



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2018

CORAM:

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**THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

W.P (MD) No.17795 of 2018

M/s.Suresh Marketing Associates,
representing through its Proprietor,
V.S.Suresh Babu,
No.145/381, 1st Floor,
East Veli Street,
Madurai.

... Petitioner

Vs.

The Chief Manager,
Bank of Baroda,
Madurai Main Road,
North Veli Street,
Madurai - 1.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus, directing the respondent to return the petitioner's original document in respect of the house property bearing Door No.145, T.S.Nos.102 and 103, Ward No.45, East Veli Street, Madurai - 1, which was furnished as secured assets to the Loan Account Number:05530400000046, within the time limit fixed by this Court.

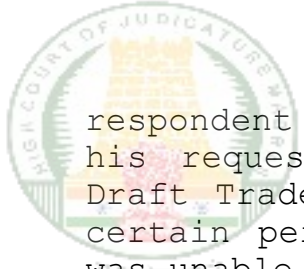
For Petitioner : Mr.PT.S.Narendravasan

For Respondent : Mr.Pala Ramasamy

ORDER

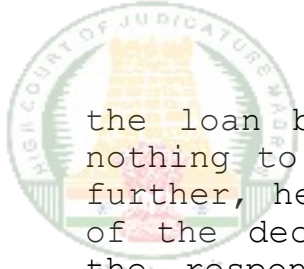
Mr.V.S.Suresh Babu, Proprietor of M/s.Suresh Marketing Associates, No.145/381, 1st Floor, East Veli Street, Madurai, has filed this writ petition seeking a writ of Mandamus directing the respondent to return the petitioner's original document in respect of the house property bearing Door No.145, T.S.Nos.102 and 103, Ward No.45, East Veli Street, Madurai - 1, which was furnished as secured assets to the Loan Account Number:05530400000046, within the time limit fixed by this Court.

2. Mr.PT.S.Narendravasan, learned Counsel for the petitioner submitted that in the year 2010, the petitioner approached the Bank of Baroda, Madurai Main Road, North Veli Street, Madurai - the



respondent herein to avail loan to develop his business. Accepting his request, the respondent bank sanctioned Rs.12 Lakhs as Over Draft Trader loan which was paid regularly without any default for certain period. Thereafter, due to various reasons, the petitioner was unable to pay the dues to the respondent bank and the petitioner was also not able to continue the business. In view of the default in payment of the outstanding dues and interest, the respondent bank issued a demand notice under Section 13(2) of the SARFAESI Act. Although a detailed reply was sent, the same was not considered. Consequently, the respondent bank also issued a possession notice under Section 13(4) of the Act and also took possession of the secured assets, namely, the house property in Door No.145, T.S.Nos.102 and 103, East Veli Street, Madurai - 1. Finally, the residential building where the petitioner was residing was brought for public auction on 24.03.2017. However, no one participated in the auction. In order to safeguard the residential building the petitioner with great difficulty arranged funds to the tune of Rs.11,50,000/- (Rupees Eleven Lakhs and Fifty Thousand only) on 27.03.2017 out of the outstanding amount due to the respondent bank to the tune of Rs.15,77,611/- (Rupees Fifteen Lakhs Seventy Seven Thousand Six Hundred and Eleven only). Again, on 12.06.2017, the petitioner also made a further payment of Rs.4,48,556/- (Rupees Four Lakhs Forty Eight Thousand Five Hundred Fifty Six only) and as such, closed the loan account due to the respondent bank. In spite of the payment made by the petitioner, the respondent bank demanded a sum of Rs.13,584/- (Rupees Thirteen Thousand Five Hundred and Eighty Four only) towards processing charge and further sum of Rs.2,030/- (Rupees Two Thousand and Thirty only) towards interest for the period from 01.07.2017 to 31.07.2017. Again, the petitioner without any objection, remitted the processing charge of Rs.13,584/- (Rupees Thirteen Thousand Five Hundred and Eighty Four only) on 05.07.2017. Thereafter, the respondent bank claimed a sum of Rs.2,030/- (Rupees Two Thousand and Thirty only) towards interest and the petitioner also paid the same and the entire amount was cleared by the petitioner and as of now, there is no due to be paid by the petitioner. Thereafter, when the petitioner approached the respondent bank with a request to return the original equitable mortgaged documents relating to the security furnished by the petitioner for the said loan, they were adamant in returning the original documents for the reasons best known to them. Therefore, finding no other alternative remedy, the petitioner issued a legal notice to the respondent bank on 26.07.2017 and on receipt of the said notice, the respondent bank by letter dated 04.08.2017 informed that M/s.Suresh Polimers obtained a loan and the same is also due to the respondent bank and hence, the petitioner was directed to settle the said loan stating that the petitioner is the legal heir of V.S.Malliga - proprietrix of M/s.Suresh Polimers, who is no more.

