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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6390/2023 & CM APPL. 25177/2023, CM APPL. 55883/2023**

INDUS SOR URJA PRIVATE LIMITED Petitioner
Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Karan Luthra, Ms. Devika
Mohan, Mr. Naman Gowda, Ms.
Anjali Tiwari, Advocates
(M:9810259213)

versus

INDIAN BANK Respondent
Through: Mr. Rajesh Kr. Gautam, Mr.
Anant Gautam, Mr. Dinesh
Sharma, Ms. Shivanni Sagar, Mr.
R.P. Daida, Advocates
(M:9811252434)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T
29.02.2024

MINI PUSHKARNA, J:

Introduction:

1. The present petition has been filed seeking direction against the respondent to forthwith release the original title documents of the property bearing No. D-17, Pushpanjali Farms, Bijwasan, New Delhi, admeasuring 3.8125 acres ("subject property"), to the petitioner in terms of the 'No Dues Certificate' dated 01st November, 2022. Since the respondent-bank has withheld the original title deeds of the aforesaid mortgaged property, despite the entire loan having been repaid by the



petitioner and the respondent-bank itself having issued a 'No Dues Certificate' dated 01st November, 2022, the present petition has been filed.

Brief Facts:

2. Brief facts of the case are as follows:

2.1 The petitioner and respondent executed a Medium Term Loan Agreement dated 15th December, 2017, under which, the petitioner was granted a Term Loan of Rs. 23.19 Crores under Loan Account No. 6594178528.

2.2 The petitioner mortgaged the subject property as a security towards the Term Loan. A charge was also registered by the Registrar of Companies on 15th December, 2017.

2.3 The respondent issued a provisional No Objection Certificate ("NOC") to the petitioner stating that an amount of Rs. 16,13,96,925/- was outstanding against the petitioner's Loan Account.

2.4 On the basis of the provisional NOC, a company by the name of Morgan Habitat Private Limited entered into a Share Purchase Agreement dated 28th October, 2022 with the original shareholders of the petitioner company, thereby acquiring the entire 100% shareholding in the petitioner company.

2.5 Subsequently, the petitioner paid the entire outstanding amount along with further accrued interest, totalling to Rs. 16,21,04,883/-. Thus, the respondent-bank issued a 'No Dues Certificate' dated 01st November, 2022, thereby confirming that no dues were pending in the Loan Account of the petitioner. It was further confirmed by the respondent-bank that it had no objection in releasing of charge on the subject



property and handing over the original title documents.

2.6 After receipt of the aforesaid 'No Dues Certificate', the petitioner filed the same with the Registrar of Companies, which recorded the satisfaction of charge of the respondent-bank.

2.7 On 01st November, 2022, the name of Morgan Habitat Private Limited and its nominee shareholder, Mr. Ambar Maheshwari was recorded in the share certificates of the petitioner-company.

2.8 Subsequently, the petitioner made various representations dated 16th March, 2023, 28th March, 2023 and 05th April, 2023 to the respondent seeking release of the original title deeds of the subject property. However, there was no response by the respondent-bank. Thus, being aggrieved of withholding of the original title deeds by the respondent-bank, the petitioner has filed the present writ petition.

Submissions on behalf of the petitioner:

3. On behalf of the petitioner, it is contended as follows:

3.1 Once the entire loan stands repaid and the Loan Account is closed, the action of withholding the security is without any authority of law.

3.2 There is no banker-customer relationship between the petitioner and the respondent after the issuance of the 'No Dues Certificate' and the entire loan availed by the petitioner stands discharged.

3.3 Section 171 of the Indian Contract Act, 1872 ("Contract Act") cannot be invoked for outstanding loan obligations of the guarantor or other separate legal entities. The said Section is applicable only qua the petitioner's dues towards the respondent.

3.4 Reliance by respondent on Clause 22 of the Loan Agreement dated 15th December, 2017 is misconceived as the same is applicable to



only 'Borrower's accounts' and 'Borrower's liabilities to the Bank'. Petitioner is the only Borrower under the Loan Agreement. Thus, contention of the respondent that respondent has outstanding dues against Aman Hospitality Private Limited, a group concern of the petitioner, is totally misplaced.

