

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.16812 of 2018

- 1 C.R. Ramachary
- 2 Babu Dress Land
Rep. by its Proprietor,
Mrs. Sabitha Ramachary
W/o. Ramachary
Both are residing
at No.3, Kambar Street,
NGO Colony Guduvanchery,
Chennai - 603202. ... Petitioners
- Vs.
- 1 Indian Overseas Bank
Rep. by its Chief Manager
Head Office, D.No.763
Anna Salai, Chennai - 600002.
- 2 Indian Overseas Bank
Regional Office, Plot No.40
80 feet Road, Arignar Anna Nagar
Madurai - 625020.
- 3 Indian Overseas Bank
Rep. by its Chief Manager
No. 52, Madurai Road
Theni Allinagaram - 625053
- 4 Indian Overseas Bank
Rep. by its Branch Manager
No. 23 New Agraharam
Palani Road,
Dindigul - 624001. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus calling for records pertaining to the order dated 04.08.2017 passed by the third respondent, to quash the

same and further direct the respondents to return the title deeds in respect of property Seethalakshmi Ginning Factory buildings, Bearing Door No. W4/B8/163/2, a vacant site to an extent of 1 acre and 1 cent or thereabouts comprised in Survey Nos. 294 and 295/2, Periakulam Main Road, Sukkuvadanpatty, Unjampatty, Theni District to the petitioner as per her representation dated 11.03.2017.

For Petitioners : Mr.M.Raja Sekhar

For Respondents : Mr.M.Senthilkumar
for Mr.K.S.Karthik Raja
for respondents 2 to 4

No appearance
for 1st respondent

ORDER
(Made by the Hon'ble Chief Justice)

Heard the learned counsel for the petitioners and the learned counsel for the respondent bank.

2. The admitted facts are that the petitioners had obtained three separate loans from the respondent bank. Two of the loan accounts were settled, however, the third loan account was not settled. When the first petitioner approached the respondent bank to release the documents in relation to the properties mortgaged in relation to the loans which were already settled, the respondent bank, by letter dated 4.8.2017, refused to return the documents. The respondent bank refused to return the documents on the ground that the first petitioner had obtained another loan as Sole Proprietor of M/s.Babu Dresses (second petitioner) from the respondent bank and he had not repaid the said loan amount and committed default. This loan account was declared as Non Performing Asset (NPA) and, hence, the respondent bank had filed a suit for recovery before the Debts Recovery Tribunal being O.A.No.434 of 2017. In the letter dated 4.8.2017, it is further stated that since the first petitioner was liable to pay substantial amount to the bank, the bank has exercised its general lien over the properties mortgaged by the first petitioner and, hence, the bank was not in a position to release the collateral security mortgaged by the first petitioner until the closure of all loans availed by him and, hence, the request of the first petitioner was rejected. Being aggrieved by this communication dated 4.8.2017, the present petition has been preferred by the petitioner.

3. The learned counsel for the petitioners submitted that it is an admitted fact that the earlier two loan accounts were settled and only the third loan account which is to the tune of Rs.63 lakhs was declared as Non Performing Asset (NPA). He submitted that sufficient collateral security, i.e., seven items which are stated in Schedules 'A' and 'B' to the Original Application, was furnished in relation to the third loan of Rs.63 lakhs.

4. However, the learned counsel for the respondent bank has produced valuation report of the seven items and according to the bank, the forced sale value of all the seven items would come to Rs.30 lakhs and even if the market value is considered, the market value of all the items would come to Rs.36 lakhs. The learned counsel for the respondent bank submitted that the loan amount is Rs.63 lakhs and the interest thereon which has accumulated is Rs.11 lakhs and hence, as of today, the petitioners owe Rs.74 lakhs to the bank and the security furnished by the petitioners is not enough to cover the said amount, hence, the bank has exercised its general lien over the properties mortgaged by the first petitioner.

5. The learned counsel for the petitioners submitted that as the earlier two loan accounts were settled, the documents relating to the properties which were furnished as security for the said two loan accounts cannot be withheld by the respondent bank. In support of his contention, he has placed reliance on two decisions of this Court.

6. The first decision relied on by the learned counsel for the petitioners is State Bank of India and another v. Jayanthi and others, reported in 2011 (3) MLJ 245 : 2011 (2) CTC 465. He pointed out that in the said case it was observed that the deposit of title deeds by which the mortgage was created by the deceased borrower, N.P.S.Mahendran, 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. We have carefully perused the said decision and we find that as far as the second loan account is concerned, the deceased N.P.S.Mahendran was not a borrower. In such circumstances, it was held that the documents furnished as security in relation to the first loan account could not be withheld in relation to the other loan account where deceased N.P.S.Mahendran was not the borrower. However, such are not the facts in the present case. In the present case, admittedly, the first petitioner is the borrower in relation to all the three loans. Hence, this decision would not apply to the case of the petitioners.

