IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4614 OF 2019

Palus Sahakari Bank Ltd., Palus	] .. Petitioner-Org. Disputant
Vs.	
1. Firoj Janglluddin Pathan	]
2. M/s. Teke Cold Storage	]
3. Mohan Ragunath Teke	]
4. Madan Ragunath Teke	]
5. Dhananjay Ragunath Teke	]
6. Sanjay Gajanan Teke	] .. Respondents-Org. Opponents

Mr. V.B. Rajure for the Petitioner.
None for the Respondents.

CORAM : VALMIKI SA MENEZES, J.J.

DATE : 14TH OCTOBER, 2022.

P.C. :

1. This petition, under Article 227 of the Constitution of India, takes exception to the Judgment and Order dated 21st December 2017 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune, in Appeal no.65 of 2017. The impugned order confirms the Judgment and Award dated 30th June 2017 passed by the Co-operative Court No.1, Sangli, in the Dispute bearing No.309 of 2003 raised by the petitioner-bank for recovery of a loan in the sum of Rs.3,60,000/-, with interest thereon @ 16% p.a., from respondent no.1 - the principal borrower and from respondent no.2-Firm, along with its partners - respondent nos.3 to 6, with whom the goods, which were subject matter of the contract, were pledged.

2. By the Award passed by the Co-operative Court, Sangli, the petitioner-bank was granted a decree for recovery of the said amount from respondent no.2-Firm, while the Award has held that respondent no.1 is not liable for repayment of the loan for the reasons as set out in the Award, that he stood discharged.

3. According to the application raising a dispute, it is the petitioner's case that respondent no.1 availed of a loan of Rs.3,60,000/- from the petitioner-bank on 4th April 2001; the loan carried interest @ 16% p.a. and the same was contracted on executing a Loan Agreement dated 4th April 2001, whereby goods owned by respondent no.1, which were of perishable nature, were pledged with the petitioner-bank and were kept in a cold storage owned and run by respondent no.2, whose partners are respondent nos.3 to 6. On default in making payment of the loan availed by respondent no.1, the petitioner-bank sought to recover the loan amount from respondent no.1 as the principal borrower and from respondent no.2-Firm and its partners, with whom the perishable goods, being raisins (bedane), were pledged. The respondent no.1 contested the matter contending that his liability under the contract had been discharged since the goods were in possession of the petitioner-bank under the Agreement dated 4th August 1999 executed between the petitioner-bank and respondent no.2-Firm for a period of five years from 1st January 1999 to 31st December 2003. It was the duty of the respondent no.2 to preserve the goods on behalf of the petitioner-bank, which

was in constructive possession of the same, until repayment of the loan. Since, on inspection, which was carried out by the petitioner-bank, the goods belonging to respondent no.1, which were pledged with the petitioner-bank, were not found in possession of the respondent no.2 in its cold storage facility and the same had been found disposed of, the respondent no.1 had no further liability under the contract agreement.

4. From the record it transpires that evidence was led by the petitioner-bank and respondent no.1; the contracts referred to above were admitted in evidence and considered by the courts below; the Co-operative Court has passed an Award in favour of the petitioner as against the respondent no.2-Firm for recovery of the loan amount with interest, but has however concluded, after appreciating the evidence before it, that respondent no.1 stood discharged from his liability under the Loan Agreement. To that extent, the petitioner-bank has challenged the Award of the Co-operative Appellate Court, Mumbai, Bench at Pune, which has, by the impugned Order and Judgment dated 21st December 2017, confirmed the Award passed by the Co-operative Court, as also confirmed the findings arrived at by the lower court on the basis of evidence before it.