3.5 In support of his contentions the petitioner relies upon the following judgments:

I. Mr. Sunil Versus Union Bank of India, 2022 SCC OnLine Bom 1224

II. M/s Sree Vadivambigai Ginning Industries Pvt. Ltd. & Others Versus M/s Tamil Nadu Mercantile Bank Limited Through its Manager Chellam Talkies Road, Pollachi, 2015 SCC OnLine Mad 441

Submissions on behalf of the respondent:

4. On behalf of the respondent, the following submissions have been raised:

4.1 The petitioner-company has sold 100% of its shareholding to M/s Morgan Habitat Private Limited under Share Purchase Agreement dated 28th October, 2022, in violation of the provisions contained in Clause 11, 22 and 30 of the Medium Terms Loan Agreement dated 15th December, 2017.

4.2 The petitioner-company under Clause 22 of the Loan Agreement has agreed that the respondent-bank shall have right of general lien or similar right to which the bank may be entitled by law, in addition to other provisions mentioned in the said Loan Agreement.

4.3 Mr. Raj Singh Gahlot has stood as a guarantor to the credit facility



granted to the petitioner company, and in the Guarantor's Form dated 15th December, 2017, he has admitted that he is a personal guarantor in various loan accounts of the group accounts and companies, being the key promoter of Ambience Group. The shareholding pattern of the petitioner company, M/s Ambience Hotels and Resorts Private Limited and M/s Aman Hospitality Private Limited indicate that all the companies are closely related to each other. The loan account of M/s Aman Hospitality Private Limited with the respondent-bank, has been declared as Non-Performing Asset ("NPA") Account, where the outstanding is Rs. 39.82 Crore as on 31st March, 2023. The said NPA Account is also under investigation by the Central Bureau of Investigation ("CBI"), which is closely connected to the petitioner company.

4.4 The respondent-bank has received an E-mail dated 28th November, 2023 from the Enforcement Directorate under the provisions of Prevention of Money Laundering Act, 2002 ("PMLA Act"), seeking information/details of the accounts of the petitioner.

4.5 Having regard to the cross shareholding of the group companies and by lifting the corporate veil of the group companies, the respondent-bank is entitled to exercise its right of general lien under Section 171 of the Contract Act, in respect of the amount, which M/s Aman Hospitality Private Limited, a group company of the petitioner, is liable to pay to the respondent-bank.

4.6 In support of its submissions, the respondent has relied upon the judgment in the case of *Syndicate Bank Versus Vijay Kumar and Others, (1992) 2 SCC 330*.



Analysis and Findings:

5. At the outset, it would be relevant to note the relevant clauses of the Medium Term Loan Agreement dated 15th December, 2017 between the parties, which are extracted as under:

“This Medium Term Loan Agreement executed at New Delhi on this 15th day of December, 2017 between

*(i)Mr/Ms/Mx.....-.....residing
Son/Daughter/Wife of.....-.....at.....-.....*

*(ii)Mr/Ms/Mx.....Son/Daughter/Wife of.....
.....-.....residing at.....
.....*

*(iii)M/s **Indus Sor Urja Private**
Limited.....carrying on Business
as.....and having its Office at L-1,
Green Park Extension, New Delhi-
110016.....*

hereinafter called the ‘Borrower(s)’ which term shall mean and include his/her/its successors, executors, administrators and assigns,
and Indian bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970, carrying on the business of banking and having its Corporate Office at 254-260, Avvai Shanmugam Salai, Royapettah, Chennai 600014 and Head Office at 66, Rajaji Salai, Chennai 600 001 and among other placed a branch at South Extension hereinafter called the ‘Bank’, which term shall mean and include its successors and assigns:

xxx xxx xxx

11. The Borrower(s) undertakes that the Bank shall be promptly advised of all changes in their constitution or style. Further, where the Borrower is a partnership firm and a change occurs in the constitution of the firm by retirement, expulsion or death of any partner of the firm or otherwise the outgoing partner or the legal representatives of the deceased partner will not be discharged in respect of the liability of the firm incurred before its reconstitution by any subsequent credits to the account or to the accounts of the reconstituted firm or to any other separate account until the Bank finally agrees to the reconstituted firm taking over the liability or until the liability is fully paid off by all the partners of the old firm including the outgoing partners or the legal representatives of the deceased partner.