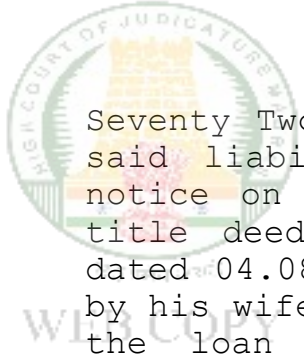
3. Learned Counsel for the petitioner submitted that in respect of M/s.Suresh Polimers, two items of properties worth more than Rs.2 Crores were furnished as equitable mortgage and the same has nothing to do with the loan amount borrowed by the petitioner. Therefore,



the loan borrowed by the petitioner is concerned, the same has nothing to do with the loan payable by M/s.Suresh Polimers. Adding further, he has stated that though the petitioner is the legal heir of the deceased V.S.Malliga - proprietrix of M/s.Suresh Polimers, the respondent bank has no legal right to retain the original documents furnished for the loan borrowed by M/s.Suresh Marketing Associates, the reason being, if the respondent bank can proceed with M/s.Suresh Polimers which worth about Rs.2 Crores, they can proceed against the said property. On the contrary, the respondent bank cannot refuse to return the original equitable documents relating to the security furnished to the Over Draft Trader loan account.

4. In a bid to impress upon this Court that there was an attempt made by the respondent bank in their favour, in respect of the legal notice dated 26.07.2017 issued by the petitioner asking the respondent bank to return the original equitable documents on the ground that they have cleared the entire loan amount, the respondent bank has not disputed the repayment of the loan amount by the petitioner in respect of M/s.Suresh Marketing Associates and therefore, a direction be issued, he pleaded.

5. A detailed counter affidavit has been filed by the respondent bank. Mr.Pala.Ramasamy, learned Counsel for the respondent bank, opposing the prayer, pleaded that the petitioner is not entitled to a writ of Mandamus seeking return of documents, which was mortgaged in respect of Loan A/c.No.05530400000046. Explaining further, he submitted that Mrs.V.S.Malliga as sole proprietrix was doing business in the name of M/s.Suresh Polimers and she had also availed Over Draft limit for a sum of Rs.24,00,000/- (Rupees Twenty Four Lakhs only) as per the bank sanction letter dated 19.04.2010 against the security of immovable property offered by Mr.V.S.Suresh Babu - the petitioner herein. On availing the loan, the petitioner has not repaid the loan as per the terms of sanction and therefore, the said A/c.No.055304000000102 was classified as Non-Performing Asset on 31.08.2015 and a sum of Rs.38,77,281/- (Rupees Thirty Eight Lakhs Seventy Seven Thousand Two Hundred and Eighty One only) was due as on 06.10.2018. In the meanwhile, V.S.Malliga died intestate on 30.01.2016 leaving behind her, Mr.V.S.Suresh Babu - husband and Mrs.Deepa Shree - daughter. Since they have inherited the estate of the deceased V.S.Malliga including the mortgaged property, to recover the public money lent, the respondent bank has taken action under the SARFAESI Act by issuing sale notice dated 20.06.2018 to the petitioner. When the petitioner as Proprietor of M/s.Suresh Marketing Associates has also availed Over Draft facility and the same was also classified as Non-Performing Asset. Immediately thereafter, the petitioner offered his immovable property at East Veli Street, Madurai and the said property was brought for auction vide auction sale notice dated 20.06.2018. Therefore, the petitioner on paying substantial amount, a sum of Rs.11,472/- (Rupees Eleven Thousand Four Hundred and



Seventy Two only) is due in respect of his liability. Although the said liability was cleared on 12.06.2017, they sent a lawyer's notice on 26.07.2017 demanding the respondent bank to return the title deeds. However, the respondent bank replied in its letter dated 04.08.2017 that he has stood as a guarantor for loan availed by his wife, namely, V.S.Malliga vide A/c.No.05530400000102, namely, the loan account of M/s.Suresh Polimers and accordingly, the petitioner was requested to clear their liability and then to get back the title deeds.

