



W.P.(MD)No.7045 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.7045 of 2021

and

W.M.P.(MD).Nos.5410, 5413 & 5415 of 2021

S.Prema

... Petitioner

Vs.

Indian Overseas Bank,
Represented by Senior Manager,
Kaliyakkavilai Branch,
Kanyakumari District.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the respondent pertaining to its auction notification bearing no. nil dated 19-03-2021 released in Thina Tanthi bringing petitioner jewel pledged loan account nos. 214003549 dated 30.10.2019 2028009423 dated 06.11.2019 and 2028009318 dated 30.10.2019 and quash the same and consequence direct the respondent to hand over the Jewels to petitioner on receipt of the loan outstanding amount specified in the notice that is a sum of Rs.4,69,564/- within a time frame that may be fixed by this Court.



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For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.N.Dilip Kumar,
Standing Counsel

ORDER

This Writ Petition was filed challenging the auction notification issued by the respondent Bank and for a consequential direction for the respondent Bank to hand over the jewels that were pledged by the petitioner for the loan availed by the petitioner which the petitioner was willing to repay back to the respondent Bank.

2. The issue that is involved in the present Writ Petition has been captured in the earlier order that was passed by this Court on 08.11.2021 and is extracted hereunder:

“This writ petition has been filed challenging the auction notification issued by the respondent Bank dated 19.03.2021 and for a consequential direction to hand over the jewels that were given as security by the petitioner while securing the loan from the respondent Bank.

2. The petitioner had availed agricultural loan from the respondent Bank. There were three



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loans that were availed by pledging the jewels. The amount became due and payable and a demand was made by the respondent Bank through their notice dated 11.01.2021. The petitioner sought for some time to repay back the loan and in the meantime, the respondent Bank proceeded to issue a notification by bringing the jewels pledged by the petitioner for public auction. The same became the subject matter of challenge in this writ petition.

3. When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that the entire amount that was demanded by the respondent Bank has been paid by the petitioner through three demand drafts all dated 03.04.2021. The learned counsel, therefore, submitted that in view of the repayment of the loans, the respondent Bank should not proceed with the public auction. The learned counsel further submitted that in view of the settlement of the loans, the respondent Bank must be directed to hand over the jewels that were pledged at the time of availing the loan.

4. Per contra, the learned counsel appearing on behalf of the respondent Bank submitted that the demand drafts have been



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received from the petitioner and in view of the same, the respondent Bank will take a decision to stop the public auction, which was slated to take place today, ie., 08.03.2021 at 3.00 p.m. The learned counsel further submitted that insofar as the consequential relief sought for by the petitioner to return back the jewels is concerned, the same is not sustainable since the petitioner has availed of other loan facilities from the respondent Bank and the respondent Bank has a general lien over the jewels pledged by virtue of Section 171 of the Indian Contract Act, 1872. The learned counsel further submitted that even as per the terms and conditions of the jewel loan, the jewels can be retained as security for the other loans availed by the petitioner.

5. The learned counsel appearing on either side brought to the notice of this Court some reported judgments on this issue.

6. In the considered view of this Court, the consequential relief sought for by the petitioner seeking for returning back the jewels, has to be independently decided by this Court by taking into consideration the law on the point. This would require the petitioner to file an additional affidavit along with all the necessary documents in order to



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explain the nature of loan that has been availed by the petitioner and if any independent security has been given for the same. On such filing of the additional affidavit, the respondent can also file a counter for the same. Thereafter, this Court will independently consider this issue and render its findings.

7. For the present, since the petitioner has settled the entire loan amount, the respondent Bank is directed not to proceed further with the public auction that is slated to be held today. The cancellation of the public auction shall immediately be announced to the potential bidders.

8. Post this matter under the caption 'for orders' on 03.06.2021. In the meantime, the petitioner shall file the additional affidavit along with the documents and the respondent Bank shall also file their counter affidavit. This Court will deal with the consequential relief sought for by the petitioner and pass orders in the writ petition."

3. Pursuant to the above order, the petitioner has filed an additional affidavit and she has stated that an agricultural loan was availed by the petitioner from the respondent Bank, Kulasekaram Branch, for



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which, the petitioner had created a security by deposit of title deed on 15.04.2015 and thereby, the property situated in R.S.No.44/1A2B measuring 45 cents was mortgaged. Subsequently, the loan was declared as “NPA” and a notice dated 03.02.2021 was issued under Section 13 (2) of the SARFAESI Act, 2002. The petitioner has stated in the additional affidavit that the total value of the immovable property that was given as security, is worth more than Rs.1,00,00,000/- (Rupees One Crore only) and whereas, the outstanding loan was only a sum of Rs.21,13,101/- (Rupees Twenty One Lakhs Thirteen Thousand One Hundred and One only). Therefore, the petitioner has taken a stand that the available security will be more than sufficient for the Bank to recover the unpaid loan availed by the petitioner. Accordingly, it is stated that the respondent Bank cannot further exercise general lien under Section 171 of the Indian Contract Act, 1872, on the jewellery that was pledged by the petitioner for the jewellery loan that was availed and which was subsequently, repaid back.