Xxx xxx xxx

22. The Borrower further agrees that in addition to any general lien or similar right to which Bank may be entitled by law, the Bank may at any time and without notice to the Borrower combine or consolidate all or any of the Borrower's accounts and set off or transfer any sum of sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of Borrower's liabilities to the Bank on any other accounts or in any other respect, whether such liabilities be actual or contingent, primary or collateral and several or joint.

Xxx xxx xxx

30. The Borrower hereby agrees and consents to the Bank for the disclosure of all or any such

i. information and data relating to the borrowers

ii. information or data relating to his/her/their obligations in any credit facility granted/to be granted by the bank and availed by the borrower and

iii. default if any, committed by the borrower in discharge of his/her/their obligations

as the Bank may deem appropriate and necessary, to disclose and furnish to Credit Information Bureau (India) Ltd., and any other agency authorized by Reserve Bank of India in this behalf.

Xxx xxx xxx”

(Emphasis Supplied)

6. Perusal of the aforesaid terms of the agreement between the parties show that the petitioner herein has been defined as the ‘Borrower’ in the said Loan Agreement, which term shall also include its successors, executors, administrators and assignees. However, the term ‘Borrower’ has not been defined to include any group company or sister concern.

7. Further, Clause 11 of the Loan Agreement stipulates that the bank shall be promptly advised of all changes in their constitution or style. Thus, there is no provision for taking any prior permission of the bank with regard to change in the constitution or style of the petitioner company.

8. Likewise, perusal of Clause 22 of the Loan Agreement between



the parties displays that the petitioner-company agreed that in addition to any general lien or similar right to which bank may be entitled by law, the bank may also combine or consolidate all or any of the Borrower's accounts for the purposes of satisfaction of any of the Borrower's liabilities to the Bank or any other accounts. Thus, in terms of the aforesaid Clause, the bank certainly has the right to take necessary steps for the purposes of recovering the liabilities of the petitioner-company from any other account of the petitioner-company. However, the said Clause cannot be interpreted to mean that the accounts of any group company or sister concern could be consolidated or combined by the bank. The aforesaid Clause certainly gives no authority to the bank to stake a general lien on the accounts of any other sister concern or the group company of the petitioner.

9. Similarly, Clause 30 of the aforesaid Loan Agreement enjoins upon the petitioner-company to disclose all information and data relating to its obligations in any credit facility granted by the bank and availed by the petitioner-company. The term used in the said Clause is again 'Borrower', which certainly refers to the petitioner-company and not to any other sister concern or the group company of the petitioner.

10. The position therefore, is clear that the respondent can exercise its general lien in terms of Clause 22 of the Loan Agreement and Section 171 of the Contract Act to retain a security for balance of accounts of the petitioner alone. The lien that the bank can exercise in terms of Clause 22 of the Loan Agreement and Section 171 of the Contract Act can be extended only qua the balance payable by the petitioner and cannot be extended towards the dues of any other entity including any sister



concern or group company of the petitioner.

11. At this stage, it would be relevant to refer to the provisions of Section 171 of the Contract Act, which reads 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.”

12. Reading of Section 171 of the Contract Act manifests that a statutory right is conferred on the banks to retain, as a security for a general balance of account, any goods bailed to the bank. Thus, in terms of Section 171 of the Contract Act, a bank would have the authority to retain title deeds of a mortgaged property in order to recover the balance amounts which are recoverable from a Borrower. Therefore, if the petitioner-company had any other loan account with the respondent-bank qua which certain balance amounts were due and payable, then the respondent-bank certainly had the authority and right to retain the title documents of the mortgaged property in order to recover its balance amounts recoverable from other loan account of the petitioner-company.

