



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 22 October 2024**
Judgment pronounced on: 09 December 2024

+ **W.P.(C) 86/2024 & CM APPL. 349/2024**

M/S THREAD AND NEEDLES & ANR. Petitioners

Through: Ms. Pratiti Rungta & Mr. Sumit Pargal, Advs.

versus

CANARA BANK & ANR. Respondents

Through: Mr. Arun Yadav & Mr. Anubhav Sharawat, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioners are invoking the extra-ordinary jurisdiction of this Court by instituting the present writ petition under Article 226 of the Constitution of India, 1950, seeking the following reliefs:

“1. Issue a Writ of Certiorari or any other appropriate Writ order or Direction thereby calling for the records relating to the Email dated 15.12.2023 issued by Respondent No. 2 containing a decision not to release the title documents of property being land which is part of Khewat no. 522, Khata no. 589, Killa no. 40//15/2/3 (0-7), 16/1(1-5), Waka Moja Ferozpur Bangar, Tehsil Kharkhoda, Distt Donipat given as collateral security in respect of loan account of M/s Thread and Needles and M/s Arisha Merchandise in terms of instructions issued by Respondent No.1 treating the same to be a security for loan account No. 90919890000281 in the name of M/s Thread & More India also maintained at its Vikaspuri Branch Delhi, examine the same and quash the same by declaring that the said decision of respondents is illegal being violative of mandate of Section 171 of Indian Contract Act and interpretation thereof by various Hon’ble High Courts.

2. Issue a writ of Mandamus or any other Writ order or direction thereby directing the Respondents to release the title documents of property being land which is part of Khewat no. 522, Khata no.



589, Killa no. 40//15/2/3 (0-7), 16/1(1-5), Waka Moja Ferozpur Bangar, Tehsil Kharkhoda, Distt. Sonipat deposited with Respondent No. 2 towards loan account of M/s Thread and Needles and M/s Arisha Merchandise forthwith as the liability against the said loan accounts for which collateral security was created by deposit of title deeds of the said property has been fully discharged. 3. Pass such other and further order(s) and grant such other reliefs in favour of the Petitioner that this Hon'ble Court deems just and proper in the facts and circumstances of the case and in the interest of justice and equity.”

BRIEF FACTS:

2. Briefly stated, petitioner no.1 which is a proprietorship firm approached respondent no. 2 Bank for financial facilities in the nature of working capital credits, which were allowed in the year 2019 and which were lastly renewed on 27.02.2023. It is admitted case of the parties that they paid the entire outstanding loan amount in respect of such credit facilities in November, 2023. The petitioners then wrote two emails dated 04.12.2023 and 15.12.2023 requesting the respondent no.2 to issue a “no objection certificate” and release the title documents of the subject property. However, the petitioners were informed that though both the loan accounts against which the title documents of the property being land which is part of Khewat No. 522, Khata No. 589, Killa No. 40//15/2/3 (0-7), 16/1(1-5), Waka Moja Ferozpur Bangar, Tehsil Kharkhoda, Distt Sonipat [“Subject Property”] was deposited as collateral security, have been fully discharged but title deeds cannot be released in view of instructions given by the respondent no. 1 to retain the said title deeds by treating it as general security for the purposes of recovery of amounts due against another loan account in the name of M/s Thread and More India (Partnership firm) maintained with the respondent no. 1 at Delhi.



3. It is the case of the petitioners that the above-mentioned property was not given as security towards the loan account i.e. M/s Thread and More India. It is stated that previously, M/s Threads and More India had approached erstwhile Syndicate Bank now Canara Bank for a Term Loan of Rs. 50,00,000 wherein Mr. Amit Garg, proprietor of the petitioner no.1 stood as a guarantor and erstwhile Syndicate Bank now Canara Bank sanctioned the said loan of Rs. 50,00,000 on 17.03.2018. It is stated that the property in question was never given as a collateral security towards the said repayment of the said loan facility and the security created against the said loan account was only in the form of hypothecation of machines to be purchased out of said loan proceeds.

4. It is a matter of record that the respondent no. 2 wrote an email dated 15.12.2023 stating therein that the respondent no. 1 informed not to release the title documents of the subject property as one loan account i.e., M/s Threads and More India had been declared NPA¹. The respondent no. 2 then issued no dues certificate dated 22.12.2023 stating that there is no outstanding liability in the account of M/s Thread and Needles as well as in the account of M/s Arisha Merchandise.