5. I have heard learned Advocate Mr. V.B. Rajure for the petitioner and perused the record of the petition.

It is the submission of learned Advocate for the petitioner before me that though both the courts had arrived at concurrent finding of fact on the question as to whether the petitioner-bank was in fact in possession of the goods pledged by respondent no.1 with the petitioner to secure the loan contracted with the bank, it is his contention that the concurrent finding of fact is not based upon the correct reading of the evidence on record and, more particularly, the Loan Agreement dated 4th April 2001 and Agreement dated 4th August 1999 executed between the petitioner-bank and respondent no.2-Firm, with whom the goods owned by respondent no.1 were pledged in cold storage. On behalf of the petitioner-bank, it is the learned Advocate's submission that the contract between the petitioner-bank and respondent no.1 in relation to the pledged goods is not the one covered by Section 176 of the Indian Contract Act, 1872, as, according to him, the petitioner-bank has never been in possession of the goods, nor did the bank have constructive or symbolic possession or control over the same.

6. Having gone through the judgments of the courts below, I am of the opinion that the finding of fact, that the possession of the goods was in fact under the control of the petitioner-bank, though kept in the cold storage under the contract with respondent no.2-Firm, is based upon proper appreciation of the terms of the contract. Both the courts below have considered, in great detail, the terms of the Loan Agreement dated 4th April 2001 in favour of respondent no.1, as also Agreement dated 4th August 1999 executed between the petitioner-bank and respondent no.2-Firm and on

considering the testimony of the witnesses of the petitioner-bank, the admission of execution of the said contracts and the terms thereof, both the courts below have correctly concluded that the loan transaction is one based upon the provisions of Sections 172 to 176 of the Indian Contract Act, 1872.

7. The Co-operative Appellate Court, on re-appreciating the evidence on record on the question / issue as to whether the respondent no.1-principal borrower has been discharged from the loan liability due to loss of the pledged goods, has concurred with the finding of the trial court that the pledged goods were in the custody of the petitioner-bank through respondent no.2-the cold storage keeper, and that respondent no.1 had absolutely no access to the said goods, thus was not in a position to dispose them off on his own. Further, from a perusal of the periodical inspection reports brought in evidence, the petitioner-bank was fully aware that the pledged goods had in fact been disposed off from the cold storage facility of respondent no.2, in breach of the contract.

8. Section 176 of the Indian Contract Act, 1872 reads thus :-

> *"176. **Pawnee's right where pawnor makes default** -*
> *If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.*

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor."

9. A bare perusal of this provision would show that if the pawnor, in this case respondent no.1, makes default in payment of the debt, or in performance of the contract within the stipulated time, the pawnee (petitioner) may bring a suit against the pawnor for recovery of the debt and retain the pledged goods as a collateral security or, in the alternate, they sell the pledged goods after giving reasonable notice of sale to the pawnor (respondent no.1) and apply the sale proceeds to the satisfaction of the debt and pay the excess amount after deducting such expenses as would be permissible to the respondent no.1.

10. The Hon'ble Supreme Court in *Lallan Prasad Vs. Rahmat Ali and Anr.*[1], while considering a bailment agreement and how it operates in relation to the pawnor, has held thus :-

> *"17. There is no difference between the common law of England and the law with regard to pledge as codified in Ss.172 to 176 of the Contract Act. Under S. 172, a pledge is a bailment of the goods as security for payment of a debt or performance of a promise. Section 173 entitles a pawnee to retain the goods pleaded as security for payment of a debt and under Section 175, he is entitled to receive from the pawner any*

