IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1255 of 2016

==

Prem Pratap Singh @ Prem Pratap Narayan Singh @ Munna Babu Son of Late Durga Prasad Singh, Resident of Village- Nand Lal Tola, Garkha Road, Chapra, P.S. Chapra Town, District- Saran.

... ... Petitioner/s

Versus

1. The Chairman, State Bank Of India
2. The State Bank of India, Main Branch Chapra, through the Chief Manager, at and P.O. Chapra, P.S. Chapra Town, District Saran
3. The Chief Manager, State Bank of India, Main Branch, Chapra, at and P.O. Chapra, P.S. Chapra Town, District Saran

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	M/s Nagendra Rai Navin Nikunj Koshalendra Rai, Advocates
For the Respondent/s	:	Mr. Rakesh Kumar Singh, Advocate

==

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 31-07-2024

1. The petitioner has filed the Writ application for the following relief:

> *" (I) Commanding the respondents to return the original Sale deed dated 30.07.1983 executed by Ram Pravesh Singh, Son of Shiv Nandan Singh of village Shivrahiya, Pargana – Chirand, P.S. Chapra Muffasil at present Village Mahamda, Pargana – Baal, P.S. Garkha, District Saran in favour of this petitioner and the original policy bond of the Insurance Policy of L.I.C. (Policy No. 532506341) in the name of the petitioner."*

ii) Grant any other relief deemed fit and proper."

2. The brief facts culled out of petition are that the petitioner carries business in the name & style of M/S Bhawani Constructions. A Cash Credit Loan Facility, for the purpose of carrying business to the petitioner, was sanctioned by respondent No. 3 Bank. It is submitted that as per the terms and conditions of the Cash Credit Facility, the petitioner executed loan documents as directed by the respondent Nos. 2 and 3 and after completion of the formalities, the loan amount was disbursed to the petitioner in Loan Account No. 11206914806. It is further submitted that at the time of taking the aforesaid loan, the petitioner created equitable mortgage as directed by the respondent Bank by depositing original Sale deed dated 30.07.1983 executed by Ram Parvesh Singh in favour of the petitioner and also deposited original Policy Bond No. 532506341 of Insurance Policy of LIC of India in the name of the petitioner.

3. It is further submitted that the petitioner paid all the outstanding dues of the aforesaid Loan Account to the Bank and, accordingly, the Loan Account was closed on 30.01.2012. After closure of the Loan Account, the petitioner requested the

Bank authorities to return the aforesaid two documents which were deposited by him to respondent No. 2 for creating equitable mortgage but the respondents did not return the documents, though respondent Nos. 2 and 3 were legally obliged to immediately return the documents after closure of the Loan Account as the petitioner has paid all the dues.

4. It is contended by the petitioner that after repeated request the documents were not returned to the petitioner by the respondents, for which the petitioner was constrained to file a case before the District Consumer Forum, Saran bearing Consumer Forum Case No. 26 of 2012. It is submitted that respondent Nos. 2 and 3 had filed their written statement before Consumer Forum, taking a plea that a Housing Loan was granted to one Sri Ram Singh by the respondent-Bank and the petitioner was a guarantor in the said loan, which has become NPA and therefore, the aforesaid two documents of the petitioner were withheld. The District Consumer Forum after hearing the parties allowed the petitioner's claim and directed respondent Nos. 2 and 3 to return the two documents to the petitioner, within three months from the date of the order with other consequential relief vide Annexure-2. Respondent Nos. 2 and 3 preferred Appeal No. 389 of 2013 before the State

Consumer Dispute Redressal Commission, Bihar, at Patna against the order of the District Consumer Forum. The State Consumer Dispute Redressal Commission, Bihar dismissed the appeal vide order dated 28.01.2015 (Anneuxre-3) but with modification of setting aside the direction to return the documents. Against the part of the order (Annexure-3) of the State Consumer Dispute Redressal Commission, Bihar, the petitioner filed Revision Petition No. 1235 of 2015 before the National Consumer Dispute Redressal Commission, New Delhi. After hearing the parties, the National Consumer Dispute Redressal Commission, held that the petitioner is not a "Consumer". Accordingly, the revision petition was withdrawn by the petitioner. Thereafter, the petitioner has filed this writ application.