13. However, such lien of the bank would not extend to the balance amount recoverable from loan account of a sister concern or a group company, unless there is any contract to the contrary. Section 171 of the Contract Act does not envisage any general lien on the mortgaged goods or property of a Borrower for recovering amounts of a loan account of a sister concern or a group company. Such a general lien would extend only for the purpose of recovery of loans from a Borrower qua other loan



accounts of the Borrower itself that may exist in the bank.

14. Even Clause 22 of the Loan Agreement between the parties does not envisage any lien for the purposes of recovery of amounts outstanding from the loan accounts of a sister concern or a group company. Clause 22 of the Loan Agreement only envisages combining or consolidating all or any of the Borrower's accounts. However, the same does not refer to the accounts of a sister concern or a group company. The said Clause of the Loan Agreement only entitles the respondent-bank to combine or consolidate any of the Borrower's account. The said Clause cannot be invoked for the dues of a third entity and is restricted to the petitioner's dues, i.e., the Borrower as defined in the recital of the Loan Agreement.

15. Admittedly, there are no outstanding dues of the petitioner-company. The respondent-bank has already issued a No Dues Certificate dated 01st November, 2022 confirming that no dues are pending in the loan account of the petitioner. The No Dues Certificate issued by the respondent-bank reads as under:

“xxx xxx xxx

**NO DUES CERTIFICATE FOR TERM LOAN AC NO.
6594178528**

With reference your mail dated 28.10.2022, we hereby confirm that there are no dues pending in the captioned account upon full and final closure of Term Loan having limit of Rs. 23.19 crore (Account No.6594178528) and receipt of an amount of Rs. 16,21,04,883/- outstanding in the loan account as on 01.11.2022 being the actual closure of the account as per terms of sanction.

Further we confirm that we have no objection in release of charge on the property at D 17, Pushpanjali Farms, Bijwasan, New Delhi mortgaged in the subject loan account, along with charge on the escrow account of the project maintained with our branch and in



handing over of original title documents as per schedule attached.

We also hereby issue our NOC for filling satisfaction of charge in ROC New Delhi.

xxx xxx xxx”

16. Thus, it is apparent that the Term Loan, for which the subject property had been mortgaged, has been closed by repayment of the entire outstanding sum. The respondent-bank itself has issued a No Dues Certificate dated 01st November, 2022 confirming that the entire loan stands repaid and that it has no objection in release of the charge over the subject property. Accordingly, there is no basis in law or in facts for the respondent-bank to not handover the original title deeds of the mortgaged property to the petitioner.

17. Once the entire loan stands repaid and the loan account is closed, the security given in the form of the subject property, has to be released. The respondent-bank cannot continue to withhold the security. This action of the respondent-bank is without any authority of law.

18. Thus, High Court of Madras in the case of *M/s Sree Vadivambigai Ginning Industries Pvt. Ltd. & Others Versus M/s Tamil Nadu Mercantile Bank Limited Through its Manager Chellam Talkies Road, Pollachi*¹, has held as follows:

“xxx xxx xxx

22. In the instant case, the ‘goods’ means only the title deeds which belong to the customer, viz., plaintiffs, were deposited with the defendant Bank as security. Therefore, there will be no bailment in case of title deeds. They have not been given to the Bank as a security for doing or accomplishing certain things whereas they have been given as a security for the loan that has been borrowed by the plaintiffs. In other words, if a Bank had lent money to a particular

¹ 2015 SCC OnLine Mad 441



customer for a specific purpose and specific amount, the lien of Bank over the money and its customer does not extend to amounts which have been borrowed by the customer on any other name or different head. In the present case, as the defendant Bank had already issued 'No Due Certificate' under Ex. A.1 for the borrowals which had been repaid by the plaintiffs, the question of extending the general lien is unacceptable.