1 *AIR 1967 SUPREME COURT 1322*

extraordinary expenses he incurs for the preservation of the goods pledged with him. Section 176 deals with the rights of a pawnee and provides that in case of default by the pawner, the pawnee has (1) the right to sue upon the debt and to retain the goods as collateral security, and (2) to sell the goods after reasonable notice of the intended sale to the pawner. Once the pawnee, by virtue of his right under S. 176, sells the goods, the right of the pawner to redeem them is of-course extinguished. But, as aforesaid, the pawnee is bound to apply the sale proceeds towards satisfaction of the debt and pay the surplus, if any, to the pawner. So long, howsoever, the sale does not take place, the pawner is entitled to redeem the goods on payment of the debt. It follows, therefore, that where a pawnee files a suit for recovery of debt, though he is entitled to retain the goods, he is bound to return them on payment of the debt. The right to sue on the debt assumes that he is in a position to redeliver the goods on payment of the debt and, therefore, if he has put himself in a position where he is not able to redeliver the goods, he cannot obtain a decree. If it were otherwise, the result would be that he would recover the debt and also retain, the goods pledged and the pawner in such a case would be placed in a position where he incurs a greater liability than he bargained for under the contrast of pledge. The pawnee, therefore, can sue on the debt retaining the pledged goods as collateral security. If the debt is paid, he has to return the goods with or without the assistance of the court and appropriate the sale proceed towards the debt. But if he sues on the debt denting the pledge and it is found that he was given possession of the goods pledged and had retained the same, the pawner has the right to redeem the goods so pledged by payment of the debt. If the pawnee is not in a position to redeliver the goods, he cannot have both the payment of the *debt and also the goods. Where the value of the pledged property is less the debt and in a suit for recovery of debt by the pledgee, the pledgee denies the pledge or is otherwise not in a position to return the pledged goods, he has to give credit for the value of the goods and would be entitled then to recover only the balance. That being the position, the appellant would not be entitled to a decree against the said promissory note and also retain the said goods found to have been delivered to him and, therefore, in his custody. For, if it were otherwise the first respondent as the pawner would be compelled not only to the amount due under the promissory note but lose the pledged goods as well. That certainly is not the effect of S. 176."*

11. This court in its judgment dated 28th November 2017, passed in *Writ Petition No.1530 of 2014, along with connected matters*[2], following the ratio laid down by the Hon'ble Supreme Court in *Lallan Prasad (Supra)*, has held as follows :-

"5. The learned counsel for the respondents has submitted that the very agreement and the consent terms, which expect the borrower to draw insurance of the pledged goods are unreasonable. In fact, once goods are pledged, it will be the sole responsibility of the bank. They do not appear to be secured loans or else the bank could obtain certificates under Section 101 of the Maharashtra Co-operative Societies Act, 1960. In view of the facts stated hereinabove, the findings recorded by the Co-operative Court and confirmed by the Co-op. Appellate Court, do not call for any interference. Both the courts have placed implicit reliance upon the judgment of the Hon'ble Apex Court reported in the case of

2 *Sangli District Central Co-op. Bank Ltd. Vs. Shri Sahebrao Shivram Bhosale & Ors.*

Lalanprasad vs. Rahemat Ali, AIR 1967 SC 1332, wherein it was observed as follows :-

> *"If the possession of pledged goods is with the pledgee, the pledge cannot maintain the suit for recovery of debt as well as retention of the pledged property would not be maintainable."*

The learned appellate court has rightly held that as per the provisions of Section 172 of the Indian Contract Act, the pledge is bailment of goods as security for payment of debt of performance of a promise. Section 173 entitles a pawnee to retain the goods pledged as security for payment of a debt."

12. Applying ratio of the judgment referred to above to the case at hand, it leaves no doubt that once both courts below have arrived at a concurrent finding of fact, based upon the evidence led by the parties, that it was within the knowledge of the petitioner-bank that the goods had been lost from its possession, there is no room for exercise of this court's supervisory jurisdiction under Article 227 of the Constitution of India in favour of the petitioner-bank. The concurrent finding of fact arrived at by the courts below is on the basis of consideration of evidence and on the basis of a well-reasoned conclusion founded upon application of the provisions of Section 176 of the Indian Contract Act, 1872. Therefore, no fault can be found in the findings arrived at by both the courts below to justify any interference of this court in its supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, the Writ Petition is dismissed.

13. The petitioner-bank is at liberty to proceed with recovery of the loan from the respondent nos.2 to 6, if it is so permissible under the law.

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[VALMIKI SA MENEZES, J.]