

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 23561 of 2023

**Indian Cable Net Company Limited and another
Vs.
The Reserve Bank of India and others**

For the petitioners	:	Mr. Rajarshi Dutta Mr. Sounak Mukherjee Ms. Sananda Ganguli Mr. Subhadip Roy
For the respondent nos. 1,2 & 4	:	Ms. Suchishmita Ghosh
For the respondent no. 3	:	Mr. Rishad Medora Ms. Bhavika Deora
Hearing concluded on	:	01.02.2024
Judgment on	:	06.02.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1 is a multi-system operator of cable television and is a subsidiary of Siti Networks Limited (for short, "Siti"). Siti holds 60 per cent equity shares in the petitioner no. 1. The petitioner no. 1 took term loan facilities from the respondent no. 3-Bank, namely the Axis Bank Limited. Subsequently, the petitioner no. 1 made full repayment of the said loan facilities by November 7, 2022. In spite of several reminders, the respondent no. 3-Bank did not issue a "No Dues" Certificate and/or release the securities in respect of the term loan/credit facilities. The securities primarily comprised of an

immovable property and 29.99 per cent shares of petitioner no. 1 held by Siti, regarding which a pledge was executed by Siti in favour of the respondent no. 3-Bank.

2. The petitioners argue that upon the repayment of the entire term loan facilities, it was the incumbent duty of the Bank, in terms of the Sanction letter and agreement, to issue No Dues Certificate and return all the securities to the petitioners. However, the Bank takes shelter of Section 171 of the Contract Act, 1872 (hereinafter referred to as, “the 1872 Act”) to claim a general lien of bankers on the security pertaining to the shareholdings of Siti in the petitioner no. 1 on the plea that Siti’s accounts with the Bank has been classified as “Non-Performing Asset” (NPA).
3. The petitioners contend that Section 171 pertains only to the accounts of the borrowers. The petitioner no. 1/borrower having repaid all its loans, no further general lien is applicable.
4. It is argued that in terms of the agreement between the parties, it was the incumbent duty of the Bank to return the securities.
5. Since a preliminary objection of maintainability of the writ petition is raised by the respondent no. 3-Bank, learned counsel for the petitioners argues that availability of alternative remedy is not an absolute bar to a writ petition being entertained. In support of his contentions, learned counsel cites *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and others*, reported at (2004) 7 SCC 166, where the Supreme Court held that the existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a

court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ, but the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. Even when an alternative remedy has been availed but not pursued, a party could prosecute proceedings under Article 226 for the same relief.

6. By citing an unreported judgment of this Court in *WPA No. 21710 of 2017 [M/s Pearson Drums & Barrels Pvt. Ltd. Vs. The General Manager, Consumer Education & Protection Cell of Reserve Bank of India and others]*, it is contended that if the respondent-Bank discharges its public duty, which is within the domain of the State to discharge, this Court can interfere under Article 226 of the Constitution of India.
7. Learned counsel next cites *MB Power (Madhya Pradesh) Ltd. through its Authorised Signatory, Rajinder Singh Vs. Ombudsman, Reserve Bank of India and Another*, reported at *2023 SCC OnLine Del 6790*, where a learned Single Judge of the Delhi High Court held that the Ombudsman is a quasi-judicial body and is reasonably expected to pass a well-reasoned order and any empty formality is to be weeded out. The Ombudsman Scheme was also discussed therein.
8. It is contended by the petitioners that the petitioners challenged the action of the Bank before the Banking Ombudsman who refused to entertain the complaint of the petitioners on the flimsy ground that it was not a case of deficiency of service by the Bank. Hence, the

challenge against the Ombudsman, who is a statutory authority, is very much maintainable.

9. Learned counsel next cites another unreported judgment of this Court in *WPA No. 21677 of 2023 [M/s. Satimata Himghar and others Vs. Indian Bank and others]* for the proposition that the bank is not entitled to withhold security on the ground of a loan taken by a third-party. In the said case, it was observed that the petitioner no. 5 therein was liable to repay as a guarantor a loan taken by a third-party company of which his wife was a Director. The same, it was held, could not create a lien on the loan accounts/deed deposited by the partnership firm which is an entirely different entity. The mere fact that the petitioner no. 5 therein may be common in the sense that he is a partner of the petitioner no. 1-Firm as well as a guarantor in respect of a different loan taken by a third-party entity, it was observed, cannot furnish a ground to the Bank to withhold that title-deeds and other securities of the partnership-firm which has no connection with the loan taken by the other juristic entity/company.
10. Drawing analogy with the present case, it is argued that the petitioner no. 1 repaid its loan; hence, the shares of Siti in the petitioner no. 1 which were pledged to secure the loan of the petitioners ought to be returned and cannot be withheld on the allegation of a negative account balance of Siti with the Bank.
11. Learned counsel appearing for the respondents challenges the maintainability of the writ petition on several counts. First, it is argued that the primary relief has been sought against the Axis Bank