23. The other important aspect that has to be seen is, the defendant Bank has not made it clear whether the documents are retained for general lien or as collateral security. Once again, if it is general lien, there has to be a relationship of Banker and customer between the Bank and the person depositing security, which should be one that has been received by the Bank in its ordinary course of banking. It can be stated that once the loan accounts are liquidated and on issuance of 'No Due Certificate', the relationship of Banker and customer ceases. As a corollary, the right of 'banker's lien' will come to an end. Therefore, in the absence of any outstanding for the purpose which the documents were deposited, the documents cannot be held as general lien. If it is to be treated as collateral security, then, the intention and offer of the title deeds for the said purpose have to be established. Though as per Exs. A.12 and B.2, there was a correspondence with respect to the same, viz., collateral security, admittedly, it was not acted upon as the defendant Bank had not lent the money sought for by the sister concern of the plaintiffs. In such circumstances, the retention of the documents by the defendant Bank is not legal.

xxx xxx xxx

26. Considered from the above perspective, I have no hesitation to conclude that by operation of Section 171 of the Contract Act, unless there is an intention expressed contrary to the contract, the bank has a general lien over the securities belonging to the debtor that come into its hands, and if the money is in its hands as the general account, it has a right to set-off; but when any deposit has been made for a special purpose, in a given circumstance, unless there is any contract to the contrary, it cannot be implied that the Bank has a general lien over the specified security deposit for a specified purpose. Indisputably, there is no contract offering to take the title deeds deposited by the plaintiffs as security to the loan availed by the sister concern of the plaintiffs. Therefore, it is not open to the Bank to claim general lien over the title deeds deposited by the plaintiffs. The express contract was for discharge of the loan availed for plaintiffs against which a 'No Due Certificate' has also been issued. In such circumstances, the action of the defendant Bank in refusing



to release the title deeds is clearly illegal. Therefore, this point is answered in favour of the plaintiffs.

xxx xxx xxx”

(Emphasis Supplied)

19. Similarly, High Court of Bombay in the case of **Mr. Sunil Versus Union Bank of India**² has held as follows:

“xxx xxx xxx

11. Section 171 of the said Act expresses the “common law principle that if a man has an article delivered to him, on the improvement of which he has to bestow trouble and express, he has right to retain each until his demand is paid”. In its primary or legal sense, “lien” means “a right of common law in a person to retain that which is rightfully and continuously in their possession belonging to another until the present and accrued claims (of the person in possession) are satisfied”. Thus, from the expression “bankers lien” it is cleared that Bank overall forms of security that are deposited by the borrower in the ordinary course of business, there has to be a relationship of banker and customer between them. In Brandao v. Barnett, it was stated as under (All ER page 722-H) “Bankers, most undoubtedly, have a general lien on all securities deposited with them, as bankers, by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien”. It was held 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 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 the reduction of customer's debit balance. Lien contemplated under section 171 of the said Act relates to goods bailed to bank. Strictly, it is confined to securities and properties in the custody of a banker. Section 171 of the said Act expresses ‘goods bailed to them’. The provision, therefore, indicates that the right to retain goods bailed is based on contract and retaining the same in absence of contract is not permissible. A Division Bench of this Court in the case of Surendra s/o Laxman Nikose v. Chief Manager and Authorised Officer, State Bank of India, Nagpur, (2013) 5 Mah LJ 283 held that

² 2022 SCC OnLine Bom 1224



Bank cannot exercise its right of general lien over the Title Deeds deposited by the petitioner after the entire loan amount was fully repaid by the petitioner.....

xxx xxx xxx

18. In view of observation of the Hon'ble Apex Court in the case of Zonal Manager, Central Bank of India v. Devi Ispat Limited (supra) relied upon by the petitioner it was held that Central Bank of India being a nationalised bank was amenable to writ jurisdiction. In the present case also respondent-Union Bank of India is a nationalised bank and, therefore, is amenable to writ jurisdiction. **According to the Bank another loan account is yet to be cleared by the petitioner and, therefore, it's security documents were not returned. On the basis of the same the bank sought to exercise its right under section 171 of the said Act and not remitted the said documents to the respondent. Admittedly, said documents were kept with the bank as a security towards the loan amount which is obtained by the petitioner in his individual capacity for purchase of the flat. The said amount is duly paid and, therefore, bank was not justified in retaining the said documents by exercising right of lien on the said documents. Admittedly, bank has right to recover the loan amount regarding the loan advanced to the Company wherein the petitioner and other Directors are borrowers and guarantors. Bank is at liberty to recover the said loan amount and also at liberty to take the legal recourse but merely because another loan account is there, wherein the petitioner and other Directors are borrowers, bank has no right to retain the said documents by exercising the right of lien.**

xxx xxx xxx”