5. As the title documents have not been released, aggrieved by the actions of the respondents, the petitioners filed this writ petition on 01.01.2024.

LEGAL SUBMISSIONS

¹ Non-Performing Asset



6. Learned counsel for the petitioners has urged that the action of the respondents is in contravention of section 171 of the Contract Act and has placed reliance on the judgment of High Court of Chhattisgarh, **Nand Kumar Adil vs. State Bank of India**².

7. *Per Contra*, learned counsel for the respondents has submitted that the borrower's security provided for one loan can be utilized against another loan as well. It was urged that the borrower cannot escape by taking away the security papers mortgaged in one loan account keeping another account irregular. Reliance is placed on the circular of the respondent bank dated 24.11.2023 states that:-

“On full repayment /settlement of the Loan account, branches shall review all direct / indirect liabilities of the borrower/mortgagor/asset owner and after satisfying themselves, branches shall release all the original movable/immovable property documents.”

8. It is urged that the respondents/bank has the legal right to retain the security papers until all dues are cleared. It was submitted that section 171 of the Indian Contract Act confers a special right on the bankers to retain security papers until the dues of the relevant account are settled, unless agreed otherwise. Borrowers and Guarantors are jointly and severally liable with the principal borrower for the outstanding amount, allowing the bank to exercise a general lien on the security provided

9. Further, the respondents relied on the judgment by Orissa High Court in **Alekha Sahoo v. Puri Urban Co-operative Bank Ltd.**³, where it was held that the general lien of bankers can be enforced on

² 2023 SCC OnLine Chh 3395

³ AIR 2004 Ori 142



the security of the principal debtor and not just the guarantor. Also, in **M. Shanthi v. Bank of Baroda**⁴, it was highlighted that the bank's right to enforce a general lien on security provided by a borrower/guarantor across multiple loan accounts for the same borrower. Lastly, it is pointed out that the respondent no. 1 has already approached the Debt Recovery Tribunal-II Delhi, *vide* TA/1044/2023 against the defaults committed by M/s Thread and More India and the partner of petitioner no.1 Mr. Amit Garg is intentionally not appearing before the DRT⁵. The matter is now listed for 02.05.2025.

ANALYSIS AND DECISION:

10. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case.

11. First things first, insofar as the plea raised by the learned counsel for the respondents that the present writ petition is not maintainable, the law is no longer *rest integra* and well settled by a catena of decisions to the effect that since the respondents are the public sector bank it is a "state" within the meaning of Article 12 of the Constitution of India, and thus amenable to writ jurisdiction under Article 226 of the Constitution of India, for which reference can be made to the decision in the case of **Zonal Manager, Central Bank of India v. Devi Ispat Limited**⁶.

12. Insofar as the issue of the respondent no.2 withholding and retaining the release of the title deeds of the property in question, it

⁴ 2017 MHC 8328

⁵ Debt Recovery Tribunal

⁶ (2010)11 SCC 186



needs to be appreciated that a ‘lien’ in its ordinary sense means the legal right to keep or retain possession of something belonging to a person in debt until that debt has been repaid.” In Common law, a ‘lien’ does not create any right, title or interest in the property in the possession of the person claiming the lien but only confers a right on the holder to retain the same until the debt is repaid. At this juncture, it would be pertinent to refer to Section 171 of the Indian Contract Act which provides as under:-

“171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.—

Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a 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.”

13. The aforementioned provision reveals that it acknowledges the common rights of bankers, amongst others, to retain goods as security for a general balance of account in the absence of a contract to the contrary. However, it also establishes an exception to the general rule, stating that no other persons have a right to retain goods as security for such balance unless there is an express contract to that effect. In contrast, the Section itself grants banks the right to retain documents as security in the absence of a contract to the contrary. For any other person to whom goods are bailed, the right to retain goods as securities can only be exercised if there is an express contract to that effect. Bankers have a general lien under Section 171 of the Contract Act to retain as a security for a general balance of account any goods bailed to them in the absence of a contract to the contrary. The



expressions “the contract to the contrary” and “a general balance of account” assume significance.

