

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of decision: 1<sup>st</sup> February, 2016**

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**W.P.(C) No.886/2014 & CM No.1780/2014 (for stay)**

**RAJ KUMAR & ANR**

**..... Petitioners**

Through: Mr. Arvind Nayar and Mr. Shashi  
Mohan, Advs.

versus

**SYNDICATE BANK**

**..... Respondent**

Through: Mr. V. Sudeer, Ms.  
Vandana Bakshi, Advs. and Mr.  
Devender Kumar on behalf of Bank.

**CORAM:-**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. The petition seeks a mandamus to the respondent Syndicate Bank (Bank) to release the title documents of property bearing plot no.3490, Block-C, Green Field Colony, Faridabad deposited by the petitioner to secure re-payment by the petitioners of the dues of the cash credit limit availed of by the petitioners in the name of petitioner no.2 M/s. ACE Exports of which petitioner no.1 is the sole proprietor.

2. It is the admitted position that the petitioner no.1 is also a guarantor of the advances made by the respondent Bank to one M/s. K.B. International and Sh. Dayanand Basoya and which advances according to the respondent Bank are still outstanding. It has also come on record that the respondent

Bank had invoked the guarantee admittedly given by the petitioner for the dues of M/s K.B. International and Shri Dayanand Basoya and instituted proceedings before the Debt Recovery Tribunal (DRT) for recovery and in which though a settlement was arrived at, but has not been honoured.

3. The contention of the counsel for the petitioners is that the petitioners had deposited the aforesaid title deeds to create equitable mortgage of the property only to secure the dues in the account of M/s. Ace Exports and not as a guarantor for the dues of M/s K.B. International. It is argued that the security given for dues in one account cannot be utilised for dues of another account.

4. The counsel for the petitioners does not dispute that the respondent as a banker has a right of general lien, as held by the Supreme Court in *Syndicate Bank Vs. Vijay Kumar* (1992) 2 SCC 330. Reliance however is placed on the judgment of the Division Bench of the Orissa High Court in *Alekha Sahoo Vs. Puri Urban Co-operative Bank Ltd.* AIR 2004 Ori 142.

5. The Division Bench of the High Court of Orissa was concerned with a challenge to the general lien exercised by the bank qua the gold ornaments deposited by the petitioner therein for the gold loan availed by her and

which gold loan had been repaid. The bank refused to return the ornaments exercising general lien for securing the dues of another customer of the bank for whom the petitioner had stood guarantee. It was held i) that the bank had not placed the bye-laws / rules of grant of gold loan to show that the gold pledged for gold loan could be retained as additional security for loan granted to another customer for whom the petitioner was the guarantor and even when the petitioner had repaid the gold loan; ii) there is no provision in the Indian Contract Act, 1872 to the effect that the properties of a surety can be retained by the creditor as security for the dues from the principal debtor; iii) a bank can exercise general lien over the properties of a customer for the general balance in such customer's account and not for the general balance of some other customer's account unless the customer has expressly agreed that his property can be retained as security for the outstanding balance in the account of some other customers; iv) that even in the guarantee agreement executed by the petitioner there was no provision that the bank could retain the properties of the petitioner as security for the outstanding balance in the loan account of the principal debtor.

6. It is not as if the dicta of the Supreme Court in **Vijay Kumar** supra was not noticed by the Division Bench of the High Court. However notwithstanding the same, it was held as aforesaid.

7. I am afraid the High Court of Orissa appears to have misread the dicta of the Supreme Court in **Vijay Kumar** supra. In fact I have enquired from the counsel for the petitioner whether the said judgment of the Orissa High Court was subject matter of appeal before the Supreme Court and he has fairly stated that he is not aware.

8. If the proposition as is canvassed by the counsel for the petitioner were to be accepted, there would in fact be no general lien, as the banks have been held to have. If it were to be held that without a customer expressly agreeing that his properties deposited with or in custody of bank be utilized for recovering due of the bank for which the customer is liable, we would be not giving effect to the word 'general' in the expression 'general lien'.

