IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
4.9.2023	08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.1062 of 2020
and C.M.P.No.12977 of 2020

P.K.Parthiban ... Appellant/Petitioner

Vs.

1. The Regional Manager,
   Canara Bank,
   No.524, Anna Salai,
   Teynampet, Chennai.

2. The Manager,
   Canara Bank, Ponneri Branch,
   Ponneri – 601 204,
   Tiruvallur District. ... Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent to set aside the order dated 12.08.2020 passed in W.P.No.8986 of 2017.

For Appellants : Mr.M.L.Ramesh
For Respondents 1 & 2 : Mr.S.Parthasarathy

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JUDGMENT

D.KRISHNAKUMAR, J.

Facts in Brief:

The appellant executed a mortgage deed in Doc.No.1155 of 2014 dated 11.2.2014 on the file of the Office of Registrar, Ponneri, as a guarantor by deposit of title deed in respect of vacant land measuring an extent of 17 cents comprised in S.No.348/2A of Kolur Village, situated at Ponneri Taluk, Tiruvallur District for the overdraft facility availed by one G.Mahendiran for a sum of Rs.25,00,000/- in Overdraft A/c No.3725256000025. Thereafter, the appellant had availed an overdraft facility independently for a sum of Rs.15.00 lakhs initially and later it was enhanced to Rs.35,00,000/- during the year 2014 by mortgaging his another property viz., vacant land measuring an extent of 0.65 acres (26.5 ares) comprised in S.No.342/5B of No.22, Kolur-III Village, Kolur Panchayat Union, Ponneri Taluk, Tiruvallur District. The borrower G.Mahendiran had cleared the entire loan and the respondent Bank had also issued a certificate stating that there is no due pending in the aforesaid overdraft account. However, pursuant to the certificate issued by the respondent bank, when the appellant had approached the respondent Bank to return the title deed deposited by him since the borrower already cleared the entire loan, the respondent bank refused to release the documents and giving no objection or removing the encumbrance by stating that the appellant is liable to pay an outstanding amount of Rs.56,42,429/- as on 31.10.2017. The respondent Bank is claiming a general lien under Sec.171 of the Contract Act. Challenging the same, the appellant has filed the instant writ petition in W.P.No.8986 of 2017 for issuance of Mandamus directing the respondents to return the title deeds placed with the second respondent Bank by creating a mortgage by deposit of title deeds in Doc. No.1155 of 2014 dated 11.2.2014 on the file of the Registrar of Ponneri.

2. The learned Single Judge dismissed the writ petition by holding that the rights under Section 171 of the Indian Contract Act can be exercised on an immovable property deposited with the respondent Bank as security. Aggrieved by the same, the present appeal.

3. The appellant raised several grounds in the appeal by stating that the learned Single Judge failed to note that there is no express undertaking given by the appellant with the second respondent to extend the mortgage created on 11.2.2014 to the overdraft facility obtained by the appellant later. The learned Single Judge failed to note that the overdraft facility obtained by the appellant later is also secured by another property by creating a mortgage. Therefore, power under Section 171 of the Indian Contract Act cannot be exercised by the Bank without approval from the

appellant.

4. According to the learned counsel appearing for the appellant, the respondent bank cannot exercise right of general lien to secure any other liabilities of the mortgagor by retaining the documents of the mortgagor or guarantor, which are deposited with an intention to secure a particular loan transaction. In support of his contention, the learned counsel appearing for the appellant placed reliance on the following decisions:

1. **Mangalore Catholic Co-operative Bank Ltd., Managalore Vs. Msundara Shetty [CDJ 1987 Kar HC 271]**

2. **Syndicate bank Vs. Vijayakumar [CDJ 1992 SC 224]**

3. **State Bank of India and another Vs. Jayanthi and 2 Ors. [2011 (2) CTC 465]**

4. **Sree Vadivambigai Ginning Industries Pvt. Ltd. Vs. Tamil Nadu Mercantile Bank [2015 (4) MLJ 431 : 2015 (3) CTC 831]**

5. **M.Shanthi Vs. Bank of Baroda Represented by its Chief Manager, Namakkal branch, Namakkal. [2017 (2) Writ L.R. 584]**

6. **State Bank of India and Ors. Vs. Thilagavathi Traders and Ors. [MANU/TN/8876/2022]**

7. **F.A.Construction Vs. Union Bank of India [2022 0 Supreme (Bom) 936]**

8. **S.Bhavani Vs. The Branch Manager, Central Bank of India, Main branch, Coimbatore [W.P.No.21629 of 2016 dated 17.10.2022]**

9. **Unreported judgment of Bombay High Court in Sunil Vs. Union Bank of India through its Branch Manager, Nagpur [W.P.No.32 of 2022 dated 13.6.2022]**