7. Thereafter, the learned counsel for the petitioners placed reliance on another decision of this Court dated 9.8.2017 in W.P.(MD) No.12613 of 2016 in the case of M.Shanthi v. Bank of Baroda. The learned counsel for the petitioners specifically placed reliance on para 11 of the said decision. He pointed out that in the said case, the decision of the Supreme Court in the case of Syndicate Bank v. Vijay Kumar, reported in AIR 1992 SC 1066 : MANU/SC/0196/1992, relied upon by the learned counsel for the respondent has been specifically considered and thereafter it was held that unless the customer/debtor has expressly agreed that his properties can be retained as security for the outstanding balance in the account of the bank, the bank cannot exercise lien over the properties of such customer under Section 171 of the Indian Contract Act, 1872.

8. We have in detail gone through the abovesaid decision. The relevant part of the said decision which was relied upon by the learned counsel for the petitioners reads as under:

"Unless therefore a customer has expressly agreed that his properties can be retained as security for the outstanding balance in the account of some other customer, a Bank cannot exercise lien over the properties of such customer under Section 171 of the Contract Act"

(emphasis supplied)

Thus, it is seen that this decision is rendered in a case where the properties belonged to different customers/borrowers. In the present case, all the properties in relation to all the three loan accounts admittedly belong to the first petitioner. Hence, this decision cannot be said to be applicable to the facts of the present case.

9. The specific case of the learned counsel for the respondent bank is that the bank exercises a banker's lien/general lien over all the properties of the petitioner and in such case, as the third loan was declared as NPA, they were well within their rights not to return the documents relating to the properties which were furnished as guarantee in the earlier two loan accounts.

10. The question of banker's lien/general lien fell for consideration before the Supreme Court in Syndicate Bank v. Vijay Kumar, supra. The provision of Section 171 of the Indian Contract Act, 1872 was also noticed in the said case. Taking into consideration Halsbury's Laws of England and provisions of the Contract Act in respect of banker's lien, the following observation was made:

"6. In Halsburys Laws of England, Vol. 20, 2nd Edn. p.552, para 695, lien is defined as follows :-

'Lien is in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract.'

In Chalmers on Bills of Exchange, thirteenth Edition page 91 the meaning of "Bankers lien" is given as follows:

'A bankers lien on negotiable securities has been judicially defined as "an implied pledge." A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer.'

In Chitty on Contract, Twenty-sixth Edition, page 389, Paragraph 3032 the Bankers lien is explained as under:

'By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business. The custom does not extend to valuables lodged for the purpose of safe custody and may in any event be displaced by either an express contract or circumstances which show an implied agreement inconsistent with the lien..... The lien is applicable to negotiable instruments which are remitted to the banker from the customer for the purpose of collection. When collection has been made the process may be used by the banker in reduction of the customers debit balance unless otherwise earmarked.'

In Pagets Law of Banking, Eighth Edition, Page 498, a passage reads as under:

'THE BANKERS LIEN

Apart from any specific security, the banker can look to his general lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognised as such.'

In Brandao v. Barnett (1846) 12 Cl & Fin 787 it was stated as under :

'Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien.'

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 customers debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted to the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which are deposited by the customer."

11. As per Section 171 of the Indian Contract Act, the bank may, in the absence of a contract to the contrary, have lien over the security for a general balance of account. However, no other person shall have a right to retain as security for such balance, unless there is an express contract to that effect. In the case on hand, the bank had created a lien over the petitioner/borrower's property which was mortgaged with the bank in respect of the other two loan accounts.

12. In the decisions relied upon by the learned counsel for the petitioners all the properties did not belong to the borrower. In the present case, the properties belong to the first petitioner/borrower. Therefore, in view of the finding of the Supreme Court, as reproduced above, we are of the view that the respondent bank has a general lien over the securities and other instruments deposited by the petitioner with the bank in the ordinary course of banking and such general lien being a valuable right of the bank as per the decision of the Supreme Court, it cannot be ignored in the absence of an agreement to the contrary. In such case, the respondent bank is well within its rights to retain the documents furnished by way of collateral security in relation to the earlier two loan accounts which were settled, as the third loan was not settled. In such

view of the matter, we do not find any merit in the submissions made by the learned counsel for the petitioners.

13. At this stage, the learned counsel for the petitioners submits that the Original Application, which is pending before the Debts Recovery Tribunal, may be directed to be disposed of expeditiously. In view of the prayer made, the Debts Recovery Tribunal is requested to dispose of the Original Application expeditiously.

In the result, the writ petition is dismissed. No costs. Consequently, W.M.P.No.19994 of 2018 is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

1. The Assistant Registrar
Debts Recovery Tribunal, Madurai.
2. The Chief Manager
Indian Overseas Bank
Head Office, D.No.763
Anna Salai, Chennai - 600002.
3. The Indian Overseas Bank
Regional Office, Plot No.40
80 feet Road, Arignar Anna Nagar
Madurai - 625020.
4. The Chief Manager
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No. 52, Madurai Road
Theni Allinagaram - 625053
5. The Branch Manager
Indian Overseas Bank
No. 23 New Agraharam
Palani Road, Dindigul - 624001

+ 1 cc to M/s. K.S. Karthik Raja, Advocate Sr.74775

+ 1 cc to M/s. Raja SekhAR, Advocate Sr.75036

W.P.No.16812 of 2018

SSV(CO)

EU(16/11/2018)