Supreme Court in **Vijay Kumar** has held:-

*“The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognised and in the*

*absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. ....Even otherwise having regard to the mercantile custom as judicially recognised the Banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business.”*

9. There is another important fact which distinguishes the facts of the present case from that subject matter of the case before the Orissa High Court. Here the respondent Bank has a Recovery Certificate against the petitioner. Once a Recovery Certificate has been issued in favour of the respondent Bank against the petitioner, the distinction which the Division Bench of the High Court of Orissa sought to make between the principal debtor and a guarantor / surety ceases to exist. As of today, the petitioner is the debtor of the respondent Bank and if it were to be held that notwithstanding the same, the respondent Bank is not entitled to exercise the right of general lien over the title deeds of the immovable property of the petitioner in lawful custody of the respondent Bank, it would be as good as giving a go-bye to the right of a banker of general lien and which in my humble opinion would be detrimental to the interest of the banks on which

carrying on of large trade and businesses depend and resultantly be prejudicial to trade and commerce. Also, the opinion of the Division Bench of the High Court of Orissa appears to be premised on the terms of grant of gold loan constituting a 'contract to the contrary' within the meaning of Section 171 of the Contract Act codifying the general lien of Bankers and which is also not the case here.

10. The counsel for the respondent Bank also draws attention to the order dated 16<sup>th</sup> March, 2012 of the High Court of Madras in W.P.(C) No.19096/2011 titled ***C. Lalitha Raj Vs. The Assistant General Manager, State Bank of India*** holding the Bank in that case to be having a general lien.

11. A Single Judge of the High Court of Madras in the order supra was concerned with the general lien exercised by the bank in that case to the monies lying in the account of a customer for the dues outstanding in the loan account of the son of the customer and for which loan account the customer had stood guarantee. It was held that once it was not disputed that the petitioner was the guarantor of the loan and in terms of the guarantee

could be treated as the principal debtor, it was open to the bank to exercise banker's general lien to attach the amount outstanding.

12. The counsel for the petitioner then contended that the respondent Bank is also holding security of another property of M/s. K.B. International/Mr. Dayanand Basoya for recovery of its dues and the recovery can be made from that property and not from the property of the petitioner.

13. I am afraid, the petitioner cannot compel the Bank to make any such choice. Till the dues of the respondent Bank from M/s. K.B. International and Mr. Dayanand Basoya for whom the petitioner had admittedly stood as guarantor are re-paid, no direction for return of the title deeds can be given.

14. No other argument was urged and in fact the counsel for the petitioner upon being faced with the queries about general lien and upon my showing disagreement with the judgment of the High Court of Orissa in *Alekha Sahoo* supra did not even opt to make argument in rejoinder and left.

15. Accordingly, the petition was dismissed in open Court.

16. However, while correcting the order in chamber and finding the language of Section 171 of the Indian Contract Act codifying the general lien of the banker's as under:-

**“171. General lien of bankers, factors, wharfinger, attorneys and policy brokers -** Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.”

and the language of Section 148 defining bailment as under:

**“148. ‘Bailment’, ‘bailor’ and ‘bailee’ defined -** A ‘bailment’ is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them. The person delivering the goods is called the ‘bailor’. The person to whom they are delivered is called the ‘bailee’.

*Explanation:* If a person already in possession of the goods of other contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.”

and further finding that the right of general lien has been prescribed against “any goods bailed” to the banker and bailment to be by delivery of goods only, I wondered whether the title deeds with the bank by way of



equitable mortgage would qualify as goods and qua which a right of general lien under Section 171 can be exercised.

17. My search has yielded:

- (a) Paget's Law of Banking, Twelfth Edition in Chapter 29 titled "Lien and Set-off" and under the Head "The banker's lien" to be opining that "what class of securities may be the subject of lien is not entirely clear" and under the heading "Documents of title to land" authoring as under:

"29.5 The lien does not extend to title deeds (or any other property) which is delivered to a banker for mere safe custody.

Until the Law of Property (Miscellaneous Provision) Act, 1989, a deposit of title deeds could create an equitable mortgage. However, by S. 2(1) of the Act, a contract for the sale or other disposition of an interest in land must be in a signed document which incorporates all the terms which the parties have expressly agreed. It is therefore no longer possible to create an equitable mortgage by a mere deposit of title deeds<sup>1</sup>. It seems doubtful whether an ineffective mortgage can give rise to a lien because the banker would not be exercising a right of retention over property delivered to him for some other purpose.

In *Wylde v. Radford*<sup>2</sup>, a customer deposited with his bankers a deed of conveyance of two distinct properties, giving them at the same time a memorandum charging one of the properties as security both for a specific sum and also for his general balance.