(respondent no. 3) which is a private bank and, thus, does not fall within the definition of 'State' under Article 12 of the Constitution of India. The present dispute pertains to contractual rights between the parties and not any discharge of public function.

12. Secondly, since contractual disputes have been raised, the alternative remedy of a civil suit is available to the petitioners.
13. Thirdly, Siti has not been impleaded as a party to the writ petition. Although admittedly Siti is undergoing a Corporate Insolvency Resolution Process (CIRP), the Resolution Professional has also not been made a party. Thus, the writ petition should be dismissed for non-joinder of necessary party as Siti is the owner of the shares pledged with the respondent no. 3-Bank.
14. Fourthly, the petitioners do not have *locus standi* to ask for a return of the shares. The holder of the shares is Siti. Merely because of the shares of the petitioners are held by Siti does not give the petitioners a cause of action to seek a return of the said shares.
15. On merits, the respondent no. 3 places reliance on Clause 13.3(b) of the Term loan Agreement between the respondent no. 3-Bank and the petitioner no. 1. The said Clause provides that in addition to the right of setting off any deposit or transferring monies lying to the balance of the account of the borrower, notwithstanding the payment of any of the loan obligations under the facilities, the borrower expressly gives the Bank the power to appropriate proceeds out of any and all security interests created in favour of the Bank under the security documents deposited with it or under its possession or control towards

satisfaction of any amounts due to the Bank on account of another agreement or transaction entered into by the borrower or any of the affiliates of the borrower with the Bank.

16. Thus, the Bank was empowered by the petitioner no. 1 to appropriate proceeds out of any security interest for amounts due from any of the affiliates of the borrower. In the present case, since Siti is the majority shareholder of the petitioner no. 1, it comes within the purview of affiliates, for whose dues the Bank is entitled to withhold the shares of Siti in petitioner no. 1.
17. It is next argued that the Siti entered into an independent pledge agreement with the respondent no. 3-Bank. Hence, from the perspective of the said agreement, Section 171 of the 1872 Act squarely applies, as Siti has a negative account balance with the Bank. Thus, the Bank has a right, in the absence of a contract to the contrary, to retain as a security for a general balance of account any goods bailed to the Bank.
18. Learned counsel for the respondent no. 3-Bank cites a Division Bench judgment of the Delhi High Court reported at 2023 SCC OnLine Del 92 [*GKA Impex Pvt. Ltd. v. Reserve Bank of India and Ors.*] for the proposition that the Banking Ombudsman which is a specialised authority and only deals with the disputes between Banks and customers, if held in favour of the Bank, the High Court while exercising its jurisdiction under Article 226 of the Constitution of India should not interfere with the decision taken by an expert body unless the decision is perverse.

19. Learned counsel next cites *Federal Bank Ltd. v. Sagar Thomas and others*, reported at (2003) 10 SCC 733, where it was held that banking is also a kind of profession and a commercial activity; the primary motive behind it can well be said to earn returns and profits. It is a private affair of the company though the case of nationalized banks stands on a different footing. It was held that such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution of India. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it.
20. Learned counsel next cites *State of Gujarat and others v. Meghji Pethraj Shah Charitable Trust and others*, reported at (1994) 3 SCC 552 in support of the proposition that if the matter is governed by a contract, a writ petition is not maintainable since it is a public law remedy and is not available in private law field.
21. On maintainability, the respondent no. 3 also cites *State of U.P. and Another v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and others*, reported at (2008) 12 SCC 675, where the Supreme Court held that it is neither the legal position nor such a proposition was held in *Suresh Chandra Tiwari (AIR 1992 All 331)* that once a petition is admitted, it *cannot* be dismissed on the ground of alternative remedy.
22. In the present case, thus, although the writ petition has been initially entertained and affidavits were directed, it is open to the court to

dismiss the same at the final hearing stage also on the ground of maintainability.

