IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22865 of 2012

Dilip Kumar Panigrahi …. ***Petitioner***

Mr. M. Balakrishna Rao, Advocate

-versus-

State Bank of India, Small and Medium Enterprises City Credit Centre, Zonal Office, Rajpath, Bhubaneswar and Another …. ***Opp. Parties***

Mr. Manoj Kumar Mahapatra-1, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
01.11.2022

Order No.
10. This matter is taken up through hybrid arrangement.

1. The petitioner had availed a Term Loan of Rs.18 lakhs for purchase of a bus from State Bank of India, SMECC Branch, Bhubaneswar/opposite party no.1 vide Letter of Arrangement dated 28th April, 2009. The monthly instalments were to be paid by 31st July, 2014. The vehicle was got registered bearing regd. No. OR-02AZ-7071.

It is next stated that the entire outstanding loan was cleared by 8th October, 2012 much before the time period for clearing the loan.

2. The prayer in the present Writ Petition is for directing the Bank to issue Form No-35 and other ancillary documents required for deletion of the hypothecation endorsement in the registration certificate of the aforesaid bus in view of the loan account having been liquidated.

3. Upon notice, a counter affidavit dated 12th December, 2014 stands filed on behalf of the Bank. In the reply, it is stated that no doubt that the loan account for the purchase of the aforesaid bus stands closed, however, there are two other loan accounts for purchase of two other passenger buses, *qua* which there are outstanding dues to the tune of Rs.72,07,399/-; and the recovery for which, an Original Application stands filed before the DRT in the year 2012. It is further stated that as per the banking guideline in Paragraph 17 of the Agreement of Loan-cum-Hypothecation (SME-2) executed between the parties, the Bank is entitled to exercise right of general lien *qua* all securities on any account for recovery of any other outstanding loans pending against the borrower. It is contended that the same is in the tune of the provision of Section 171 of the Contract Act providing the Bank to keep a general lien on all securities for recovery of outstanding dues.

4. At the time of hearing, learned counsel for the Bank further states that the aforesaid Original Application has since been allowed by the DRT and the execution proceedings are pending before the Recovery Officer. After hearing learned counsel for both the parties, we find that the stand of the Bank in not issuing the Form No-35 and other ancillary documents required for deletion of the hypothecation of the said vehicle *qua* which the loan stands closed to be justified in view of the contract of hypothecation agreement executed by the petitioner at the time of taking up the loan. We further find that the said clause to be in tune with the general provisions of Section 171 of the Contract Act providing the Bank to have a general lien on securities offered in a loan for safeguarding the other outstanding dues in other accounts.

5. In view of the above, we find the prayer made in the present Writ Petition cannot be accepted and accordingly the same stands dismissed.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

Sipun 1st November, 2022,
cuttack