IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.36127 Of 2021
(Through hybrid mode)

Ghanashyam Kampa .... *Petitioner*

Mr. Panchanan Panigrahi, Advocate

-versus-

The Sr. Manager, Canara Bank, BBSR .... *Opposite Party*

Mr. Sudhir Kumar Mishra, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
13.04.2022

Order No.
05.

1. Petitioner, by this writ petition wants return of his title document, deposited to create security for repayment of housing loan.

2. Mr. Panigrahi, learned advocate appears on behalf of petitioner while Mr. Mishra, learned advocate appears on behalf of the bank.

3. Earlier, Mr. Panigrahi, had relied on **judgment dated 9th August, 2017** of a Division Bench of Madras High Court in **W.P.(MD) no.12613 of 2016 (M. Shanthi v. Bank of Baroda**). He submitted, in the judgment several views of different High Courts and declaration of law of the Supreme Court on, inter alia, section 171 in

Contract Act, 1872 were discussed. He submitted, in year, 2011 credit facility of cash credit was obtained upon creating security of stock. Subsequently, a separate sanction for housing loan was made and security for repayment of that was by deposit of title deed in respect of the property. According to him, his client took the first loan for business and the second loan for house. For the house, the title deed was deposited.

4. It appears from **M. Shanti** (supra) there were several views expressed. Some of them are:-

(i) Where there is credit facility extended upon security obtained for repayment and the bank has a right to recover under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, provisions therein will be override provisions in the Contract Act.

(ii) A specific contract will be a contract to the contrary that will militate against the banker's general right of lien under section 171 in the Contract Act.

(iii) Bank cannot exercise general right of lien to secure any other liability of mortgagor, when the deposit was with intention to secure a particular loan transaction.

(iv) It is doubtful, whether in exercise of general right to retain title deed, the bank can being the property to sale, for recovery of some debt in connection with a different transaction, not covered by the mortgage.

5. Mr. Mishra, files additional affidavit. In it is disclosed, inter alia, letter dated 28th December, 2012 evidencing deposit of title deeds. The letter says that the document was deposited as security for repayment of a credit facility with limit of Rs.16,90,000/-, which petitioner urges was housing loan and repaid. There is no dispute on this. However, the letter goes on to say that the security is being created also in respect of any other monies in any other account standing in name of petitioner. As such, there is no contract to the contrary, militating against the banker's right of general lien as can be found from said letter.

6. On the reason given above, petitioner is not entitled to interference by Court on his banker having exercised general lien over his title document.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant