IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.7190 of 2017

Mr.A.Michael Raj ... Petitioner

Vs.

1. The Chairman & Managing Director,
   Central Bank of India,
   Chander Mukhi, Nariman Point,
   Mumbai - 400 021.

2. The Central Bank of India,
   Rep by its Chief Manager,
   Tirupur Branch,
   No.2, Court Street,
   Tirupur - 641 601. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the 2nd respondent to return back the Property Document pertaining to Plot No.3, Comprised in S.F.No.342/2 and S.F.No.344, to an extent of 1100 Sq.ft., Mannari Village, Tirupur Taluk, registered as Document No.1796 of 1996 on the file of Tirupur Joint II Registrar Office.

For Petitioner : Mr.K.Chozhan
For Respondents : Mr.L.Ganesh for R1 & R2
Standing Counsel

O R D E R

This writ petition has been filed for a mandamus seeking for a direction to the second respondent to return back the property document pertaining to Plot No.3, comprised in S.F.No.342/2 and S.F.No.344, to an extent of 1100 sq.ft., Mannari Village, Tiruppur Taluk, registered as Document No.1796 of 1996 on the file of Tirupur Joint II Sub-Registrar Office.

2.The case of the petitioner is that the petitioner stood as a guarantor for a loan availed by a person named Mr.James Aruldass who was running a proprietorship unit in the name and style of M/s.Frankly Garments and a sum of Rs.2 lakhs was granted as loan by the second respondent to said James

Aruldass on 29.07.2010. According to the petitioner, his property which is mentioned supra was given as collateral security for the loan availed by Mr.James Aruldass, proprietor of M/s.Frankly Garments.

3.It is the case of the petitioner that the loan availed by Mr.James Aruldass, proprietor of M/s.Frankly Garments was discharged on 30.12.2013. According to the petitioner, even though the borrower discharged the loan, the respondents refused to return back the title deeds of the petitioner which were given as a security to the respondents in respect of the loan availed by Mr.James Aruldass, proprietor of M/s.Frankly Garments. The petitioner has given representations to the respondents seeking for return of title deeds pursuant to the discharge of the loan. Since the respondents failed to return the title deeds, the petitioner has filed this writ petition.

4.A counter affidavit has been filed by the respondents before this Court wherein they have stated that the petitioner is conscious of the fact that the second respondent bank has not returned the title deed to him, since the petitioner also stood as a personal guarantor for the loan liability of another borrower Mrs.S.Mariammal and Mr.S.Rajagopal. According to them, the petitioner had executed a guarantee agreement on 13.03.2009 in favour of the second respondent to secure the loan amount of Rs.13.50 lakhs together with costs and interest, charges and expenses thereon availed by the borrowers, Mrs.S.Mariammal and Mr.S.Rajagopal.

5.It is the contention of the respondents that the second respondent has got a general lien under Section 171 of the Indian Contract Act over the subject property belonging to the petitioner, since the borrowers in respect of the other loan transaction namely Mrs.S.Mariammal and Mr.S.Rajagopal have failed to discharge the loan amount.

6.It is also the contention of the respondents that the petitioner has not questioned the return of the title deeds immediately on the discharge of the loan amount in respect of the loan availed by M/s.Frankly Garments in the year 2013. According to them, the petitioner had kept quite for more than 4 years from 2013 and filed this writ petition only in the year 2017 by making false allegations.

7.Heard Mr.K.Chozhan, learned counsel for the petitioner and Mr.M.L.Ganesh, learned counsel for the respondents 1 and 2.

8.The learned counsel for the petitioner drew the attention of this Court to Section 171 of the Indian Contract Act and would submit that it was held by the Division Bench decision of this Court in the case of M.Shanthi vs. Bank of

Baroda, Namakkal Branch reported in 2017 2 Writ LR 584 and would submit that the bank cannot exercise general lien in respect of a guarantors property. He would submit that in respect of the loan availed by Mrs.S.Mariammal and Mr.S.Rajagopal, the petitioner stood only as a guarantor and therefore, Section 171 of the Indian Contract Act does not get attracted.