14. In the cited cases of **Nand Kumar Adil vs. State Bank of India** (*supra*), in light of Section 171, it was held that the bank has a general power of lien over the title deeds which were deposited by the customer for securing the term loan but once the loan amount had been already repaid, a direction was issued to the bank to return the subject title deeds to the customer. In another case decided by the Madras High Court in **S. Bhavani v. Branch Manager, Central Bank of India**⁷, the petitioner stood only a guarantor for the education loan which was obtained in the year 2010, which loan was repaid in full and was settled. When the bank sought to exercise a general lien over the said titles for repayment of the previous loan taken in 2008, the said action of the bank was denounced and it was held as under:-

9. On a careful perusal of the Sec. 171 of the Indian Contract Act, to exercise general lien to retain the document as a security for a general balance of account one of the ingredients is that property must be bailed in favour of the bank.

10. Admittedly, in this case the property in question is not bailed to the bank towards the loan borrowed by the petitioner in the year 2008, whereas the educational loan was obtained in the year 2010 and the petitioner was not a borrower and only stood as a guarantor. However, she has executed the memorandum of deposit of title documents in respect of the property not only belong to her but also some third party. As the amount has already been paid, now the bank cannot contend that they are entitled to exercise general lien as per Sec. 171 of the Indian Contract Act. Admittedly, this property was never bailed to the bank towards the loan amount borrowed by the petitioner in the year 2008 much prior to the educational loan.

11. In this regard it is relevant to note that *State Bank of India v. Jayanthi*, reported in (2011) 2 CTC 465, it is held that mortgage created by the guarantor for a different loan can be treated as a

⁷ 2022 SCC OnLine Mad 7571



contract to contrary to disable the Bank to exercise the general lien as per Sec. 171 of the contract Act to retain the security for the loan for the which the mortgagor was a guarantor. Paragraphs 9 to 16 of the judgment reads as under:

“9. After having decided the above question in favour of the appellant Bank, we now move on to consider the more important question in this appeal, viz., as to whether the appellant Bank shall be entitled to retain the documents of title in respect of the property which has been inherited by the respondents claiming a right of general lien under section 171 of the Indian Contract Act. Before we delve into the factual and legal aspect, it would be necessary to look into section 171 of the Indian Contract Act, 1872 and for easy reference the same is extracted as herein below.

“171. General lien of bankers, factors, wharfingers, attorneys and policy brokers Bankers, factor, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a 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 which balance, goods, bailed to them, unless there is an express contract to that effect.

10. The case of the appellant Bank is that they have a right to retain the title deeds of the property delivered to them in the normal course of business transaction by exercising general lien under Section 171 of the Act and therefore, they are not bound to return the same till the liability in the other account where the mortgagor (husband of the 1st respondent herein, since deceased), was a guarantor, is discharged.

11. The learned Senior Counsel appearing for the appellant Bank mainly placed reliance on a decision of the Hon'ble Supreme Court in Syndicate Bank v. Vijaya Kumar, reported in (1992) 2 SCC 330.

12. As noticed above, Section 171 of the Act states that the bankers like the appellant Bank, in the absence of a contract to the contrary, retain as security for a general balance account, any goods bailed to them. Therefore, what is required to be seen in the instant case is whether there is any contract to the contrary, which prevents the bank from exercising their general lien and as to whether any goods have been bailed to them. It cannot be disputed that the property in question was not bailed to the appellant Bank by the deceased borrower at any point of time. Further, it is an undisputed fact that the property in question was offered



by (late) N.P.S. Mahendran to cover his liability in respect of the loans, which he had borrowed in the accounts of M/s. Sanjay Bala Tea Plantation and M/s. Aarthi Bala Tea Plantation and his self acquired properties were mortgaged to secure this specific loan transactions. No document has been placed before us to show that the borrower had given any authorisation to the Bank to hold the documents of the mortgaged property, given to secure the loan transaction for M/s. Sanjay Bala Tea Plantation and M/s. Aarthi Bala Tea Plantation, for the purpose of any other loan availed in any other branch by M/s. Somerset Tea Plantation in which (late) N.P.S. Mahendran, stood as a guarantor. Thus, the issue boils down to the question as to whether there is any contract to the contrary, which prevents the appellant Bank from exercising its general lien under Section 171 of the Act.