6. Although the respondent bank explained the statutory right of lien and requested to settle the entire amount, the petitioner has not considered and therefore, the present writ petition is not legally maintainable. The petitioner also accepting the request of the respondent bank to settle the entire loan amount sent a proposal on 09.08.2018 coming forward to settle the amount by offering a sum of Rs.28,00,000/- (Rupees Twenty Eight Lakhs only). The relevant portion in the proposal sent by the petitioner on 09.08.2018 is extracted hereunder for ready reference:

"In this circumstances, my income also soared and unable to pay the dues properly. In this current scenario, my son-in-law has come forward to settle a/c with his loan amount Rs.26 Lakhs + cash amount Rs.2 Lakhs. Total Rs.28 Lakhs, one time settlement as proposed.

I request you to consider this proposal and grant permission to settle the loan a/c.No.05530400000102 fully with the above mentioned amount of Rs.28 Lakhs and release the documents. Once we receive the proposal from you rend, we will settle the amount within a week time."

7. Subsequently, at the request of the respondent bank, the petitioner has improved his offer and agreed to pay a sum of Rs.31,85,000/- (Rupees Thirty One Lakhs and Eighty Five Thousand only) on 14.08.2018. The same was also endorsed in the letter dated 09.08.2018. When the said proposal was accepted by the respondent bank and was made in its letter dated 21.08.2018 to deposit the agreed amount, only the petitioner has not honoured the said One Time Settlement proposal. In the meanwhile, the petitioner has filed the writ petition seeking to deliver the title deeds of the petitioner. Therefore, the present writ petition seeking a writ of Mandamus is not legally maintainable. When the respondent has got a right of lien under Section 171 of the Indian Contract Act, 1872, the respondent bank is justified in holding the documents.

8. In this context, it is relevant to extract hereunder Section 171 of the Indian Contract Act, 1872:

"171. General lien of bankers, factors, wharfingers, 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."

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9. Various High Courts and also the Honourable Supreme Court, while dealing with the valuable right of the banker's lien have held that lien is a right in one man to retain and the said valuable right is in his possession belonging to another until certain demands of the person in possession are satisfied.

10. Placing reliance on a judgment of this Court in State Bank of India, Kotagiri Branch v. Chokkalingam and others reported in (2008) 1 MLJ 1009 : MANU/TN/0021/2008, a Division Bench of this Court, accepting the banker's lien/general lien, has held that the bank has a general lien over the securities and other instruments deposited by respondents 1 to 3 in the ordinary course of banking and such general lien being valuable right of the banker, as per the decision of the Honourable Supreme Court in Syndicate Bank v. Vijay Kumar and others reported in AIR 1992 SC 1066 : MANU/SC/0196/1992, dealing with Section 171 of the Indian Contract Act, 1872 and also Section 60 of the Transfer of Property Act, 1882, ruled that valuable right of the banker cannot be ignored in the absence of agreement to the contract. In the said judgment, the borrowers who are partners of one firm, namely, M/s.Sree Vari Corporation, initially obtained crop loan and subsequently, the partnership firm, through the partners of the firm also obtained loan to the tune of Rs.70 Lakhs, Rs.20 Lakhs towards cash credit and Rs.50 Lakhs towards term loan. While taking such loan, the properties at Survey Nos.678 and 679 of Thekkampatti Village were mortgaged and the original documents were deposited with them. Pursuant to One Time Settlement in respect of loan amount of Rs.70 Lakhs, the borrower, partnership firm, paid a sum of Rs.74,34,485/- in full and final settlement of the loan account. Thereafter, the partners who are the guarantors requested the bank to return the documents of title in their favour, but the bank refused to return the documents on the ground that the crop loan taken on 14.12.1996 which was renewed twice, on 23.10.1997 and 05.02.1997, have not been returned by the partners of the firm. Therefore, the Debts Recovery Tribunal, Coimbatore, after hearing the parties, directed the bank to return those original documents mortgaged which was also confirmed by the Debts Recovery Appellate Tribunal. As against that, the bank filed C.R.P(NPD)No.3019 of 2007, taking a stand that it is the established principle of Mercantile System that banker has general lien over all forms of commercial paper deposited by or on behalf of customer in ordinary course of business placing reliance on the judgment of the Honourable Supreme Court in Syndicate Bank v. Vijay Kumar and others reported in AIR 1992 SC 1066 : MANU/SC/0196/1992. On the other hand, the partnership firm also referring to Section 171 of the Indian Contract Act, 1872 and section 60 of the Transfer of Property Act, 1882, submitted that the bank has no right to exercise general lien over the properties