9.Per contra, Mr.L.Ganesh, learned counsel for the respondents would submit that the bankers right to recover the money would be lost if they are not allowed to exercise general lien as per the provisions of Section 171 of the Indian Contract Act. He would rely upon the Division Bench decision of this Court, in the case of C.R.Ramachary and Ors vs. Indian Overseas Bank and Ors. reported in Manu/TN/7441/2018 and would submit that as per the said decision, the bank can exercise lien under Section 171 of the Indian Contract Act. The learned Standing Counsel for the respondents also referred to Section 25(aa) of Recovery of Debts and Bankruptcy Act, 1993 and would submit that the bank has a right to take possession of the property over which security interest is created or any other property of the defendant and appointing a receiver for such property and to sell the same. According to him, since the property which was offered as a security by Mrs.S.Mariammal and Mr.S.Rajagopal in respect of other loan was insufficient, the respondent bank is entitled to exercise lien over the property owned by the petitioner which was given as a security for the loan availed by Mr.James Aruldass, proprietor of M/s.Frankly Garments as the petitioner is the guarantor to the loan available by Mrs.S.Mariammal and Mr.S.Rajagopal.

Discussion:

10.Section 171 of the Indian Contract Act, reads 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.

11. The learned Standing Counsel for the respondents also referred to Section 19 (3-A) of the Recovery of Debts and Bankruptcy Act, 1993 which reads as follows:

> "(3A) Every applicant in the application filed under sub-section (1) or sub-section (2) for recovery of debt, shall-

(a) state particulars of the debt secured by security interest over properties or assets belonging to any of the defendants and the estimated value of such securities;

(b) if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and

(c) if the estimated value of such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the Tribunal particulars of other properties or assets owned by the defendants."

12. A Division Bench judgment relied upon by the learned counsel for the petitioner in the case of M.Shanthi vs. Bank of Baroda, Namakkal Branch reported in 2017 2 Writ LR 584 is also a case where a guarantor to another loan transaction was denied return of his title deeds despite the fact that he discharged the loan account where he was a borrower. The Division Bench had given due consideration to various authorities including the judgment of a Division Bench of this Court in the case of State Bank of India vs. Jeyanthi and others reported in 2011 2 CTC 465 where it was held that the respondent bank cannot exercise right of lien to secure any other liabilities of the mortgagor by retaining the documents of the mortgagor or guarantor, which were deposited with an intention to secure a particular loan transaction. Paragraph 30 of the aforesaid decision reads as follows:

30.Hence this Court is of the firm view that the respondent bank cannot exercise right of lien to secure any other liabilities of the mortgagor by retaining the documents of the mortgagor or guarantor, which are deposited with an intention to secure a particular loan transaction. Lien is primarily considered as a right to retain security. It is doubtful, whether in exercise of such right to retain the title deeds the mortgagee can bring the property for sale for recovery of some debt which is due from the mortgagor, in connection with a different transaction, which is not covered by the mortgage.

13.As seen from the aforesaid decisions, consistently various High Courts, all over India have held that a bank cannot exercise right of lien to secure any other liability of the mortgagor by retaining the documents of the mortgagor or guarantor, which were deposited with an intention to secure a particular loan transaction. In the case on hand, admittedly the petitioner had deposited his title deeds only to secure the loan availed by Mr.James Aruldass, proprietor of M/s.Frankly Garments and he did not deposit the title deeds to secure the loan of Mrs.S.Mariammal and Mr.S.Rajagopal. Therefore, this Court is of the considered view that the Division Bench decision relied upon by the learned counsel for the petitioner in the case of M.Shanthi vs. Bank of Baroda, Namakkal Branch reported in 2017 2 Writ LR 584 is squarely applicable to the facts of the instant case.

14.Even in the decision relied upon by the learned counsel for the respondents in the case of C.R.Ramachary and Ors vs. Indian Overseas Bank and Ors. reported in Manu/TN/7441/2018, the Division Bench has only followed the decision of State Bank of India vs. Jeyanthi and others which has been followed by the Division Bench of this Court in the case of M.Shanthi vs. Bank of Baroda, Namakkal Branch reported in 2017 2 Writ LR 584. In the case of C.R.Ramachary and Ors vs. Indian Overseas Bank and Ors. reported in Manu/TN/7441/2018, the facts are distinguishable to the case on hand. In that case, admittedly, the petitioner had obtained 3 separate loans from the respondent bank and two of the loan accounts were settled. However, the third loan account was not settled. The Respondents bank refused to return the documents on the ground that the petitioner therein had obtained another loan and he did not repay the said loan and committed default. The bank had exercised its lien over the properties mortgaged by the first petitioner therein.

