BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.4883 of 2019

M/s.Bhavadharani Builders,
Rep. By its Managing Partner,
Palanikumar ... Petitioner

Vs.

1. The Regional Manager,
Central Bank of India,
Madurai Regional,
Dr.Ambedkar Road,
Madurai - 20.

2. The Chief Manager,
Central Bank of India,
Thallakulam Branch,
No.6, Thirumukulam North Street,
Thallakulam, Madurai.

3. The Chief Manager,
Canara Bank,
Grand Central Bank,
Pandian House,
No.118-B, West Perumal Maistry Street,
Madurai - 625 001. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to release the documents in Document Number 2090/2010 & 6623/2012 to the third respondent, which was submitted by the petitioner as collateral in lieu of the overdraft account No.3321338976 with the second respondent.

For Petitioner : Mr.G.Prabhu Rajadurai,
for Mr.R.Maheswaran.
For R-2 : Mr.R.Ravikumar
For R-3 : Mr.Pala Ramasamy

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O R D E R

The Writ petitioner is a firm whose Managing Partner is one Thiru.Palanikumar. The firm is enjoying overdraft facility with Thallakulam Branch of Central Bank of India. The overdraft facility has been periodically enhanced and by the year 2016, it was Rs.1.8 Crores. The petitioner has given two documents bearing No.2090/10 in respect of the property bearing Door No.139/5, Kallikudi Road, NGO Nagar, Kariyapatti, Virudhunagar District and another document bearing No.6623 of 2012 in respect of the property situated in R.S.No.80/5B1 at Anaiyur Village, First Pit, Madurai North Taluk, Madurai, as collateral security. For better facilities, the petitioner wanted to switch over to the Grand Central Branch of Canara Bank, Madurai. The third respondent/Canara Bank was willing to take over the petitioner's account. The petitioner submitted an application before the third respondent in this regard. There was also due intimation to the second respondent about the request for closure of the overdraft account. The third respondent processed the papers and was informed by the second respondent about the extent of liability. Based on the same, the third respondent transferred a sum of Rs.1.8 Crores to the second respondent Bank through R.T.G.S. on 05.02.2019 for taking over the Writ petitioner's liability.

2. The second respondent was specifically requested by the petitioner to close the overdraft account and forward the said documents to the third respondent Bank. But the second respondent refused to do by contending that the father of Thiru.Palanikumar, namely, Thiru.Nedumaran is also having overdraft account with the second respondent for a sum of Rs.2.25 Crores and that only on the closure of Thiru.Nedumaran's account, the documents in question would be handed over to the third respondent. On account of the stand taken by the second respondent, the petitioner was constrained to move this Court.

3. The second respondent had filed a counter affidavit. The clear stand taken by the second respondent is that the move of the third respondent as well as the Writ petitioner is not in tune with the norms formulated by the Reserve Bank of India. It was further pointed out that at no point of time, the second respondent had assured to release the security on receipt of the funds from the third respondent. The second respondent would blame the third respondent for having acted in a hasty manner. It was further claimed that the account of Thiru.Nedumaran is showing signs of sickness and it is likely to slip into NPA shortly.

4. This Court posed a specific question to the learned counsel appearing for the second respondent as to whether the second respondent is asserting its right of lien enshrined in Section 171 of the Indian Contract Act for retaining the document No.6623/12 that belongs to Thiru.Nedumaran. The learned counsel appearing for the second respondent Bank fairly stated that they are not asserting

any right of banker's lien but that they are only seeking to enforce the charge created over the said property.

5. Heard the learned counsel on either side.

6. It is true that Thiru.Nedumaran is having overdraft facility with the second respondent. It is equally true that the said account is secured because Thiru.Nedumaran has given collateral securities which according to the petitioner are worth Rs.6 Crores. It is not in dispute that Thiru.Nedumaran is not a partner in the Writ petitioner's firm. Therefore the concept of group account cannot be pressed into service. Since the second respondent is invoking the right of charge, this Court will have to refer to Section 100 of the Transfer of Property Act 1882 which reads as follows:-

> "100. Charges- Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.
>
> Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

7. It is well settled that "charge" can be created either by act of parties or by operation of law. In the present case, the second respondent has not placed any material based on which such a right is being claimed. When the Writ petitioner in order to secure their account handed over the document that belongs to Thiru.Nedumaran, the second respondent did not obtain any undertaking from Thiru.Nedumaran that the Bank can have an overall charge over the said property even in respect of his other liabilities. Therefore, the only conclusion that can be drawn is that the document in question can be retained only so long as the petitioner's overdraft liability with the second respondent Bank is not cleared. The moment it is cleared, the second respondent cannot have any claim over it. As already stated, the second respondent is not asserting any right of lien.

8. Though paragraph No.2 of Section 100 of the Transfer of Property Act 1882 is not strictly applicable in this case, one can look to it for guidance. A charge cannot be enforced against a

person in whose favour the property has been transferred for consideration and without notice of the charge. In this case, the third respondent did not unilaterally remit a huge sum of Rs.1.8 Crores to the second respondent. There was exchange of correspondence among the parties. The second respondent did not, before such remittance inform the third respondent that it is having a charge over the document of Thiru.Nedumaran that was given as a collateral to secure the Writ petitioner's overdraft account. Therefore, after receiving a sum of Rs.1.8 Crores from the third respondent, the second respondent cannot now contend that it would not hand over the documents to the third respondent.

9. It is true that Thiru.Nedumaran is having overdraft account with the second respondent. But the said overdraft account is independently secured. The Writ petitioner's account with the second respondent is independent. It is true that the title document belonging to Thiru.Nedumaran has also been given as one of the securities to secure the Writ petitioner's overdraft account. But the said liability of the Writ petitioner has been liquidated in full on account of transfer of funds from the third respondent Bank to the second respondent Bank. Thiru.Nedumaran has executed a letter of personal guarantee. There is no accompanying memorandum or undertaking letter of Thiru.Nedumaran so as to create charge over the document in question not only to cover the liability of the petitioner but also that of Thiru.Nedumaran. Thus the claim of charge made by the second respondent has not been substantiated. The second respondent is a Government of India undertaking. Therefore, it cannot afford to conduct its affairs in an unreasonable and arbitrary manner.

10. Therefore, the second respondent is directed to release the petition mentioned documents to the third respondent and close the petition mentioned account of the Writ petitioner, forthwith and without any delay. This Writ petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS III)

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To

The Regional Manager,
Central Bank of India,
Madurai Regional,
Dr.Ambedkar Road,
Madurai - 20.

1 CC to M/s.R.RAVIKUMAR, Advocate (SR-60846[F] dated 12/04/2019)

+1 CC to M/s.R.MAHESWARAN, Advocate (SR-60912[F] dated 12/04/2019)

+1 CC to M/s.PALA.RAMASAMY, Advocate (SR-61128[F] dated 15/04/2019)

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