5. Counter affidavit was filed on behalf of the respondents.

6. It is submitted by the Learned counsel for the respondents that Sale deed of land was not deposited with the Bank officials against the sanctioned Loan and the xerox copy of Sale deed was not genuine and original rather the petitioner and others have played a fraud by submitting the manufactured, concocted and forged document, which was revealed in an

enquiry made by the Bank. It is further submitted that under direction of the senior officers of the Bank, an F.I.R. has been lodged against the petitioner under Sections 420, 467, 468, 471 and 120B of the IPC.

7. It is further contended by learned counsel for the respondents that when the Loan Account became NPA, a Notice under Section 13(2) of the SARFAESI Act was sent to the petitioner showing therein as outstanding dues of Rs. 13,81,308/- and subsequently issued an advertisement in daily Newspaper for taking possession under provision of SARFAESI Act vide Annexure-R/3.

8. A reply to the counter affidavit was filed by the petitioner. The petitioner has denied the allegations levelled against him in counter affidavit. It is submitted by the petitioner that no document has been submitted by him while being a guarantor in the Loan Account of Sri Ram Singh. In fact, the petitioner has deposited original Sale deed and LIC Policy Bond by way of equitable security in the C.C. Loan Account of the petitioner, which was closed after payment of all the dues. It is further submitted that as far as any illegality committed by Sri Ram Singh is concerned, the petitioner is not liable for all his actions. With regard to the Sale deed of Sri Ram Singh, it is

stated that the Bank's Advocate, on request of the respondent No. 3, had inspected the record of the relevant document in the office of the District Sub Registrar and gave his opinion that the Sale deed No. 9817 dated 06.03.2002 is genuine and the interest of the Bank is safe. It is further contended that petitioner has been falsely implicated in criminal case by the Bank.

9. By way of filing a supplementary affidavit, the petitioner has brought on record an arrangement letter and guarantee agreement dated 26.03.2004, which has been supplied to the petitioner by the order of the Central Information Commission, on the basis of petitioner's queries under R.T.I.. It is submitted that none of these papers mention that the petitioner has consented to keep his documents deposited as security in other account to be withheld till payment of the guaranteed amount in the account of Sri Ram Singh.

10. On the other hand, in reply to the aforesaid submissions, learned counsel for the Bank by way of filing supplementary counter affidavit stated that the petitioner was a guarantor against the Housing Loan taken by Mrs. Arti Devi and the petitioner offered his guarantorship to the Loan Account taken by Shri Ram Singh and his wife Smt. Arti Singh,

therefore, the documents deposited earlier as security/mortgage documents against the initial loan, were converted as security to the new Loan Account of Sri Ram Singh under Principle of SET-OFF as enumerated under the provisions of CPC and Contract Act.

11. Heard learned counsel for the petitioner as well as learned counsel for the State Bank of India and perused the entire records.

12. From perusal of records it is crystal clear that the petitioner has deposited all outstanding dues under the loan taken by the petitioner.

13. In support of his contention, Learned counsel appearing for the appellant has placed reliance on the citations reported in **AIR 1984 SC 1012 (Gurbax Rai Versus Punjab National Bank, New Delhi)**, **AIR 2004 Orissa 142 (Alekha Sahoo Versus Puri Urban Co-operative Bank Ltd.),** and an order dated 27.12.2021 by Telangana High Court in **W.P. No. 10655 of 2020 (INK N Paper versus The Karur Vysya Bank & Ors.**).