15.The aforesaid case is distinguishable from the case on hand. In the instant case, the petitioner was only a guarantor to the loan transaction in respect of the loan availed by Mrs.S.Mariammal and Mr.S.Rajagopal. In fact, in paragraph 12 of the decision relied upon by the learned counsel for the respondents in C.R.Ramachary's case, the Division Bench of this Court has observed that the decision relied upon by the learned counsel for the petitioner namely (a) State Bank of India vs. Jeyanthi and others reported in 2011 2 CTC 465 2 CTC 465 and (b) M.Shanthi vs. Bank of Baroda, Namakkal Branch reported in 2017 2 Writ LR 584 are not applicable for the facts of that case, since the petitioner therein was a borrower for both the loan transactions but in the present case the petitioner who is a guarantor under both the loan transactions and his title deeds were deposited as a guarantor only to secure the loan which was subsequently discharged. Therefore, this Court is of the considered view that the decision relied upon by the learned Standing Counsel for the respondents namely C.R.Ramachary's case referred to supra is not applicable to the case on hand. Insofar as the applicability of section 25(aa) of the Recovery of Debts and Bankruptcy Act, 1993 which the learned counsel for the petitioner has relied upon is concerned, the same is also not applicable to the case on hand, since the said provision came into force only on 01.09.2016 whereas the petitioner has given his property as a security for the loan availed by Mr.James Aruldasss, proprietor of M/s.Frankly Garments which was discharged by the borrower on 30.12.2013 much prior to the introduction of section 25(aa) under the RDB Act, 1993.

16.Admittedly, in the case on hand, the borrower namely Mr.James Aruldass discharged the loan on 30.12.2013 where the petitioner stood as a guarantor and had given his property as a collateral security, i.e., prior to the coming into force of Section 25(aa) of the Recovery of Debts and Bankruptcy Act, 1993. Section 25(aa) of the Act reads as follows:

> (aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;

17.Since section 25(aa) of the RDB Act, 1993 came into force only on 01.09.2016, this Court is of the considered view that the same is also not applicable to the case on hand. Section 19 (3A) of Recovery of debts and Bankruptcy Act, 1993 also came into force only on 04.11.2016. Therefore, for the said reasons, this provision also does not aid the respondents. Therefore there is no necessity for this Court to examine as to whether the respondent bank can exercise lien under section 25(aa) of the RDB Act, 1993 or under section 19 (3A) of the RDB Act, 1993.

18.For the foregoing reasons, the respondents bank will have to necessarily return the title deeds of the petitioner in respect of the loan account of Mr.James Aruldass, proprietor of M/s.Frankly Garments where the petitioner stood as a guarantor and had deposited his title deeds to secure the said loan.

19. In the result, the second respondent is directed to return back the property document of the petitioner pertaining to his property situated at Plot No.3, comprised in S.F.No.342/2 and S.F.No.344, to an extent of 1100 sq.ft., Mannari Village, Tiruppur Taluk, registered as Document No.1796 of 1996 on the file of Tirupur Joint II Sub-Registrar Office within a period of two weeks from the date of receipt of a copy of this order. However, it is made clear that the respondent bank is not prevented from recovering its dues against the borrower as well as the guarantor in respect of the loan availed by Mrs.S.Mariammal and Mr.S.Rajagopal in accordance with law.

20.With the aforesaid direction, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman & Managing Director,
   Central Bank of India,
   Chander Mukhi, Nariman Point,
   Mumbai - 400 021.

2. The Chief Manager,
   Central Bank of India,
   Tirupur Branch,
   No.2, Court Street,
   Tirupur - 641 601.

+1cc to Mr.M.L.Ganesh, Advocate, S.R.No.7177.

W.P.No.7190 of 2017

AAB(CO)
CSR 12.03.2021