4. The respondent Bank has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“5. Before adverting to counter the contentions raised by the petitioner, it is necessary



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to state the following details:-

a. Petitioner along with her son and daughter had borrowed an Agricultural Term Loan (loan account number 004203881500002) of Rs.15 lakhs on 15.04.2015 from Indian overseas Bank, Kulasekaram branch. Towards securing the loan outstandings, petitioner and her co-borrowers had deposited their title deeds in respect of an immovable asset of house site together with building vide registered deed of mortgage dated 15.04.2015 bearing Document No. 923 of 2015 on the file of the Sub Registrar, Thiruvattar.

b. Due to default committed by the petitioner and her co-borrowers, the loan account was classified as a Non-Performing Asset on 29.06.2020. After giving sufficient time to the petitioner and co-borrowers, a demand notice was issued on 03.02.2021, to which a representation was received from the petitioner on 22.03.2021 and it was also promptly replied on 23.03.2021

c. Petitioner had not made good the loan defaults till date.



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d. In the meanwhile, petitioner under three jewel loans bearing account numbers 2028009318 dated 30.10.2019, 214003549 dated 30.10.2019 and 2028009423 dated 06.11.2019 borrowed respective sums of 1,00,000/-, 2,20,000 and 1,00,000/- by pledging gold jewel gold jewels, from the Kaliyakkavilai Branch of Indian Overseas Bank. All these three loans had been sanctioned upon receipt of a valid application from the writ petitioner. She had also issued letters of undertaking in respect of these loans and she had also signed the loan agreements agreeing to abide by the conditions which inter alia contains the following term:-

"The jewelry pledged to the bank shall be continuing security for all my present and future indebtedness and liabilities either solely or jointly with other persons in whatsoever capacity either as borrower or guarantor at any office of the Bank."

e. There is a clear contract between the parties establishing the availability of a right of lien in favour of the respondent bank apart from the statutory Banker's General Lien provided under Section 171 of the Indian Contract Act.



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f. Petitioner failed to repay the outstandings in the jewel loans also compelling the answering respondent to issue a demand notice on 11.01.2021.

g. Petitioner issued a legal notice on 02.02.2021 and it was replied by the bank advocate on 04.02.2021 categorically stating as follows:-

“...Your client has further agreed that notwithstanding anything to the contrary contained in the agreement of pledge it is specifically agreed and acknowledged that the bank shall always be entitled to have the bank's right of general lien and set off on the surplus money, if any remaining out of the sale of the project against any of your client's liability to the bank as borrower or customer. The contention in your notice that the right of general lien cannot be exercised in respect of another loan offered by your client long before the pledging of jewels in the bank is unsustainable and untenable. The branches at Kulasekaram and Kaliakavilai come under the fold of the very same Indian overseas Bank. So the bank has got the right to exercise its general lien over all the assets of your client and as such the jewel pledged in the bank is liable for the amount due from your client



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and agricultural loan availed from the Kulasekaram branch".

h. Petitioner did not come forward to settle the jewel loan outstanding compelling the bank to issue a jewel auction sale notice and publish the same in the newspaper.

i. After challenging the auction stile notice in this WP, during the pendency of the writ petition, the petitioner had paid a total sum of Rs. 4,69,264/- to the bank and after adjusting the loan outstanding, there is a balance amount of Rs. 6983/- payable by the petitioner towards the jewel loan outstanding.

j. In light of the availability of a contractual lien in addition to the general lien under Section 171 of the Contract Act in favour of the bank, against the jewels, towards securing the loans advanced by its Kulasekaram branch, the bank is entitled to withhold the Pledged jewels till the entire outstanding payable by the petitioner towards all loan accounts are settled."



