



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.03.2021

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**THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HON'BLE MRS.JUSTICE S.KANNAMMAL**

W.A.(MD)No.1038 of 2017
and
C.M.P(MD)No.7283 of 2017

Canara Bank,
Inamkulathur Branch,
rep. by its Manager,
Tiruchirapalli-621 303.

.. Appellant/Respondent

Vs.

Tiruchirapalli Multipurpose Social
Service Society rep. by its
Secretary-cum-Director,
49K, Bharathiyar Salai, Post Box No.12,
Thiruchirapalli-620 001.

.. Respondents/Petitioner

* * *

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 05.06.2017 in W.P.(MD)No.12532 of 2010 on the file this Court.

Prayer in WP(MD). 12532/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS, directing the Respondent to repay the sum of Rs.48,80,164/- with accrued interest to the petitioner.

* * *

For Appellant : Mr.E.Om Prakash, Senior Counsel
for M/s.Vast Law Associates

For Respondent : Mr.B.Prasanna Vinoth



JUDGMENT

PUSHPA SATHYANARAYANA, J.

The respondent before the Writ Court filed this Writ Appeal questioning the order dated 05.06.2017 passed by a learned Single Judge of this Court allowing the writ petition in W.P.(MD)No.12532 of 2010 filed by the respondent herein.

2. The prayer made by the respondent herein in the writ petition was to direct the appellant herein/respondent therein, to repay the sum of Rs.48,80,164/- with accrued interest.

2.1. For the sake of convenience, the parties are referred to as per their status in this writ appeal.

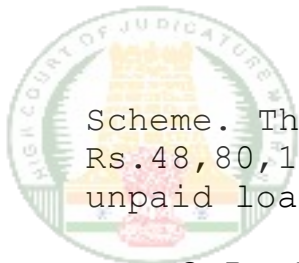
3. The case of the respondent, as has been pleaded before the learned Single Judge, which is necessary for a just decision of the appeal, in a nutshell, reads as follows :

3.1. The respondent is a registered Society doing several service activities. The appellant Bank, to extend loans to a number of individuals under the Differential Interest Rates Scheme (in short, "DIR Scheme") availed the assistance of the respondent on account of its experience in the service sector, so as to identify the beneficiaries and also extended loans to those individuals as well as Self-Help Groups under the said scheme.

3.2. The respondent deposited funds received from various agencies, both Governmental and Non-Governmental, in seven different Fixed Deposits (FDs) during the year 1995 with the appellant Bank, which was at Rs.62,08,745/-. The FDs were for a period of five years and thus, due to mature in the year 2000.

3.3. Alleging that there were defaults, the appellant Bank exercised the right of general lien on the FDs and sent a communication on 05.02.1996 to the respondent, which was replied to by the respondent on 15.02.1996 stating that they were neither co-applicant nor Guarantor of the loans and the Bank has no right to mark general lien over their FDs. The respondent also issued a legal notice on 16.05.1996, which was replied to by the appellant on 28.05.1996. Though negotiation meetings were held between the parties, it served no purpose.

3.4. In such circumstances, the respondent sought the appellant to foreclose one of the FDs in vain, but the appellant issued another notice on 10.09.1996 calling upon the respondent to pay all the dues indebted by 1540 individual loanees under the DIR



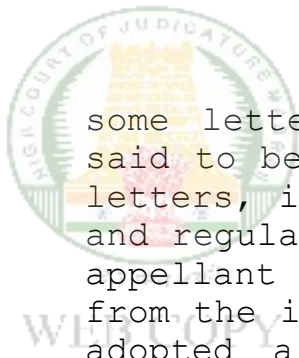
Scheme. Thereafter, on 27.09.1996, the appellant adjusted a sum of Rs.48,80,164/- out of the six FDs of the respondent towards the unpaid loans of those 1540 individuals.

3.5. The respondent filed O.P.No.131 of 1997 on the file of the National Consumer Disputes Redressal Commission, New Delhi, but the same was dismissed on 07.05.2004 holding that the respondent Society was not a consumer under the Consumer Protection Act and giving liberty to approach the Civil Court or to take recourse to any other alternative remedy. The challenge laid by the respondent before the Hon'ble Supreme Court in Civil Appeal No.7001 of 2004 also met with the same fate on 30.07.2009. The action of the respondent in approaching the Banking Ombudsman also failed to yield any result, as its complaint was rejected for want of jurisdiction.

3.6. In the above-said backdrop, the respondent filed W.P.(MD) No.12532 of 2010 and the order passed thereon in its favour is put to challenge by the appellant.