- 23.** Learned counsel for the respondent no. 3-Bank next places reliance on *Syndicate Bank v. Vijay Kumar and others*, reported at (1992) 2 SCC 330 where *Halsbury's Laws of England* was quoted to observe that 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. It was further observed that a banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer.
- 24.** Learned counsel next cites a judgment of a learned Single Judge of the Delhi High Court in *Raj Kumar and Another v. Syndicate Bank*, reported at 2016 SCC OnLine Del 4726 where the Delhi High Court reiterated the proposition laid down in *Vijay Kumar (supra)* to distinguish a judgment of the Orissa High Court. The respondent no. 3 next cites an unreported judgment of a learned Single Judge of the Madras High Court in *WP No. 8986 of 2017 [P.K. Parthivan vs. The Regional Manager, Canara Bank & Anr.]* to strengthen his arguments on Section 171 of the 1872 Act.
- 25.** Learned counsel appearing for the Reserve Bank of India and the Ombudsman hands over written instructions and virtually echoes the arguments of the respondent no. 3-Bank.

- 26.** Learned counsel for the Ombudsman also relies on the Reserve Bank - Integrated Ombudsman Scheme of 2021. Under Clause 3(1)(g) thereof, “Deficiency in service” has been defined as a short-coming or an inadequacy in any financial service or such other services related thereto which the Regulated Entity is required to provide statutorily or otherwise, which may or may not result in financial loss or damage to the customer. Learned counsel also relies on Clause 6 of the said Scheme which provides for the establishment of a Centralized Receipt and Processing Centre, which has also been impleaded as a respondent herein. The function of the said Centre is merely to receive the complaints filed under the Scheme and process them, it is argued, and, as such, the said Centre had nothing to do with the present cause of action.
- 27.** Learned counsel seeks to justify the order of the Ombudsman by arguing that as the respondent no. 3 has banker’s lien under Section 171 of the Contract Act on the shares of petitioner no. 1 held by Siti, there was no deficiency of service on the part of the respondent no. 3-Bank in refusing to return the securities to the petitioners.
- 28.** Upon hearing learned counsel for the parties, the issue of maintainability is required to be addressed first.
- 29.** The primary relief in the present writ petition is against the order of the Ombudsman, who is a statutory authority, functioning under the 2021 Scheme cited by the Ombudsman, rejecting the petitioners’ complaint on the ground that there is no deficiency of service. As held by the Delhi High Court in *MB Power (Madhya Pradesh) Ltd. (supra)*,

the Ombudsman is a quasi-judicial body which is required to pass a reasonably well-reasoned order. Since the Ombudsman functions under the Scheme floated by the Reserve Bank of India and its functioning has a statutory flavour, any action or inaction of the Ombudsman can very well be classified under the purview of public duty, coming within the ambit of Article 12 of the Constitution of India. The petitioners, being aggrieved parties, do have the *locus standi* to challenge such order of the Ombudsman.

- 30.** Even if we consider the secondary relief sought against the action of the respondent no. 3-Bank, there cannot be any reason why the respondent no. 3 cannot be amenable to the writ jurisdiction. The matter pertains not merely to a contract between private parties. The respondent no. 3 discharges duties of a Bank, which is an essential component of the banking system and is governed by the guidelines issued from time to time by the Central Regulatory Authority that is the Reserve Bank of India. The impugned action was taken by the Bank while discharging such banking affairs.
- 31.** On a more basic premise, the respondent no. 3-Bank has all powers vested under the SARFAESI Act and other similar statutes, which at times acquires the character of implementation of debts on an equal footing with courts and tribunals. Thus, while discharging such public functions, it does not lie in the mouth of the respondent no. 3-Bank to say that it is not discharging public functions, although it enjoys, as a Bank, several statutory powers which are on an equal footing with nationalized banks.