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5. The main contention that was raised by the learned counsel appearing for the petitioner is that the respondent bank had issued a notice dated 11.01.2021 in all the three jewellery loan accounts and had directed the petitioner to pay the dues and redeem the jewels. This offer made by the Bank was accepted by the petitioner and accordingly, the entire jewellery loan was repaid back and in spite of the same, the jewellery which were pledged was not returned back to the petitioner. The learned counsel by relying upon the language under Section 171 of the Indian Contract Act, 1872, submitted that the notice dated 11.01.2021 that was issued towards the three jewellery loan accounts was a contract to the contrary, which enabled the petitioner to redeem the jewels and therefore, the respondent bank does not have a general lien over the jewellery as a security towards the agricultural loan which remains due and payable.

6. The learned counsel appearing for the petitioner further submitted that the respondent bank has already initiated proceedings under the SARFAESI Act, 2002 and the same has been put to challenge by the petitioner in S.A.No.252 of 2021 which is pending before the Debt Recovery Tribunal, Madurai and interim stay was granted in I.A.No.954 of 2021, staying all further proceedings of the Bank with a condition that the



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petitioner must deposit a sum of Rs.3,17,000/- (Rupees Three Lakhs and Seventeen Thousand only) in two installments and this condition was also complied with by the petitioner. In view of the same, the stay order is in operation and the case is also pending before the Debt Recovery Tribunal. The learned counsel submitted that the agricultural loan carried an independent security by means of mortgage by deposit of title deeds and therefore, such a security cannot be extended by including the jewelleries also which was given as a security for the jewellery loan that was availed by the petitioner. To substantiate this submission, the learned counsel relied upon the Division Bench Judgment of this Court in the case of ***M.Shanthi Vs. Bank of Baroda, represented by its Chief Manager*** reported in ***2017 SCC Online Mad 37703***. The learned counsel appearing on behalf of the petitioner also relied upon the Judgment of the learned Single Judge in the case of ***N.Rajathi Vs. The Manager-Canara Bank, Kombai Branch, South Car Street, Uthamapalayam Taluk, Theni District and others*** in ***W.P.No.506 of 2014*** dated 06.01.2023. The learned counsel also placed reliance upon the Judgment of the Bombay High Court in the case of ***A.S.Chandurkar and others Vs. Union Bank of India, Through its Branch Manager*** reported in ***2022 0 AIR (BOM) 195***



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7. Per contra, the learned counsel appearing for the respondent Bank submitted that the Judgments that were relied upon by the learned counsel appearing for the petitioner will not apply to the facts of the present case, since in all those cases, there was mortgage of immovable property which was relatable to the concerned loan account and hence it cannot be extended to the other loan, more particularly, when the loan for which the security was given was already repaid back. In the instant case, the jewellerys were pledged which is a bailment in line with Section 148 of the Indian Contract Act, 1872. The learned counsel submitted that insofar as the Bankers loan for the securities that are pledged, the Judgment of the Hon'ble Apex Court in the case of ***Syndicate Bank Vs. Vijay Kumar and Others*** reported in ***(1992) 2 Supreme Court Cases 330*** will directly apply and specific reliance was placed on the following passage:

“The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable



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right of the banker judicially recognised and in the absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted to the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which are deposited by the customer.”

8. The learned counsel appearing for the respondent Bank further submitted that the notice dated 11.01.2021 cannot be taken to be a contract to the contrary, since the notice only pertains to the jewellery loan that was availed by the petitioner and at the relevant time, the petitioner had not repaid back the jewellery loan and hence, the Bank was taking steps to recover the loan by bringing the jewellery pledged for auction. In view of the same, this notice which pertained to the jewellery loan cannot be considered to be a contract to the contrary insofar as the agricultural



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loan that was taken by the petitioner. The learned counsel submitted that insofar as the jewellery loan that was availed by the petitioner, even though he had pledged the jewellery as a security, the petitioner had specifically agreed in Clause 9.4 of the Agreement that the jewellery that is pledged to the Bank will be a continuing security for all the present and future indebtedness and liabilities and hence, the petitioner is bound by the contractual obligation. The learned counsel further submitted that there are no merits in this Writ Petition and that the same is liable to be dismissed by this Court.

9. The relief sought for in this Writ Petition has two limbs to it. The first limb pertains to the auction notification issued by the respondent Bank to bring the jewellery for auction and sale. In view of the fact that the petitioner has repaid back the jewellery loan, there is no reason for the respondent Bank to take any action to once again issue any auction notification. Hence, the first limb of the relief has become infructuous by virtue of the subsequent development that took place in this case. The discussion in this Writ Petition will confine therefore itself only to the second limb of the relief that has been sought for by the writ



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petitioner, wherein, the petitioner had sought for a direction to the respondent Bank to return back the jewellery which was pledged as a security.

