

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.1102 of 2015

Indian Overseas Bank
Represented by its Manager,
Thiruvavaduthurai Branch,
Kuthalam Taluk,
Mayiladuthurai,
Nagapattinam District ... Appellant / Defendant

Versus

R.Panneerselvam ... Respondent / plaintiff

Second Appeal filed under Section 100 C.P.C. against the decree and judgement dated 30.01.2015 passed in A.S.No.5 of 2014 on the file of the Principal Sub Judge, Mayiladuthurai confirming the fair and decreetal order dated 29.11.2013 passed in O.S.No.304 of 2012 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Ms.Ananda Gomathy

For Respondents: Mr.S.Sounthar

J U D G M E N T

The defendant, which is the Bank, challenging the judgment and decree granted in favour of the plaintiff for mandatory injunction to hand over the jewels pledged by the plaintiff for the agricultural jewel loan and for permanent injunction restraining the defendant to conduct auction of the jewel pledged for the agricultural jewel loan, has preferred the above Second Appeal.

2. The case of the plaintiff is that he availed Kissan Credit card facility from the defendant-Bank vide A/c.No.CDCC A/c.30 and obtained loan for a sum of Rs.45,000/- on 17.07.2009. The said Kissan Credit Card was valid for three years. Admittedly, the plaintiff had not paid any amount for the said loan, as he has suffered a set back in his agricultural activity

and he had also not executed any document for renewal of the said loan. In the absence of renewal of the said loan, the loan had become time barred. Apart from the Kissan Credit Card facility, the plaintiff had also availed three agricultural loans by pledging his jewels on different dates, namely, on 03.06.2011 for a sum of Rs.10,000/- on 10.06.2011 for a sum of Rs.36,000/- and on 23.08.2011 for a sum of Rs.23,000/-. The defendant-Bank had issued a demand notice on 05.12.2012 stating that the said jewels pledged would be auctioned on 20.12.2012. After the receipt of the demand notice, the plaintiff approached the defendant-Bank and offered to deposit a part of the loan amount. The defendant refused to receive the part payment by demanding the discharge of the Kissan Credit Card availed by the plaintiff, which was already time barred. The defendant-Bank does not have any right for general lien for the time barred loan. Hence, they are liable to receive the amount for the jewel loan and return the pledged jewels. As the defendant failed to heed to the request of the plaintiff, the plaintiff issued a suit notice on 16.12.2012 and was constrained to file the suit.

3. The defendant had filed the written statement resisting the contentions of the plaintiff. The defendant denied all the averments stated in the plaint excepting the admitted facts. The first loan of Kissan Credit Card was obtained by the plaintiff and it had not been repaid till date by him. The defendant also had denied that the loan was time barred. The plaintiff had availed three jewel loans subsequently and even for the same, he had not paid any amount. The plaintiff has never approached the defendant for discharge of the loan. As per the law, the defendant had the right of Banker's General lien over the jewels pledged by the plaintiff for other loans also. Therefore, the defendant sought for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Ex.B1 to B4. On the side of the defendant, one Sivalinga Moorthy, the Branch Manager was examined as D.W.1 and Exs.B1 to B4 were marked.

5. Based on the oral and documentary evidence, the trial Court had decreed the suit in O.S.No.304 of 2012 and the same was confirmed by the lower appellate Court in A.S.No.5 of 2014. Aggrieved by the same, the defendant-Bank has preferred the above Second Appeal.

6. While admitting the Second Appeal on 12.01.2016, this Court framed the following substantial question of law:

"Whether the Courts below were right in holding that the lien of the appellant bank for recovering the loan amount dated 17.07.2009, was ceased by operation of Section 3 of the Limitation Act on 17.07.2013 though the legal position is that what is extinguished is only the right to enforce the debt by judicial process, but not the right to recover the debt itself?"