- 32.** Respondent no. 3 has relied on *Federal Bank Ltd. (supra)*, which was rendered in the year 2003, where a distinction was drawn by the Supreme Court between private banks and nationalized banks insofar as amenability to the writ jurisdiction is concerned. However, law is dynamic. In the present age of rapid privatization of banks, the line of distinction between nationalized and private banks stands considerably blurred.
- 33.** It is well-settled that the public authorities are required to act even in their private dealings and contractual matters on a much higher pedestal than ordinary entities. The standards of fairness and reasonableness expected of entities discharging public function is much higher than that of an ordinary private entity.
- 34.** Seen from such perspective, even the secondary relief sought by the petitioners against the respondent no. 3-Bank is amenable to judicial scrutiny under Article 226 of the Constitution of India subject, of course, to the tests of arbitrariness and unreasonableness being satisfied. In fact, in paragraph 18 of *Federal Bank Ltd. (supra)*, cited by the respondent no. 3, the Supreme Court held that a writ petition may be maintainable against a private body discharging public duty or positive obligation of public nature and against a person or a body under liability to discharge any function under any statute to compel it to perform such a statutory function.
- 35.** Seen from such perspective, the respondent no. 3 discharges a positive obligation of public nature and enjoys powers under, as well as is governed by, several guidelines of the Reserve Bank of India,

which is the statutory central regulatory authority of banking and financial transactions in India.

36. Insofar as the *locus standi* of the petitioner is concerned, the said objection is flimsy. The petitioners definitely have a direct interest in asserting their rights to have a no-dues certificate and return of their securities upon having discharged their loans.
37. Insofar as the immovable property which is also a part of the security is concerned, the argument that Siti is the owner of the shares does not apply. Hence, the petitioners have locus standi to move the present writ petition in respect of such portion of the security in any event.
38. The argument of non-joinder of Siti as a party is neither here nor there. Since the petitioners' cause of action is entirely based on the rejection of the Ombudsman and the respondent no. 3-Bank of the petitioners' prayers, the mere fact that Siti pledged its shares held in the petitioner no. 1 does not make it a necessary or a proper party to the present writ petition as framed. It is petitioner no. 1 which claims return of its securities on the closure of its loan and not Siti making an independent claim of its pledged shares held in petitioner no. 1.
39. The Division Bench judgment of the Delhi High Court in *GKA Impex Pvt. Ltd. (supra)* refused to exercise its jurisdiction under Article 226 to interfere with the decision taken by the Ombudsman on the ground of it being an expert body. The rider was that the decision was not perverse. In the said case, the Ombudsman had given detailed orders, citing relevant clauses of the concerned agreement and giving

ample reasons, as opposed to the instant case where the Ombudsman has merely returned the complaint of the petitioners under Clause 16(2)(a) on the cryptic ground that in the opinion of the Ombudsman there is no deficiency in service. The expression “no deficiency in service” is of wide amplitude. In the present case, the same touches the merits of the contentions raised by the parties and as such, the Ombudsman could not brush aside the complaint merely on the ground that there is no deficiency of service disclosed. No reasons worth the name are found in the impugned order of the Ombudsman.

40. Reasons sought to be furnished subsequently by way of written instructions through counsel cannot suffice, since it is well-settled law that *post facto* furnishing of reasons in connection with a writ petition is not an appropriate substitute of reasons being given in the impugned order itself at the germane juncture.
41. In *Meghji Pethraj Shah Charitable Trust (supra)*, the Supreme Court observed that if the matter is governed by contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field.
42. However, the said position has been considerably watered down since, the Supreme Court having held time and again that there can be interference under Article 226 in the event even a private body or an individual discharges public functions or there is a public law element involved. In fact, in the present case, the Ombudsman is a public authority coming within the purview of Article 12 of the Constitution of India and, as per the above discussion, the very nature of the

banking duties discharged by the Axis Bank also falls within the purview of the broad connotation of 'State' under Article 12 of the Constitution of India. While discharging public functions, even in contractual matters, the concerned entity has to adhere to higher standards of transparency and reasonableness than ordinary parties to private contracts.

43. Respondent no. 3 has also cited *State of U.P. (supra)* where the Supreme Court observed that it is not the legal position that once a petition is admitted it cannot be dismissed on the ground of alternative remedy. There cannot be any quarrel with such proposition. In fact, in deference to such proposition, this Court is at present deciding the issue of maintainability first.
44. However, although couched as 'maintainability', the issue here is not whether a writ petition is maintainable, since there is no Constitutional bar in filing it and no statute below the Constitution can debar a Constitutional remedy; the appropriate query is whether this court should 'entertain' the writ petitioner.
45. The petitioners have cited *S.J.S. Business Enterprises (P) Ltd. (supra)* on the issue of maintainability, where the Supreme Court has held that the existence of an adequate and suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ.