4. The learned Senior Counsel for the appellant submitted that the appellant filed a detailed counter-affidavit before the Writ Court, but the learned Single Judge did not consider the merits stated therein, but passed the impugned order allowing the writ petition. According to the learned Senior Counsel for the appellant, the respondent not only recommended the persons/beneficiaries for the loans, but also assured to co-operate and collaborate/joint venture the implementation of the credit programme and also guaranteed for the recovery. The appellant filed those letters given by the respondent before the learned Single Judge. It was claimed by the appellant that the loan facilities were extended to the individuals recommended by the respondent only on the assurance and undertaking given by the respondent to repay the loans. According to the appellant, the FDs were the Seed Capital Money received and they were made only on the basis of the guarantee given by the respondent Society for repayment of the loans by the beneficiaries under the DIR Scheme and the Seed Capital Money was the backbone of the loan facility. The learned Senior Counsel for the appellant reiterated the submission that the dispute is of civil nature and therefore, the writ petition ought not to have been entertained by the learned Single Judge and the impugned order of the learned Single Judge is without jurisdiction and therefore, it is liable to be set aside.

5. The learned counsel for the respondent contended that the respondent clearly established before the learned Single Judge that excepting identifying the beneficiaries for the scheme, the respondent did not play any role in the sanction or recovery of the loan facilities. Though the erstwhile office-bearers issued



some letters undertaking to repay the loan, the same cannot be said to be the Guarantee, as per the scheme and in fact, in those letters, it was stated that the appellant shall follow their rules and regulations in sanctioning the loan and as such, it is for the appellant Bank to take appropriate legal action for the recovery from the individual defaulters. It is submitted that the appellant adopted a short-cut colourable method, instead of undertaking appropriate legal action, by exercising the general lien on the FDs of the respondent. It is the consistent stand of the respondent that they were neither co-applicant nor Guarantor for the loans and the appellant Bank had no right to exercise the general lien towards their FDs. The learned counsel for the respondent contended that by virtue of the liberty granted by the Hon'ble Supreme Court, the respondent filed the writ petition, which was rightly allowed by the learned Single Judge assigning valid reasons. The learned Single Judge also held that the appellant was not justified in invoking the general lien under Section 171 of the Contract Act, in the absence of any contract to that effect, qua the said loan transactions. It is also held by the learned Single Judge that a mere recommendation and the assurance of the respondent for the loan facilities did not cloth the Bank with a right under Section 171 of the Contract Act to exercise the general lien. Thus, the learned counsel for the respondent sought for dismissal of this appeal.

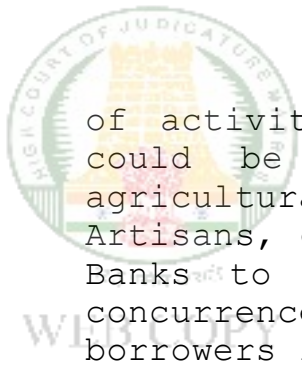
6. We have heard the learned Senior Counsel for the appellant and the learned counsel for the respondent and perused the materials placed before us.

7. Before delving into the submissions of either side, it is apt to refer to Section 171 of the Indian Contract Act, 1872 and the relevant clauses of the DIR Scheme.

7.1. Section 171 of the Indian Contract Act, 1872, 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."

7.2. Clause 1(iii) of the DIR Scheme allows the Banks to channelise funds through co-operative societies/large size multipurpose societies (LAMPS) to ensure increased flow of funds to Scheduled Caste/Tribes. Clause 2.3. speaks of the broad range



of activities covered under the scheme, as per which, advances could be given to eligible persons in farming or allied agricultural activities like poultry, dairy, etc., tradesmen, Artisans, etc.,. Clause 5 captioned "Area of operation" allows the Banks to go beyond the normal area of operations with prior concurrence of the controlling authorities, if a cluster of borrowers is available there.

7.3. Clause 9.4 lays down Security and the said provision reads as follows :

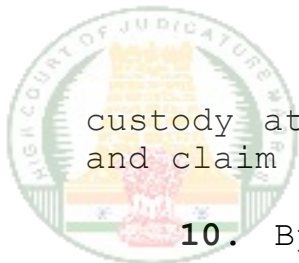
"9.4. Security : Generally the borrower has no assets to offer as security and therefore only such assets as are created by the Bank loan are taken as security. Third party guarantee is not to be sought. Even group or cross guarantee among a homogeneous group of borrowers is sought only for moral suasion in appropriate cases. Advances upto Rs.500 are sanctioned as clean cash credits."

7.4. One of the steps to improve recovery of the dues, as suggested was to delegate the responsibility of collecting installments from the group members and depositing in the Bank to the group leaders among the borrowers in the same locality. The other suggestion was pressure may be exerted through the guarantors and other influential local people. Clause 13 of the Scheme is Credit Guarantee Cover and it covers the Advances granted to the individuals.