7. As per the pleadings in the plaint, the plaintiff had availed Kissan Credit Card facility from the defendant-Bank for the sum of Rs.45,000/- on 17.07.2009 and it is valid for 3 years and renewable every year. The plaintiff has not paid any amount for the said loan as he suffered loss in the agricultural activities. Admittedly, the defendant had also not obtained any signature on any document for renewal of the said loan. Hence, the loan had automatically become time barred for recovery. Incidentally, the plaintiff had also availed three loans by pledging the jewels. The case of the defendant was that the amount was credited as per Ex.A-1 only on 17.07.2010 and it was wrongly mentioned as 17.07.2009 by the staff of the Bank. However, it was admitted by D.W.1 in his cross examination that there was no alteration made in the date mentioned in Ex.A-1 and it is the duty of the Bank to handle the numbers carefully. As stated earlier, the Kissan Credit Card facility is valid for three years and renewable each year. A perusal of Exs.B1 to B4 would go to show that the loan was availed on 13.07.2010 and the amount was credited to the plaintiff's account on 17.10.2010. Admittedly, the plaintiff had not signed any document of renewal nor he had paid any amount towards the said loan. Therefore, from the date of loan sanctioned on 13.07.2010, there was no entry in the account of the plaintiff. The Bank had also not taken any steps to recover the loan from the plaintiff. Therefore, the plaintiff had contended that as on date, the loan was time barred and the defendant cannot have any general lien over the time barred loans.

8. The question that has to be decided is as to whether the general lien is extendable even to the time barred debts.

9. As stated earlier, the defendant had not taken any action for recovery of the loan. Hence, the defendant cannot exercise any right of general lien on the jewels pledged by the plaintiff, as submitted by the learned counsel for the respondent. It is the specific case of the plaintiff that he approached the defendant-Bank to repay the jewel loan, which was taken subsequently, for which also, there was a default by him. Only on the notice issued by the Bank intimating the proposed

auction of the jewel pledged, the plaintiff rushed to the Bank and offered to discharge the loan by paying the entire amount. At that juncture, when the defendant compelled the plaintiff even to discharge the Kissan Credit Card, which was obtained earlier, the plaintiff had made a claim that earlier loan was time barred. The plaintiff had also deposited the entire amount due on the jewel loan pursuant to an interim order pending suit.

10. Learned counsel for the appellant/Bank contended that the right to exercise a lien (banker's lien) was a statutory right, which vested with the appellant and therefore, it could not be linked to any period as envisaged under the Limitation Act. It is further argued by the learned counsel for the appellant that even the jewel loan application had specifically empowered the Bank to retain in its custody, the jewel pledged for a debt which could become payable in present or in future. It is argued that the statutory recognition to the concept of banker's general lien which provides that in the absence of a contract, the Banker may retain with him the goods in his possession for a general balance of account. Granting the decree in favour of the plaintiff had stopped the banker from exercising its statutory right.

11. It is pointed out by the learned counsel for the respondent/plaintiff that the general lien under Section 171 of the Contract Act cannot be extended for a time barred debt and therefore the Bank has got no right to retain the jewellery and it is duty bound to return it to the owner.

12. Section 3 of the Limitation Act provides that a suit or appeal or application shall be instituted within the time prescribed. Where the Court finds that the suit or other proceedings instituted after the period of limitation, it must be dismissed although limitation has not been set up as a defence. Section 3 of the Limitation Act merely makes such question a material one for determination in every case. As a general rule of procedure, the Court is not bound to raise and decide a question of fact on its own motion, but must raise and decide a material question of law although not raised by the parties.

13. Learned counsel for the appellant brought to the attention of this Court that the Limitation bars only the remedy but does not destroy the rights of the parties. The rules of Limitation are meant to see that parties do not resort to dilatory tactic, but seek their remedy within a time fixed by the legislature. The word 'right' means a primary or substantive right only, such right continues to exist notwithstanding that the remedy is barred by Limitation.

14. Thus contending, the learned counsel for the appellant pressed into service AIR 1992 SC 1815 [PUNJAB NATIONAL BANK AND OTHERS -VS- SURENDRA PRASAD SINHA] in support of her contention. Para 4 of the same reads as follows:-

"4.The rules of limitation are not meant to destroy the rights of the parties. Sec. 3 of the Limitation Act 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation."

