AD-05
Ct No.09
06.09.2023
TN

WPA No. 20613 of 2023

Sri Amal Kumar Ganguly
Vs.
State Bank of India and others

Ms. Rituparna De Ghosh,
Mr. Pratik Majumder,
Mr. Siddhartha Paul,
Mr. S. Ghosh
.... for the petitioner

Mr. Anirban Pramanick,
Mr. Punarbasu Nath
.... for the respondent-Bank

Mr. Rajarshi Basu,
Mr. Ananda Dulal Sarkar
.... for the State

1. The petitioner has challenged the freezing of an account of the petitioner at the Deshapriya Park Branch of the State Bank of India. It is contended that the petitioner was a partner in a partnership firm but had resigned from the same on June 30, 2020.

2. The said resignation was accepted, according to the petitioner, on January 18, 2021. However, subsequently in December, 2022, an amount of Rs.1,47,615/- was deducted by the Bank from the petitioner.

3. It is submitted that the savings bank account standing in the name of the petitioner has been frozen and four fixed deposits of the petitioner have been put on hold, without any prior notice to the petitioner.

4. Learned counsel for the Bank argues that the Bank has a general lien under Section 171 of the Indian Contract Act, 1872. It is submitted that the petitioner himself, by a letter as annexed at page-42 of the writ petition, had sought for a freezing of the account of the partnership firm.

5. Since the Bank has substantial claims against the partnership firm, of which the petitioner was admittedly a partner, it is argued that the Bank is entitled to put a freeze on the account and fixed deposits of the petitioner.

6. A perusal of Section 171 of the Contract Act shows that it pertains to general lien of bankers, factors, wharfingers, attorneys and policy-brokers.

7. It is provided therein that the entities as indicated above, including bankers, may, in the absence of a contract to the contrary, retain as 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.

8. Section 171 of the Contract Act pertains to special contracts and falls within Chapter-VIII, which relates to indemnity and guarantee.

9. The concept of general lien applies to goods retained as security and refers specifically to goods "bailed" to the Banks.

10. The money lying in the account of the petitioner, that too, in his personal account and not that of the partnership firm, cannot be deemed to be a bailed good for the purpose of Section 171.

11. Learned counsel for the Bank seeks to rely on *Syndicate Bank vs. Vijay Kumar,* reported at *AIR 1992 SC 1066*, where it was held that in mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customers in the ordinary course of banking business.

12. In the present case, the account of the petitioner has been frozen by the Bank, which does not come within the category of security. At best, the Bank could argue that the fixed deposits of the petitioner were frozen by them in adjustment of proceeds regarding dues to the Bank.

13. However, since the petitioner disputes that the petitioner is still a partner in the partnership firm, it is at best arguable whether the petitioner has any liability as a partner or as a guarantor with regard to dues of the partnership firm to the Bank, for the Bank to freeze the personal fixed deposit accounts held by the petitioner.

14. The remedy of the Bank does not lie in Section 171 but in an appropriate proceeding before an appropriate legal forum, where the Bank is in any event at liberty to ask for specific reliefs.

15. However, the mode in which the Bank has operated, freezing unilaterally the fixed deposits and running account of the petitioner held in his name personally, has to be deprecated. The said act has also been done without prior notice to the petitioner, which further right on the petitioner to assail such unilateral action of the Bank.

16. In such view of the matter, WPA No. 20613 of 2023 is allowed, thereby directing the Bank to immediately de-freeze the account held by the petitioner in his own name with the Deshapriya Park Branch of the respondent-Bank as well as to release the hold on the fixed deposits of the petitioner, held in the personal name of the petitioner, also with the respondent-Bank. Such de-freezing shall be done by the respondent-Bank latest within one week from date.

17. It is, however, made clear that it will be open to the Bank to apply before the appropriate legal forum for appropriate remedy against the petitioner, if the Bank is of the perception that the petitioner has any liability towards the Bank in any capacity pertaining to the partnership firm-in-question. Nothing in this order shall prevent the Bank from doing so.

18. There will be no order as to costs.

19. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)