13. In Chitty on Contracts, 29th Edition (2004) - Volume-II, Page 496 on Bankers' Lien, it is stated as follows:

"... The most frequent example of circumstances inconsistent with the general lien is in the case of a deposit expressed to cover an advance for a specified purpose. However, once the original purpose has been fulfilled by repayment of the specified advance, if a customer knowingly permits the banker to retain the security, a general lien may ultimately be implied and its protection then claimed in respect of other advances"

14. In the instant case, the borrower, (late) N.P.S. Mahendran, has admittedly deposited the title deeds of the property to secure a loan transaction availed in respect of two Plantation Companies. This fact has not disputed by the appellant Bank. Therefore, we have no hesitation to hold that this contract/mortgage, had been created by the deceased borrower for a specific purpose and for a specific loan and the contract was self contained and the terms and conditions were binding upon both the borrower as well as the bank. In other words, the deposit of title deeds by which the mortgage was created by the deceased borrower was for a specific purpose to cover an advance for a specific loan. When such is the situation, the borrower having deposited the documents in order to secure a specific transaction, the bank cannot contend that they could hold the documents for a balance due in a different loan account where the said N.P.S. Mahendran is not a borrower. Further, the language of Section 171 of the Act, is explicit to the fact that the bankers are entitled to retain as a



security for a 'general balance account'. Admittedly, it is not the case of the appellant Bank that the amount, which is now said to be due on account of the borrowings of M/s. Somerset Tea Plantation, is a general balance account of the deceased borrower N.P.S. Mahendran.

15. In the case of Syndicate Bank v. Vijaya Kumar, referred supra and relied on by the learned senior counsel for the appellant Bank, it is to be noted that the borrower therein issued a letter in favour of the bank stating that the bank is at liberty to adjust from the Fixed Deposit receipts without any reference to the loan and he agreed that the Fixed Deposit receipts shall remain in the bank so long as any amount on any account is due to the bank from them either singly or jointly or with others. Thus, the Hon'ble Supreme Court, while interpreting such a letter covering the transaction executed by the borrower therein, rendered a finding that the bank is entitled to general lien over the Fixed Deposit receipts given by the borrower therein.

16. As noticed above, the facts of the present case are couched differently. There was a specific contract/agreement between the deceased borrower and the bank, by which the borrower the borrower offered the property in question to secure only a particular transaction. Therefore, this agreement/mortgage has to be construed as a 'Contract to the Contrary' and therefore, we have no hesitation to hold that the bank cannot claim these documents by invoking the power of general lien under Section 171 of the Indian Contract Act, 1872."

and held that the borrower having deposited the documents in order to secure a specific transaction, the bank cannot contend that they could hold the documents for a balance due in a different loan account, wherein the person is not a borrower.

12. Considering the above judgment, the Division Bench of the Madurai Bench of Madras High Court in the case of **M. Shanthi v. Bank of Baroda**, reported in (2017) 2 Writ LR 584 has also held that the bank cannot exercise the general lien and the Court at para 30 of the judgment held as follows:

"30. Section 60 of Transfer of Property Act, speaks about specific rights of mortgagor. It is clear that every mortgagor is entitled to collect the mortgage deeds and all other documents relating to the mortgaged properties, which are in the possession or power of mortgagee. This



right of mortgagor is certainly a legal enforceable right. The mortgagee is under an obligation to return the title deeds upon payment of the entire money due. This legal obligation gives an enforceable right in favour of the mortgagor in connection with the mortgage. This legal obligation of the mortgagee to return the title deed to the mortgagor upon discharge of mortgage loan for which the title deeds were secured, can be certainly treated as an implied contract contrary to Section 171 of the Indian Contract Act.”

13. The Division Bench of this Court reported in (2019) 2 CTC 645, in the case of **C.R. Ramachary v. Indian Overseas Bank**, wherein this Court held that in the absence of a contract to the contrary, bank has lien over the security for a general balance of account and the single Judge of this Court in W.P. No. 8986 of 2017 has also taken a similar view. The above two judgments the facts are entirely different. Whereas in this case, while availing the educational loan, the petitioner stood only as a guarantor she is not a borrower and educational loan was availed in the year 2010, whereas the petitioner proprietary concern availed loan in the year 2008. Further, as per Sec. 60 of the Transfer of Property Act, it is substantive provision which is governing the mortgagor and mortgagee, it is in fact cast obligation on the bank to return the documents once the mortgage money is paid.