The bankers later claimed a general lien over the other property. This claim was rejected, but on the basis of the construction of the memorandum rather than on the ground that the general lien does not extend to conveyances. The case is therefore of little assistance. As Buckley J. said of *Wylde v. Radford* in *Re London and Globe Finance Corpn*<sup>3</sup>:

‘All that Kindersley V-C held was that, upon the true construction of the memorandum, the result of the transaction in that case was that property B was never intended to be charged at all; that the deed was deposited because it contained property A, and not because it contained property B; and that as regarded B there was no security given’

1. *United Bank of Kuwait v. Sahib* [1997] Ch 107, CA.
  2. (1863) 33 LJ Ch 51.
  3. [1902] 2 Ch 416 at 420.”
- (b). A Single Judge of this Court in ***Sadhna Gupta Vs. R.C. Gupta*** 2009 (112) DRJ 376 to have held title deeds to be goods within the meaning of Section 171 of the Contract Act and to have further held that it cannot be considered as immovable properties as long as possession of the property was not taken over by the bank.
- (c). Single Judges of this Court in ***State Bank of India Vs. Diwanji Buildwell (India) Pvt. Ltd.*** 111 (2004) DLT 267 and ***Texla***

*Towers Ltd. Vs. Punjab National Bank* (2004) 109 DLT 975 to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

- (d). A Single Judge of the High Court of Andhra Pradesh in *Mohan Enterprises Vs. Andhra Bank* MANU/AP/0614/2007 to have held the right of a banker to general lien to extend to title deeds of immovable property deposited with it though without discussion whether the same are goods or not.
- (e). Yet another Single Judge of the High Court of Andhra Pradesh in *V. Srinadha Reddy Vs. The Branch Manager, Indian Bank* MANU/AP/0752/2011 to have held the right of general lien to extend to gold deposited for a gold loan also and to be a valuable right of the banker judicially recognized.
- (f) Justice H.J. Kania speaking for the High Court of Bombay in *The Indian Cotton Company Ltd. Vs. Huri Poonjoo* AIR 1937 Bom. 39 to have observed "it cannot be disputed that title deeds of immovable property would fall under the definition of goods,

within the meaning of the Indian Contract Act” though not in the context of banker’s lien.

- (g) Supreme Court in ***R.D. Saxena Vs. Balram Prasad Sharma*** (2000) 7 SCC 264 to have held “thus understood goods to fall within the provision of Section 171 of the Contract Act should have marketability and the person to whom it is bailed should be in a position to dispose it of in consideration of money. In other words, the goods referred to in Section 171 of the Contract Act are saleable goods. There is no scope for converting the case files into money, nor can they be sold to any third party. Hence, the reliance placed on Section 171 of the Contract Act has no merit”.
- (h) A Single Judge of the High Court of Calcutta in ***R.K. Agencies Ltd. Vs. Central Bank of India*** AIR 1992 Cal. 193 to have also observed that “the concept of banker’s lien is generally in respect of what are called collaterals, i.e. documents, securities etc. which come into the hands of the banker and are intended to cover the banker’s claim against the customer.

- (i). A Single Judge of the High Court of Calcutta in *Nayabuddin Vs. Union of India* MANU/WB/0881/2015 to have though without considering the said aspect held the bank to be having a general lien over title deeds of immovable property, deposited with it as a security.
- (j). A Division Bench of the High Court of Madras in *The Committee representing RBF Nidhi Limited Vs. Vipanchi Investments Pvt. Ltd.* MANU/TN/0143/2009 to have again though without going into the said aspect held the right of general lien to extend over title deeds of immovable property deposited with it.
- (k). A Single Judge of the High Court of Karnataka in *Sri Nagendra Prasad Vs. The Manager, State Bank of Mysore* MANU/KA/3074/2013 to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.
- (l). A Single Judge of the High Court of Madras in *Sree Vadivambigai Ginning Industries Pvt. Ltd. Vs. Tamil Nadu*

***Mercantile Bank Limited*** MANU/TN/0913/2015 to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

(m). ***State Bank of India Vs. Jayanthi, Aarthi Lakshmi and Sanjai Balaji*** AIR 2011 Mad. 179 to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

(n). A Division Bench of the Bombay High Court in ***Shri Surendra Vs. Chief Manager & Authorized Officer State Bank of India*** MANU/MH/1328/2013 to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

18. In view of the aforesaid position, the doubt which had arisen stands cleared and I hold that the rights under Section 171 of the Contract Act can be exercised with respect to title deeds of immovable property deposited with the Bank as security.

19. The petition thus stands dismissed.

20. Needless to state that after the dues of the respondent Bank relating to M/s K.B. International / Mr. Dayanand Basoya are satisfied, the petitioner in accordance with law shall be entitled for release of the title deeds, unless the said dues are satisfied from the said property of the petitioners.

No costs.

**FEBRUARY 01, 2016**

‘pp/gsr’

*(corrected & released on 29<sup>th</sup> February, 2016)*

**RAJIV SAHAI ENDLAW, J.**