- 46.** In *M/s Pearson Drums (supra)*, this Court interfered on the premise that the Bank was discharging its public duty which was within the domain of the State to discharge.
- 47.** Taking into consideration such aspects of the matter and the above discussions, this Court holds that the writ petition is very much maintainable at the instance of the petitioners and ought to be entertained and decided on merits as well.
- 48.** The matter is not confined to the domain of contractual rights alone but touches the larger issue of the powers of banks, while discharging their public banking functions, to claim general lien beyond the agreements entered into by them. There is no disputed question of fact involved requiring detailed evidence but mere interpretation of the law and the relevant terms of the agreements is involved. So, there is no justification for relegating the parties to the prolonged rigours of a civil suit unnecessarily.
- 49.** Coming to the merits of the case, the primary defence of the respondent no. 3-Bank, in refusing to honour its sanction letter and agreement with the petitioners by issuing no-dues certificate and returning the securities, is Clause 13.3(b) of the term loan agreement entered into between the petitioners and the respondent no. 3-Bank. As per the said Clause, the petitioner no. 1/borrower gave the Bank the power to appropriate proceeds out of any and all security interest created in favour of the Bank under the security documents or deposited with it or under its possession or control towards satisfaction of any amount due to the Bank on account of another

agreement or transaction entered into by the borrower or any of the affiliates of the borrower with the Bank. It must be noted here that the Bank, in the same breath, seeks to derive power from Section 171 of the 1872 Act to claim general lien on the one hand and to assert its rights on Clause 13.3(b), which is specific lien arising out of contract. The two are mutually exclusive, since at the same time, a general source of power cannot be juxtaposed with a contractual source to vest the power of lien on the Bank. Even then, giving the benefit of doubt to the bank, let us proceed on the premise that the said claims are in the alternate and, thus, maintainable.

- 50.** Taking first thing first, Clause 13.3 (b) envisages satisfaction of any amounts due to the bank on account of “another agreement or transaction” entered into by the borrower or any of the affiliates of the borrower with the Bank. It is clearly to be noted that the Bank, in the same breath, is asserting its rights on the basis of its pledge agreement with Siti, where the petitioners are not parties, and its term loan agreement with petitioner no. 1, where Siti is not a party.
- 51.** Even if for argument’s sake it is assumed that the petitioner no. 1 could bind itself by Clause 13.3(b) of the term loan agreement, the said contractual right conferred on the Bank cannot be asserted by the Bank against a third-party to the said agreement, that is, Siti, as the petitioner no.1 cannot make a concession on behalf of a separate juristic entity, even if its holding company. Although by the term “affiliates” the Bank has defined in the term loan agreement to include controlling entities and Siti admittedly controls 60 per cent of the

shares of the petitioner no. 1, the provisions of Clause 13.3(b) cannot contractually be binding on Siti.

- 52.** In fact, the Bank itself has argued that the pledge agreement between the Siti and the Bank is the source of control of the Bank over the pledged shares.
- 53.** Coming to the alternative contention of the Bank that the power of lien derived by the Bank flows from Section 171 of the 1872 Act, let us explore such general power of lien and its interplay with the immediately succeeding provisions of the said Act. Section 171 provides that bankers, in the absence of any contract to the contrary, may retain as security for a general balance of account, any goods bailed to them.
- 54.** The expression “general” preceding the term lien in the heading of Section 171 of the Contract Act clearly indicates that such general lien flows from the previous Sections of the Act, which elaborate the concept of general bailment.
- 55.** Section 171 is a notional continuation of the previous provisions dealing with the bailors’ and bailees’ respective rights. In fact, Section 170 provides for the bailee’s particular lien. As opposed to such “particular” lien, Section 171 prescribes “general” lien of bankers and certain other entities.
- 56.** However, if bailments are taken to be a genus, pledges are a particular species of the same. However, there is a conceptual divide between such bailment and general lien up to Section 171 and the next limb of the provisions starting from Section 172 of the 1872 Act, which

defines the bailment of goods *as security for payment of a debt or performance of a promise* as pledge. Thus, to be a “pledge”, a bailment has to be given by way of security for payment of a particular debt or performance of a particular promise. Thus, such bailment cannot be a general bailment, which is *goods-specific*, but has to be linked with the payment of a particular debt or performance of a particular promise and is, thus, *debt/promise-specific*. This is the primary distinction between a pledge and an ordinary bailment.