14. For better appreciation of the facts, relevant paragraphs of the judgment passed in **Alekha Sahoo (supra)** are quoted hereinbelow:

"7. The first question, therefore, which has

to be decided in this writ petition is whether the Bank could under the provisions of its bye-laws retain the gold ornaments of the petitioner as additional security for the loan granted to Manmohan Sahoo, Proprietor Bimala Bhandar for whom the petitioner was a guarantor. Along with its counter-affidavit, the Bank has annexed the documents which the petitioner has signed at the time of taking the gold loans as Annexure-R/1 series. The relevant portions of the documents in which the petitioner has undertaken to accept the bye-laws of the Bank as binding on him are quoted herein below:

"I have and have been explained the relevant bye-laws and rule of the Bank in this connection and I accept the same as binding on (sic) rule also undertake to abide by the decision of the Bank authorities as to the extend of loan to be granted on the security of these goods after its due appraisement and valuation made by the Bank and I authorize to break or melt any part or whole of these goods for purpose of proper testing at my risk and expense."

"The 2nd party also authorized to take any action at any time with regard to the pledged goods according to their bye-laws and rules which can be questioned and challenged by the first or his/their representative at any time."

In the aforesaid portions of the documents signed by the petitioner at the time of taking the gold loans, the petitioner has stated that the bye-laws and the rule of the Bank have been explained to him and he has accepted the same as binding on him and has further stated that he will not question the said bye-laws and rule. But the particular bye-law and rule of the Bank to the effect that the Bank can retain the gold *ornaments of the petitioner for the Loan Account of the principal debtor for whom he is a guarantor has not been placed by the Bank before the Court. In the absence of any bye-law or rule of the Bank to the effect that the gold ornaments of the petitioner pledged for the gold loans could be retained by the Bank as additional security for loan granted to Bimala Bhandar for whom the petitioner was a guarantor, the Bank could not retain the gold ornaments of the petitioner after repayment of the gold loans by the petitioner under the bye-laws of the Bank.*

……………………………………………………

…

11. In Syndicate Bank v. Vijay Kumar (supra) cited by Mr. Kanungo, the judgment debtor who owned two Fixed Deposits executed two letters on 17-9-1980 creating a lien in favour of the Bank over the two Fixed Deposit Receipts and on these facts the Supreme Court held that the two letters executed by the judgment debtor on 17-9-1980 created a lien in favour of the bank over the two Fixed Deposit Receipts. This is thus a case where the owner of the Fixed Deposit Receipts had expressly agreed that the Bank would have lien over the fixed Deposit Receipts. In this case, the Supreme Court has not laid down any law that the Bank can exercise its general lien under Section 171 of the Contract Act over the properties of the surety for the liabilities of the principal debtor to the Bank. In S. Vasupalaiah v. The Vysya Bank, Kudagenahalli Branch (supra) and in City Union Bank Ltd. v. C. Thangarajan (supra) cited by Mr. Kanungo, the learned single Judges of the Karnataka High Court and the Madras High Court respectively have referred to the aforesaid decision of the Supreme Court in Syndicate Bank v. Vijay Kumar (supra) and have held *that the Bank can exercise lien over the properties of a guarantor or a co-promisor for recovery of the outstanding dues of the principal debtor or the promisor to the Bank. But as we have discussed above, courts in England and in India have held that the Bank can exercise general lien over the properties of a customer for the general balance in such customer's account and not for the general balance of some other customer's account. Unless therefore a customer has expressly agreed that his properties can be retained as security for the outstanding balance in the account of some other customer, a Bank cannot exercise lien over the properties of such customer under Section 171 of the Contract Act. In the guarantee agreement executed by the petitioner for the cash credit account of Bimala Bhandar, a copy of which has been annexed to the counter-affidavit as Annexure - R/2, there is no such provision that the Bank can retain the properties of the petitioner as security for the outstanding balance in the Loan Account of Bimala Bhandar. In fact, the Bank has also not relied on any such provision in the guarantee agreement and instead has relied on the bye-laws of the Bank and the general lien of the Bank as provided in Section 171 of the Contract Act. As we have seen, the Bank has no such right under the bye-laws or Section 171 of the Contract Act to retain the gold ornaments of the petitioner as security for the outstanding balance in the Loan Account of Bimala Bhandar.*

12. *Since we have found that the Bank has no right whatsoever either under its bye-laws or under Section 171 of the Contract Act to retain the gold ornaments of the petitioner after the petitioner had cleared the outstanding balance in the two gold Loan Accounts for which the gold ornaments were pledged as security, the retention of the gold ornaments of the petitioner by the Bank was without any authority of* *law and is arbitrary and the impugned notice dated 30-7-2003 is liable to be quashed.*