14. This Court has already in the judgment already reported in AIR 2011 Mad 179, held that mortgage created by the guarantor for a different loan can be treated as a contract to contrary to disable the Bank to exercise the general lien as per Sec. 171 of Contract Act. The same principle is squarely applicable to the present case also. Admittedly, there is a mortgage of the property belong to the guarantor as well as the third party. In such view of the matter when the mortgage itself is closed and the account has been closed. The Bank cannot exercise general lien under Sec. 171 of the Contract Act.

15. Accordingly, the Writ Petition is allowed. The respondent is directed to handover the title deed within a period of one month from the date of receipt of a copy of this order. No costs”

15. There is another decision by the Calcutta High Court titled **Axis Bank Limited v. Indian Cable Net Company Limited**⁸ wherein too, an issue arose whether after repayment of the loan to the bank, the

⁸ 2024 SCC OnLine Cal 6621



latter could claim general lien and retain the document with regard to the other loan transactions by the same party. A reference was made to the decision by the Division Bench of the Madras High Court in ***M. Shanthi v. Bank of Baroda*** (*supra*) wherein, after noting the provision of Sections 58, 59 and 60 of the Transfer of Property Act, it was held that the Bank cannot exercise right of lien under Section 171 by retaining the title deeds which are offered as a security in relation to a particular loan transaction. After considering the scope of Section 60 of the Transfer of Property Act and the scope and object of Section 171 of the Contract Act, the Court held that the bank cannot retain the title deeds which were offered as security in relation to an independent loan transaction after the Borrower discharged his entire liability in connection with the loan which is secured by deposit of title deeds.

16. In ***M. Shanthi*** (*supra*) Madras High Court reiterated the proposition of law that the mortgage deed has to be considered as “a contract to the contrary” referred to in Section 171 of the Contract Act, and therefore, the bank cannot claim to retain the title deed deposited to create equitable mortgage by invoking the power of lien under Section 171 of the Contract Act. It was further held that “*every mortgager is entitled to collect the mortgage deeds and all other documents relating to the mortgaged properties, which are in possession or power of the mortgagee. Such right of the mortgage is certainly a legal enforceable right and the mortgagee is under an obligation to return the title deeds upon payment of the entire money due. This legal obligation of the mortgagee to return the title deeds to*



the mortgager upon discharge of mortgage loan for which the title deeds were secured, can be certainly treated as an implied contract contrary to Section 171 of the Indian Contract Act. Since the 1st respondent has already repaid the loan amount there is no question for a “general balance of account”.

17. In ***Syndicate Bank (supra)***, the Bank was specifically given the liberty to apply the Fixed Deposit Receipts⁹ to the loan/overdraft account and it was also agreed that the said FDRs and renewals shall remain with the Bank so long as any other amount might be outstanding in respect of any other loan subscribed by the customer. On such facts it was held that the general lien was created in favour of the Bank over the two FDRs by executing two letters. The Division Bench of the Madras High Court in ***M. Shanthi (supra)*** after noting the decision in the case of ***Syndicate Bank (supra)*** observed that the issue relating to mortgage by deposit of title deeds and the right of lien to retain the title deeds after the discharge of mortgage loan was not dealt with by the Supreme Court.

18. It needs to be emphasized that the respondents' counsel failed to demonstrate any provision in the agreement that reserved the bank's right to create a general lien on the title deeds beyond the account in question in any other branch of the same bank. No letter or document has been produced to demonstrate that the petitioners had granted any such concession while subscribing to the credit facilities availed from the respondent no. 2/bank.

⁹ FDR



19. In view of the aforesaid academic discourse, this Court is in agreement with the decisions of the Chhattisgarh, Madras as well as Calcutta High Courts that the respondent Bank in this case cannot be legally allowed to retain the title deeds which were submitted by the petitioners while obtaining the credit facilities so as to secure outstanding amount in respect of other loans by a partnership concern in which the petitioner no.2 was a partner pertaining to a different branch or for a different loan/credit agreement.

20. In view of the foregoing analysis, this writ petition is hereby allowed. A writ of mandamus is issued, quashing the email dated 20.12.2023 issued by the respondent no. 2. The respondents are directed to release the title documents of the property in question to the petitioners within one month from the date of this order. Failure to comply will result in payment of a token amount of ₹1 lakh as compensation for litigation and harassment costs, without affecting the petitioners' rights to seek appropriate compensation for deficiency in services in accordance with law.

21. All pending applications are also disposed of accordingly.

DHARMESH SHARMA, J.

DECEMBER 09, 2024/Ch