10. Even at the inception, it must be seen as to whether the petitioner had a contractual obligation to continue the jewellery to be kept as a security when she availed of the jewellery loan from the respondent Bank. For this purpose, Clause 9.4 of the terms and conditions is extracted hereunder:

“The jewelry pledged to the bank shall be continuing security for all my present and future indebtedness and liabilities either solely or jointly with other persons in whatsoever capacity either as borrower or guarantor at any office of the Bank.”

11. It is clear from the above Clause that the petitioner has specifically agreed that the jewellery that was pledged towards the jewel loan will continue to be a security for all the present and future indebtedness and liabilities. Therefore, even if the petitioner had repaid



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back the jewellery loan, insofar as the agricultural loan that was availed by the petitioner, the contractual obligation obligates the petitioner to continue to keep the jewellery as a security even for the agricultural loan that was availed by the petitioner. By virtue of this agreement, the petitioner herself has indirectly admitted the right of general lien available to the respondent Bank under Section 171 of the Indian Contract Act, 1872.

12. Insofar as the Judgments that were relied upon by the learned counsel for the petitioner, all those cases dealt with the mortgage created over an immovable property and none of those cases pertained to a pledge of movable properties. Insofar as the security given towards the loan through mortgage by deposit of title deed, once the amount is settled with respect to that loan, the Bank cannot continue to retain the documents by relying upon the provisions of Section 171 of the Indian Contract Act, 1872. This is in view of the fact that the title deed in question which was deposited is relatable only to the concerned loan that was availed by the borrower. Once that loan amount is repaid, the general lien cannot be exercised under Section 171 of the Indian Contract Act, 1872, for the



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amount that is due and payable towards some other loan. Even the Division Bench of this Court in *M.Shanthi case* referred supra, has taken note of this position of law and has held that the lien is primarily concerned as a right to retain security and that the Bank cannot retain the title deed of the mortgage or can proceed further to bring the property for sale towards the recovery of dues in connection with a different transaction which is not covered by the mortgage. The Division Bench held that the right of lien under Section 171 of the Indian Contract Act, 1872, cannot run contrary to the provisions of the Transfer of the Property Act, 1882, which deals with the creation of a mortgage by deposit of title deeds towards security for a particular transaction.

13. In the light of the above discussion, this Court has absolutely no hesitation to hold that the Judgments that were relied upon by the learned counsel for the petitioner will not apply to the facts of the present case, since in the present case, apart from the petitioner being bound by the contractual obligation, the properties involved are movable properties that were pledged and which falls within the scope of bailment under Section 148 of the Indian Contract Act, 1872. In view of the same,



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it directly falls within the scope and ambit of Section 171 of the Indian Contract Act, 1872.

14. The notice dated 11.01.2021 issued by the respondent Bank to the petitioner by directing the petitioner to pay the dues and to redeem the jewels cannot be taken to be a contract to the contrary. These notices only pertained to the jewellery loan that was due and payable at the relevant point of time and the petitioner was informed that if the amount is not paid, action will be taken to auction the jewels that were pledged for recovering the loan. Therefore, the notice that was issued directing the petitioner to repay back the loan amount, cannot be taken to be a contract to the contrary. This is more so, since the petitioner had already obligated herself by virtue of Clause 9.4 of the terms and conditions of loan.

15. The learned counsel for the petitioner submitted that the petitioner believed that the jewellery will be returned back after the jewellery loan is settled and the petitioner had arranged for a marriage in the family and now, the amount has already been paid with very great difficulty and the jewels have also not been returned back. Therefore, the



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learned counsel requested this Court to consider equity in this case, more particularly, when the immovable property that was given as a security for the agricultural loan will sufficiently take care of the recovery of that loan.

16. In a case of this nature, a Writ Court cannot invoke equity and grant the relief, since the respondent Bank is dealing with public funds and the Hon'ble Apex Court has repeatedly held that the High Courts cannot exercise their jurisdiction under Article 226 of the Constitution of India on misplaced sympathy. That apart, the value of the security that is available for the agricultural loan cannot be a determinant factor to deny the respondent Bank of their right of general lien available under Section 171 of the Indian Contract Act, 1872. In a way, the petitioner had also admitted this right by means of Clause 9.4 of the terms and conditions. Thereby, the petitioner is also under a contractual obligation to recognize the general lien of the respondent Bank under Section 171 of the Indian Contract Act, 1872.



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17. The conspectus of the above discussion leads to the only conclusion that the second limb of the relief sought for by the petitioner seeking for returning back the jewelleries, cannot be granted by this Court.

18. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

23.11.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
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