8. A reading of Section 171 of the Contract Act makes it clear that there should be an express contract for certain category of persons including Bankers to retain as a security for a general balance of account, any goods bailed to them and in the absence of a contract, the appellant cannot exercise its right of general lien.

8.1. Further, the above clauses of the DIR Scheme are self-explanatory speaking about the options available to the Banker for sanction of loan, security and recovery and guarantee, etc. under the said Scheme.

9. The learned Single Judge, after referring to the judgments relied upon by the learned Senior Counsel for the Society in **Indian Bank, Rasipuram Branch V. Sri Annapoorna Finance, Rasipuram [(2002) 1 MLJ 125]**, **Anumati V. Punjab National Bank, AIR 2005 SCC 29** and **Vijaya Bank and another V. Naveen Mechanised Construction (P) Ltd., AIR 2004 Karnataka 199**, held that there is no question of exercising the general lien in the absence of any security or property in the respondent's bank



custody at the time when it sought to exercise the general lien and claim set-off.

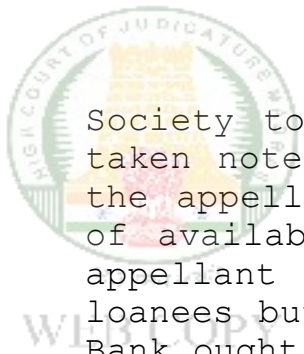
10. By referring the contents of the letters issued by the respondent, the learned Single Judge held that the Bank had availed of the assistance of the respondent to identify the borrowers/ beneficiaries. From the reading of the clauses of DIR Scheme, it is clear that the Bank is empowered to do so, but at the same time, the Bank has to follow its own rules and regulations, in tune with the said Scheme, for extending the loan and they cannot rely upon the alleged letters issued by the respondent Society alone to term them as guarantee. Thus, the respondent cannot be mulcted with the liability on account of the default committed by the individual loanees, though they had been identified by them.

11. Though the learned Senior Counsel for the appellant filed a compilation of judgments, including the judgments delivered by one of us (Pushpa Sathyanarayana, J.) in **A.A.Associates rep. by its Proprietrix Mrs.A.Teresa Juliet V. Indian Overseas Bank rep by its Managing Director and Chief Executive Officer and Others, 2019 SCC Online Mad 783**, and **P.K.Parthiban V. The Regional Manager, Canara Bank and Others, MANU/TN/2095/2020**, the same cannot be relied upon to grant any relief to the appellant in this appeal. While there is no quarrel over the ratios laid down and reiterated in those judgments, but given the facts and circumstances of the case, the same cannot be applied to the case on hand.

12. At the risk of repetition, it is to be stated that in the absence of any contract mulcting the respondent with the liability of clearing the dues indebted by the individual loanees, or express agreement of the respondent by signing in the templates/forms of the Bank, the Bank has no power to exercise the general lien on the FDs maintained by the respondent Society.

13. The learned Single Judge relied upon the judgment in **Brahmayya V. V.K.P.Thangavelu Nadar and others, AIR 1956 Madras 570**, wherein, this Court held that the persons in whose name a fixed deposit is made with the bank, (sic-the Bank) has no ownership to the moneys and it is actually a debt due by the bank to the depositors. We are in agreement with the said proposition and further make it clear that unless there is any agreement to the contrary, the Bank is indebted to pay the maturity amounts of the FDs to the depositors.

14. The allegation of the respondent that the Bank has not taken any action to recover the moneys from the actual loanees, but adopted a short cut method of adjusting the FDs forcing the



Society to run from pillar to post to redress its grievance was taken note of by the learned Single Judge to negate the claim of the appellant Society to dismiss the writ petition on the ground of availability of alternative remedy. If the allegation of the appellant that the respondent collected the amount from the loanees but failed to deposit the same with the Bank is true, the Bank ought to have taken appropriate action in the manner known to law. But instead of taking recourse to the recovery of the dues as per law, without any authority, the Bank invoked the right of general lien and the same cannot be accepted to be the right approach and for the wrong committed by the Bank, the respondent cannot be asked to go before the Civil Court, after passage of so many years.

15. The irresistible conclusion of the foregoing discussion would be that the order passed by the learned Single Judge does not suffer from any infirmity warranting interference in this appeal. In the result, this Writ Appeal shall stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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To

+1 CC to M/s.B.PRASANNA VINOTH, Advocate (SR-13514[F] dated 25/03/2021)

+1 CC to M/s.VAST LAW ASSOCIATES, Advocate (SR-13783[F] dated 25/03/2021)

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25.03.2021

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