5. The respondent Bank in its counter affidavit has stated that

the appellant had approached the respondent Bank for sanction of Rs.15.00 lakhs as an overdraft facility initially for the purpose of prawn culture and the respondent bank has originally sanctioned a loan for a sum of Rs.15.00 lakhs to the appellant on 20.6.2014 and the same was enhanced to the tune of Rs.35.00 lakhs on 30.9.2014 relying on the additional security already mortgaged with the respondent Bank. The appellant had defaulted in making repayments from the date of enhancement of said facility to the respondents. The petitioner's account has been classified as Non Performing Asset on 30.12.2015 as per the guidelines of Reserve Bank of India. The appellant is liable to pay an outstanding of Rs.56,42,429/- as on 31.10.2017 to the respondent Bank. An application in O.A.No.500 of 2017 has also been filed against the appellant before the Debt Recovery Tribunal III at Chennai which is pending for disposal. It is further stated that the appellant's account has been classified as Non Performing Asset on 30.12.2015 due to his default from the date of sanction of the facility. The facility was secured with an equitable mortgage of the vacant land measuring an extent of 0.65 Acres (26.5 Ares) comprised in Survey No.342/5B at No.22, Kollur III Village, Kollur Panchayat Union, Ponneri Taluk, Thiruvallur District situated within the Registration Sub District of Ponneri and Registration District of North and registered as Document No.9795 of 2014 dated 12.9.2014.

6. In support of his contention, the learned counsel appearing for

the respondent Bank relied upon the following decisions:

1. **Delhi High Court judgment in Raj Kumar and Ors. Vs. Syndicate Bank reported in LAWS (DLH)-2016-2-195**

2. **First Bench judgment of this Court in C.R.Ramachary Vs. Indian Overseas Bank [LAWS (MAD)-2018-10-615]**

7. Heard the learned counsel appearing for the appellant, learned counsel appearing for the respondent Bank and perused the materials available on record.

8. Admittedly, mortgage deed as Doc.No.1155 of 2014 dated 11.2.2014 on the file of SRO, Ponneri has been executed as an equitable mortgage by depositing title deed in respect of the property in question. While so, the appellant had approached the respondent Bank for sanction of Rs.15.00 lakhs as an overdraft facility initially for the purpose of prawn culture for which the appellant mortgaged another immovable property to the respondent Bank, by deposit of title deed viz., 0.65 acres (26.5 ares) of vacant land comprised in S.No.342/5B of No.22 Kolur-111 Village, Kolur Panchayat Union, Ponneri Taluk, Thiruvallur district. The respondent Bank originally sanctioned overdraft facility for a sum of Rs.15.00 lakhs to the appellant on 20.6.2014 and later it was enhanced to the tune of Rs.35.00 lakhs on 30.9.2014.

9. According to the appellant, the respondent Bank by letter dated 27.1.2017 certified that Overdraft facility in A/c No.3725256000025

availed by G.Mahendran has been cleared on 24.1.2017 and there is no lien over the subject property and therefore, the appellant stated that he is entitled for return of the documents. The appellant sent a legal notice to the respondent Bank stating that the overdraft facilities obtained by G.Mahendran had been fully settled and there is no due to the respondent Bank in respect of the subject property and the same was also undisputed by the respondent Bank. However, it is the stand of the Bank that even though Mr.G.Mahendran had cleared his loan, as the appellant was in huge arrears in sofar as his another loan is concerned, the Bank is not obliged to return the documents.

10. The question is whether the Bank can exercise a general lien over the title deeds deposited by way of equitable mortgage for the purpose of repayment of dues of a different loan account.

11. It would be relevant to extract the decision in the case of ***F.A.Construction Vs. Union Bank of India reported in 2022 0 Supreme (Bom) 936*** wherein it is held as under:

> *"10. Reliance is placed upon section 171 of the contract act which reads thus :*
> *"171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers. – Bankers, factors, wharfingers, attorneys of a high court and policy- broker*

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."

11. According to Halsbury's Law of England, Vol.20.2nd Edn.p552, para 695,lien in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied.

As per chitty on contract, Twenty-Sixth edition, page 389, paragraph 3032 the ***Banker's*** *lien is explained as under:*

"Extent of lien- By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business.

13. Bankers undoubtedly have a general lien on all securities deposited with them as bankers customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien.

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17. The Division Bench of this court in the case of Mr. Sunil S/o\. Ratnakar Gutte observed and held that once the entire loan amount was repaid, the bank is not entitled to retain the title documents. The bank could not have invoked section 171 of the contract act and plead right of general lien.

18. In the present, case, the security was given to the bank by way of mortgage by deposit of title deeds to secure the loan advanced to the appellant. The transaction was that of a mortgage referable to Sec.58(f) of the Transfer of Property Act, 1882.

19. A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

20. The requisites of a equitable mortgage are:

(i) debt, (ii) deposit of title deeds and (iii) an intention that the deeds shall be security for the debit.