- 57.** The next few Sections carry forward the idea of a specific genre of bailments, that is, pledge and its incidents.
- 58.** Section 173 of the 1872 Act empowers the pawnee to retain the goods pledged, for the payment of the debt or performance of the promise as well as interest of the debt and necessary expenses.
- 59.** More importantly, Section 174 clearly prevents the pawnee (the Section is couched in negative language), in the absence of a contract to that effect, from retaining the goods pledged for any debt or promise *other than* the debt or promise for which they are pledged.
- 60.** Section 174 is specific to pledges. Thus, when there is a contradiction between the general power of lien under Section 171 in case of general bailment and Section 174, which pertains to pledges in particular, Section 174 has to prevail, since it pertains specifically to pledge as opposed to other types of bailment. Hence, under Section 174, the pawnee is specifically restrained from retaining goods pledged for any debt or promise other than the debt or promise for which they are pledged.

- 61.** Again, Section 176 of the 1872 Act clearly stipulates that if the pawnor makes default in payment of the debt, or performance at the stipulated time of *the promise in respect of which the goods were pledged*, the pawnee may bring a suit and retain the goods pledged as collateral security. It is extremely important to note that the default has to be not of any other promise but the payment of the specific debt or performance of the specific promise for which the pledge was given.
- 62.** In the present case, the pledge agreement, which is an admitted document, clearly shows that Siti had given the pledge to secure the debt taken by the petitioner no. 1/borrower. Hence, a composite reading of Sections 172, 173, 174 and 176 of the 1872 Act clearly denotes that the pawnee, that is, the Bank is not entitled to retain the pledged goods, being the shares of Siti in petitioner no. 1 for any debt or promise other than the debt or promise for which they are pledged, that is, the loan and credit facilities taken by the petitioner no. 1 and such loan/facilities alone. In the present case, admittedly, the entire loans and credit facilities have been repaid by petitioner no. 1. Thus, the general right of lien under Section 171 of the Contract Act has to give way to the specific provisions pertaining to pledge as enumerated particularly in Section 174 of the said Act. Seen from such perspective, the banker (respondent no. 3) does not have any general lien over the property, since the goods (shares) were specifically pledged to secure a particular debt of the borrower/petitioner no. 1 and not bailed in general to the Bank. The shares could only be

retained under Section 173 of the Contract Act if petitioner no. 1 failed to repay its loans.

- 63.** In none of the judgments cited by the respondent no. 3 was the interplay between Section 171 on the one hand and Sections 172, 173, 174 and 176 on the other considered or argued. Hence, the propositions laid down in the said judgments cannot operate as precedent in the present context. The judgments cited on lien all revolve around the interpretation of Section 171 of the 1872 Act, as opposed to the specific case made out by the respondent no. 3-Bank here, which is based on the pledge agreement under which the particular shares of the petitioner no. 1 held by Siti were deposited with the Bank.
- 64.** In such view of the matter, the respondent no. 3-Bank palpably acted without authority and *de hors* the law, in a patently arbitrary and unreasonable manner, in withholding the no-dues certificate and the security in the form of immovable property as well as the shares in favour of the petitioners.
- 65.** Thus, the Ombudsman ought to have exercised his jurisdiction within the contemplation of the 2021 Ombudsman Scheme and, instead of returning the complaint in a cursory manner by saying that there was no deficiency of service, ought to have allowed the claim of the petitioners and directed the respondent no. 3-Bank to return the securities to the petitioners.
- 66.** Since this court has already traversed the length and breadth of the merits, which have been argued extensively by the parties themselves,

it will be a futile exercise to relegate the matter back to the Ombudsman, thereby repeating the entire process. Hence, the purpose of justice would be sub-served and multiplicity would be curtailed if the matter is decided finally here on the basis of the discussions above.

- 67.** In the light of the above observations, WPA No. 23561 of 2023 is allowed on contest, thereby setting aside the impugned order of the Ombudsman and quashing the refusal of respondent no. 3.
- 68.** The respondent no. 3-Bank shall issue the requisite no-due certificate/s to the petitioner no. 1 and return all securities given by the petitioner no. 1 for the loans and credit facilities taken by the petitioner no. 1 which have since been admittedly repaid in entirety.
- 69.** Such exercise shall be completed by the respondent no. 3-Bank at the earliest, positively within three (03) weeks from date.
- 70.** There will be no order as to costs.
- 71.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later

Learned counsel for the respondent no.3 seeks an order of stay at this juncture.

Since arguable questions of law are involved in the matter, the operation of the above judgment and order is stayed for four weeks from date.

(Sabyasachi Bhattacharyya, J.)