13. *For the aforesaid reasons, we quash the impugned noticed dated 30-7-2003 of the Secretary, Puri Urban Co-operative Bank Ltd., Puri to the petitioner and direct the opposite parties to forthwith return the gold ornaments to the petitioner. Considering the facts and circumstances, parties shall bear their own costs."*

15. In the order of **INK N Paper (supra),** the Telangana High Court passed the order in light of the decisions passed in **Gurubax Rai (supra)**. The relevant paragraphs are quoted herein below:

12. The issue involved was whether the amount (Rs.59,00,570.02 ps) recovered by the Bank from the insurer towards destruction of pledged goods, would have been adjusted by the bank towards payment of dues by partners of the firm under a separate Loan Account. The Supreme Court held as under:

"The question is : is it open to the Bank which held pledged goods against the cash credit facility to adjust the amount recovered from the pledged goods for wiping out separate dues of the individual partners ? The goods were of the firm. They were not the goods of the partners. The goods were not offered as security for the individual debt of the partners."

……………………………………………………...

16. Under Section 171 of the Indian Contract Act, 1872, the Bank has got right to exercise lien over the goods pledged to it. The subject vehicle is purchased by the petitioner/firm by availing loan from

> *respondents/Bank. It is not in dispute that the entire loan amount had already been discharged. It is the case of the respondents/Bank that the partners of the petitioner/firm stood as guarantors for the loan obtained by AIIPL. The petitioner/firm is a separate entity and the vehicle under hypothecation does not belong to the partners of the petitioner/firm in individual capacity. Merely because the partners of petitioner/firm stood as guarantors for the loan availed by AIIPL, which failed to repay the same, it cannot be said that the vehicle of the petitioner/firm can be kept on hold and NOC be denied to it on the premise that the Bank has right to exercise lien on the goods pledged to it under Section 171 of Contract Act until the loan availed by AIIPL is repaid. In the decisions cited supra, it is made clear that the loans taken by the partners in their individual capacity cannot be recovered by exercising lien on the goods of firm. The ratio laid down in Gurbax Rai's case (Supra 1), M/s. Omega Cables Limited's case (Supra 2), Ramchandra Sahu's case (Supra 3) squarely applies to the instant case."*

16. Per contra, Learned counsel for the respondents relied on a judgment of **Syndicate Bank Versus Vijay Kumar & Others** reported in **[(1992)2 Supreme Court Cases 330]**. The said judgment is not at all helpful for the respondents in the present case.

17. The ratio of the Apex Court reported in **Gurubax Rai (supra)** read with decision of **INK N Paper (supra)** squarely applies to the present case on hand.

18. Since this Court has found that Bank has no right whatsoever either under its bye laws or under Section 171 of the Contract Act to retain the original Sale deed and LIC Policy Bond of the petitioner, after the petitioner had cleared the outstanding loan amount of his Loan Account for which the original Sale deed and LIC Policy Bond were pledged as security, the retention of the Sale deeds and LIC Policy Bond of the petitioner by the Bank was without any authority of law and is arbitrary. Furthermore, this Court called for the loan application of Shri Ram Singh for whom the petitioner stood as guarantor. The loan application disclose that the borrower Shri Ram Singh had immovable properties i.e. cultivated land and a house At Column No. 11 (a) relates to particulars of immovable property of the particulars of guarantor. But nothing is mentioned at that Column. So the document/loan application of Shri Ram Singh clearly disclose that petitioner has not deposited his Sale deed.

18. For the aforesaid reasons, I direct the respondents to forthwith return the aforesaid two documents i.e. original Sale deed dated 30.07.1983 and the original policy bond of the Insurance Policy of L.I.C. (Policy No. 532506341) to the petitioner.

19. Let the record of the Bank be returned to the Learned counsel of the Bank.

20. With the above observations, this Writ Petition stands allowed.

21. Interlocutory application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.08.2024
Transmission Date	NA