15. Following the same, in the case of Bank of Baroda -vs- D.Radha Krishna Reddy (2007) 6 ALD 824, wherein in paragraph 14, it has been held as follows:

"14.....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 to the banker judiciously recognised and in the absence of agreement to contrary by virtue of statutory provision under Section 171 of the Contract Act the banker has a general lien over such securities and amounts in its possession. He has the right to use the proceeds towards adjustment of the debt due to him from the customer. Such a lien is also applicable to negotiable instruments including fdrs of the customer which are lying wit the bank. Merely because the said fixed deposit was created subsequent to the loan transaction it would not make any difference. The bank has a right to adjust all the amounts which are in their possession and which belong to the customer on the date they adjust the said amount irrespective of the date on which the transaction which gave raise to the said claim took place."

16. From the propositions laid down by the Hon'ble Supreme Court, a general lien exercised by the Bank is an implied pledge and the Bank had the right to sell the jewels even at the earliest point of time. Applying the principle, bar of Limitation does not destroy the cause of action. It is open to the Bank to extend its general lien over the jewels.

17. It is interesting to note that a Division Bench of this Court in the case of [STATE BANK OF INDIA, REP BY ITS BRANCH MANAGER, KOTHAGIRI BRANCH, NILGIRIS AND ANOTHER-VS- JAYANTHI AND

OTHERS, 2011(2) CTC 465 with reference to AIR 1992 SC 1066 [SYNDICATE BANK -VS- VIJAY KUMAR AND OTHERS], has held in paragraphs 14 and 15 as follows:

"14. In the instant case, the borrower, (late) N.P.S. Mahendran, has admittedly deposited the Title Deeds of the property to secure a loan transaction availed in respect of two Plantation Companies. This fact has not disputed by the Appellant-Bank. Therefore, we have no hesitation to hold that this contract/mortgage, had been created by the deceased borrower for a specific purpose and for a specific loan and the contract was self-contained and the terms and conditions were binding upon both the borrower as well as the Bank. In other words, the deposit of Title Deeds by which the mortgage was created by the deceased borrower was for a specific purpose to cover an advance for a specific loan. When such is the situation, the borrower having deposited the documents in order to secure a specific transaction, the Bank cannot contend that they could hold the documents for a balance due in a different loan account where the said N.P.S. Mahendran is not a borrower. Further, the language of Section 171 of the Act, is explicit to the fact that the bankers are entitled to retain as a security for a 'general balance account". Admittedly, it is not the case of the Appellant-Bank that the amount, which is now said to be due on account of the borrowings of M/s. Somerset Tea Plantation, is a general balance account of the deceased borrower N.P.S. Mahendran.

15. In the case of Syndicate Bank v. Vijaya Kumar, referred supra and relied on by the learned Senior Counsel for the Appellant-Bank, it is to be noted that the borrower therein issued a letter in favour of the Bank stating that the Bank is at liberty to adjust from the Fixed Deposit receipts without any reference to the loan and he agreed that the Fixed Deposit receipts shall remain in the Bank so long as any amount on any account is due to the Bank from them either singly or jointly or with others. Thus, the Hon'ble Supreme Court, while interpreting such a letter covering the transaction executed by the borrower therein, rendered a

finding that the Bank is entitled to a general lien over the Fixed Deposit receipts given by the borrower therein."

18. However, in this case, there is no specific contract or agreement between the plaintiff and the Bank, whereby the plaintiff can be said to have offered the jewels in question to secure even the previous transaction, which is time barred.

19. In the absence of such contract to the contrary, I have no hesitation to follow the Division Bench of this Court to hold that the Bank cannot claim its right to sell the jewels pledged with it by extending the general lien.

20. In the light of the above discussions, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Subordinate Judge, Mayiladuthurai
2. The Additional District Munsif, Mayiladuthurai.
3. The Section Officer, V.R. Section, High Court, Madras

+1 CC to Ms. Ananda Gomathy, Advocate sr 26523.

+1 CC to Mr. S. Sounthar, Advocate sr 26006.

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S.A.No.1102 of 2015

EV (CO)
SP (25/05/2018)

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