21. The debt may be existing debt or a future debt. Thus, any transfer or interest in a property to secure payment of money, advanced or to be advanced or an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability is a mortgage.

22. Section 60 of the Transfer of Property Act, 1882 provides that at any time after the money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to requires the mortgagee to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property This right of equity of redemption vests with the mortgagor under section 60 of the Transfer of Property Act.

23. In the instance case, on 31.03.2018, the mortgagor gave a letter. The excerpts of the letter are thus:

"To,
The Branch Manager,
Andhra Bank,Bandra-west,Mumbai.
Sub: Offer of Security of Commercial premises in the name of M/s. Nircon Construction, 205, Lunkad Skyvista, Survey No.230A/3/2, Viman Nagar, Lohegaon, Pune, for the Credit facility availed by M/sF.A. Construction.

Respected Madam,

Referring to the above, we hereby offer the Security of our office premises No.205, Lunkad Skyvista, Survey No.230A/3/2, Viman Nagar, Lohegaon, Pune for the WCTL limit of Rs.98.00 Lacs availed by M/s. F.AConstruction having address at 201-202, Prabhat Chamber, Plot no.92, S.V. Road, Khar- West, Mumbai-400052.

The intangible mortgage of the above security can be done & Bank Charge be registered with the Builder/CERSAI/ Sub Registrar."

24. The memorandum of deposit of title deeds specify the amount to be secured i.e. 98,00,000/-. The amount refers to the working capital loan advanced to the appellant for an amount of Rs.98,00,000/-. Memorandum refers to amount of Rs.98,00,000/- and further stipulates that documents of title to the immovable property are deposited with intent to secure repayment to the bank of moneys that are now due or shall from time to time or at any time be due from M/s. F.A. Construction or me/us either solely or jointly, with any other person or persons to the bank whether on balance of account or by discount or otherwise in respect of bill of exchange, promissory notes, cheques *and other negotiable instruments or in any manner whatsoever and including interest, commission and other banking charges and any law costs in connection thereto.*

25. The recitals specifically refer to the lien of Rs.98,00,000/- and whatever would be due then or from time to time or at any time. The memorandum of deposit of title deeds nor letter given by the mortgagor to the bank stipulates any other loan than the working capital term loan limit of Rs.98,00,000/-.

26. It is not disputed that the said account i.e. working capital term loan of Rs.98,00,000/- has been closed and no dues certificate has been issued by the bank. In that event, the mortgagor gets a right to redeem the same. Bank would not be entitled to retain the documents for recovery of other amounts i.e. the amount other than outstanding in the working capital term loan account of Rs.98,00,000/-.

27. In view of the provisions of section 60 of Transfer of Property Act, the mortgagor will have every right to redeem and there cannot be any clog on right of mortgagor to redeem. Even otherwise, the creditor can always approach the court for attachment of property or claim such other relief as is permissible under law."

12. The aforesaid decision would squarely apply to the facts of the case on hand. When the appellant as mortgagor stood as a guarantor for the loan availed by the borrower, the loan account has been subsequently

closed and a no dues certificate has also been issued by the Bank, the appellant gets a right to redeem the collateral security and seek return of his documents. Bank would not be entitled to retain the documents for recovery of other amounts i.e. any amount other than the outstanding due in respect of the loan account for which the appellant offered his property as collateral security. Thus, the action of the respondent Bank refusing to return the title deed is illegal and the same requires interference of this court. Except the aforesaid decision, the judgments relied upon by the counsel appearing for the appellant are not relevant to the case on hand.

13. In similar circumstances, the Division Bench of the Bombay High Court, Nagpur Bench in **Sunil case (W.P.No.32 of 2022)** supra, has also held that the Bank has no right to withhold title deeds when there is no relationship of Banker and customer and the plea of general lien cannot be canvassed by the Bank.

14. In view of the foregoing discussions, the respondent bank cannot retain the documents furnished by way of collateral security in relation to an earlier loan account which stood settled, citing a subsequent loan not being settled for which the subject property was not offered either as a mortgage or as a collateral security. Consequently, the order passed by the

learned Single Judge is liable to be set aside and is accordingly set aside.

15. In view of the above, the writ appeal stands allowed. No costs. The respondent Bank is directed to return the documents in respect of the property in question within a period of three weeks from the date of receipt of copy of the order. Connected miscellaneous petition is closed.

(D.K.K.J.) (P.B.B.J.)
08.11.2023

Speaking/Non Speaking order
Index: Yes
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To
1. The Regional Manager,
   Canara Bank, No.524, Anna Salai, Teynampet, Chennai.
2. The Manager,
   Canara Bank, Ponneri Branch, Ponneri – 601 204, Tiruvallur District.

D.KRISHNAKUMAR, J.
AND
P.B.BALAJI, J.

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Pre-Delivery Judgment in
W.A.No.1062 of 2020
and C.M.P.No.12977 of 2020

Dated: 08.11.2023