mortgaged by the partners in respect of the credit facility availed by the partnership firm. This Court, accepting the stand of the bank that the bankers most undoubtedly have a general lien on all securities deposited with them by a customer unless there be an express contract or circumstances that show an implied contract, inconsistent with lien. The general lien being valuable right of the banker cannot be ignored. It is pertinent to extract hereunder the relevant portion:

"5. The question of bankers lien/general lien fell for consideration before the Supreme Court in *Syndicate Bank v. Vijay Kumar and Ors.* . 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 bankers lien, the following observation was made by the Supreme court:

"6. In Halsbury's 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 "Banker's lien" is given as follows:

A banker's 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 Banker's 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 extent 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 customer's debit balance unless otherwise earmarked.

In Paget's Law of Banking, Eighth Edition, Page 498, a passage reads as under:

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THE BANKER'S 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 customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted 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.

6. In view of the finding of the Supreme Court, we are of the view that the bank has a general lien over the securities and other instruments deposited by respondents 1 to 3 in the ordinary course of banking and such general lien being valuable right of the banker, as per Supreme court decision, it cannot be ignored in absence of an agreement to the contrary.

7. We, accordingly, set aside the impugned order dated 10th Sept., 2007, passed by DRAT as also the order dated 17th Jan., 2007, passed by DRT, Coimbatore. But



this order will not stand in the way of respondents 1 to 3 to pay back the dues to the bank and, thereafter, to request the bank to release the documents. The civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. But there shall be no order as to costs."

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11. The same judgment has been followed by another Division Bench of this Court in *The Committee, rep. RBF Nidhi Ltd., v. Vipanchi Investments Pvt. Ltd.*, and others reported in 2009 (2) CTC 1 : MANU/TN/0143/2009, holding that the bankers most undoubtedly have a general lien on all securities deposited with them by a customer. The relevant portion is extracted hereunder for ready reference:

"21. In *Syndicate Bank v. Vijay Kumar and others*, AIR 1992 SC 1066, while considering the scope of 'general lien', the Apex Court quoted the Halsbury's Laws of England as follows:

"Lien 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."

The Apex Court has also quoted '*Chalmers on Bills of Exchange*' as to the meaning of 'Banker's lien', which reads as follows:-

"A banker's 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."

The Apex Court has also quoted '*Chitty on Contract*' as to the general lien, which reads as follows:-

"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 proceeds may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked."



22. In Brando v. Barnett (1846) 12 Cl., it is stated as follows:-

"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."

Having quoted the above judgments, the Apex Court ultimately held as follows:-

"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. 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."

On the given facts of the case, we are of the considered opinion that M/s R.B.F. Nidhi Limited is entitled to invoke the provisions of Section 171 relating to general lien and the claim of the appellants-companies seeking for redemption in terms of Section 91 of the Transfer of Property Act must yield to such right and consequently the right to claim redemption cannot be accepted."

12. In view of the above, since the issue raised in the present writ petition is no longer res integra and it has been well settled that the bankers most undoubtedly have a general lien on all securities deposited with them by a customer and 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, we are not able to find any merit in the writ petition and accordingly, this writ petition fails.

<https://hcservices.ecourts.gov.in/hcservices/> 13. In the result, this writ petition stands dismissed. However, it is made clear that the petitioner after paying all the loan amount due to the respondent bank can request the bank to



release the original documents/title deeds. No costs.

Sd/-
Assistant Registrar(Records)

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Sub Assistant Registrar

+1cc to Mr.PT.S.Narendravasan Advocate in SR.No.93286

+1cc to Mr.Pala Ramasamy Advocate in SR.No.93905

W.P (MD) No.17795 of 2018
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