IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2020

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.8986 of 2017
and W.M.P.No.9897 of 2017

P.K.Parthiban ...Petitioner

Vs

1. The Regional Manager,
   Canara Bank,
   No.524, Anna Salai,
   Teynampet, Chennai.

2. The Manager,
   Canara Bank, Ponneri Branch,
   Thiruvallur District,
   Ponneri-601 204. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to return the title deeds placed with the second respondent Bank by creating a mortgage by deposit of title deeds in Document No.1155 of 2014, dated 11.02.2014 on the file of the Registrar at Ponneri.

For Petitioner : Mr.M.L.Ramesh

For Respondents : Mr.S.Parthasarathy

O R D E R

The petitioner seeks a writ of Mandamus directing the respondents - Canara Bank to return the title deeds placed with it by creating a mortgage deed document bearing No.1155, dated 11.02.2014.

2. The petitioner had stood as a Guarantor for a sum of Rs.25,00,000/- availed as Overdraft facility by one G.Mahendran from the respondents and had deposited the documents of title, which he is seeking to be returned. The said loan of G.Mahendran was discharged and letter of clearance was also given. During

the subsistence of the said guarantee, the petitioner himself obtained an Overdraft facility to the tune of Rs.35,00,000/- and had executed another mortgage by depositing title deeds, the value of which is equivalent to the overdraft facility extended to him.

3. According to the petitioner, the said property satisfied the security of the loan extended to him personally. The petitioner is now claiming return of the said document, which he had given as security for the OD facility availed by G.Mahendran, which is discharged in full. When refused by the Bank, a legal notice was issued on 03.02.2017 calling upon the Bank to return the documents mortgaged as guarantor for the OD facility extended to Mahendran. The second respondent also sent a reply on 20.02.2017 claiming Banker's lien over the title deeds as per Section 171 of the Indian Contracts Act for the loan extended to the petitioner himself, which is an OD facility for a sum of Rs.35,00,000/-.

4. As the petitioner had not specifically agreed to mortgage the said property for the loan/OD facility availed by him, it was contended that the Bank cannot retain the document, as general lien and sought for the return of the same. Hence, the petition.

5. The respondents also filed a counter-affidavit stating that the property that was deposited by way of title deeds for the loan availed by the petitioner would not satisfy the credit facility extended to him. Admittedly, the OD facility was availed by the petitioner even before the discharge of OD facility availed by the said G.Mahendran. It is also stated that the petitioner was not prompt in repayment of the credit facility and hence, a suit in OA No.500 of 2017 was filed against the petitioner before the Debts Recovery Tribunal (DRT)-III at Chennai, which is said to be pending. In fact, the bank had specifically given a reply dated 20.02.2017 claiming Banker's lien over the title deeds as per Section 171 of the Indian Contract Act for the loan/credit facility extended to the petitioner, for which, he had given his other property as security by mortgaging the same.

6. Therefore, the question that would arise for consideration in the writ petition is whether the Bank is empowered to exercise its powers under Section 171 of the Indian Contract Act by extending the Banker's lien over the property, which was given as security for the credit facility availed by G.Mahendran, though admittedly, is discharged.

7. Section 171 of the Contract Act readsa as follows :

> 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."

8. The concept of general lien itself is in respect of what is called collatorals, i.e., document, securities, etc., which are in the custody of the Banker and are intended to cover the Banker's claim against a customer.

9. It is not the case of the petitioner that the general lien, that is exercised by the respondents Bank is for the borrowal of a third party, for whom, he had given the security, but it is for his own credit facility, that was availed by him. Therefore, if it were to be held that without the borrower expressly agreeing that his properties deposited with or in the custody of the Bank be utilized for recovering the dues of the Bank, for which he is liable, the term general lien itself would be inapplicable.

10. In a recent decision of the Division Bench of this Court in C.R.Ramachary V. Indian Overseas Bank, it was specifically held, considering the decision of the Hon'ble Apex Court in Syndicate Bank V. Vijayakumar, AIR 1992 SC 1066, as follows :

> "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.
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> 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."

11. It is also relevant to refer to the order of a learned Single Judge of Delhi High Court in Raj Kumar and others V. Syndicate Bank, 2016 SCC OnLine Del 4726, considering a catena of decisions of various High Courts, and held that the rights under Section 171 of the Indian Contract Act can be exercised on an immovable property deposited with the Bank as security.

12. Even in the affidavit filed in support of this petition, it is stated by the petitioner that he has been very regular in payment and has not defaulted, though the respondents Bank would state that the outstanding as on 31.10.2017 was Rs.56,42,429/-. Admittedly, the proceedings before the DRT-III had also been initiated.

13. As the general lien exercised by the Bank is well within the ambit of Section 171 of the Indian Contract Act, the petitioner cannot seek for return of the title deeds that was deposited for the credit facility taken by G.Mahendran. However, it is open to the petitioner to approach the Bank for settlement and get the debt extinguished.

14. In the light of the above discussion, the writ petition is liable to be dismissed and accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Manager,
Canara Bank,
No.524, Anna Salai,
Teynampet, Chennai.

2. The Manager,
Canara Bank, Ponneri Branch,
Thiruvallur District,
Ponneri-601 204.

+1cc to M/s.M.L.Ramesh, Advocate, S.R.No.26368
+1cc to M/s.s.Parthasarathy, Advocate, S.R.No.26503

W.P.No.8986 of 2017

RJI(CO)
KKV/25/08/2020