(Emphasis Supplied)

20. Likewise, Division Bench of Punjab and Haryana High Court in the case of ***The Punjab National Bank, Ltd. Versus Arura Mal Durga Das and Others***³, has held that a banker has a right to have a charge on all the monies of a borrower towards his liabilities, but the same must belong to one payer, in the same capacity, i.e., as a borrower. It has been held that bank does not have a right to combine the account of a third party to set off the liability against another. Elucidating the concept of

³1960 SCC OnLine Punj 126



general lien of a bank, it has further been held that bank has no right of lien on the personal account of a partner towards the liability of his firm. However, a bank does have the right of lien to hold monies of one firm with partners to another firm, with the same partners. Thus, it has been held as follows:

“xxx xxx xxx

The rule of English law that the Bank has a lien or more appropriately, a right to set-off against all moneys of his customers in his hands has been accepted as the rule in India. According to this rule when moneys are held by the Bank in one account and the depositor owes the Bank on another account, the Banker by virtue of his lien has a charge on all moneys of the depositor in his hands and is at liberty to transfer the moneys to whatever account, the banker may like with a view to set off or liquidate the debts,—vide Llyods Bank Ltd. v. Administrator-General of Burma [A.I.R. 1934 Rangoon 66] and Devendrakumar Lalchandji v. Gulabsingh Nekhesingh [A.I.R. 1946 Nag. 114].

In order to create Banker's lien on several accounts it is necessary that they must belong to the payer in one and in the same capacity. Where the person has two accounts, one a trustee account and another private account at a Bank, deposits in the two accounts cannot be set off, the one against the other [see Lloyds Bank Ltd. v. Administrator General of Burma [A.I.R. 1934 Rangoon 66]].

Bankers have a right to combine one or more accounts of the same customer. But it cannot combine the account belonging to another or to himself alone with another account which is the joint account with another and third person,—vide Radha Raman Choudhry and another v. Chota Nagpur Banking Association Ltd [A.I.R. 1944 Pat. 368] and Punjab National Bank Ltd. v. Satyapal Virmani [A.I.R. 1956 Pun. 118].

Similarly, the Banks have no lien on the deposit of a partner, on his separate account, for a balance due to the Bank from the firm. Therefore, the banker is entitled to combine all accounts kept in the same right by the customer. It does not matter whether the accounts are current or deposit or whether they are in the same or different branches [Garnett v. MKewan [[(1872, L.R. 8 Ex 10.]]]. It is of essence to the validity of a banker's lien, that there should be a mutuality of, claim between the Bank and the depositor. In order that it should be permissible to set off one demand against another



both must mutually exist between the same parties.....

xxx xxx xxx”

(Emphasis Supplied)

21. The fact that the guarantor in the loan of the petitioner-company, is also a guarantor qua loans of other companies in the group concern, would not confer any authority on the respondent-bank to claim lien on the title documents of the subject property for securing the loan accounts of the other companies in the group concern. Thus, High Court of Karnataka in the case of ***Vijaya Bank, Rep. by its Deputy General Manager and Another Versus Naveen Merchandised Construction (P) Ltd. and Others***⁴ has held as follows:

“xxx xxx xxx

13. The decision relied upon by the learned Counsel appearing for the appellant-Bank in Syndicate Bank v. Vijay Kumar ((1992) 2 SCC 330 : AIR 1992 SC 1066) would not be helpful to him in the present case as in the said case the letters were executed in favour of the Bank specifically to enable the Bank to retain the securities with the Bank so long as any amount on any account is due to the Bank from the borrower. In the present case, it is not the case of the appellant-Bank that the petitioners have subsequently borrowed any amount and that the security is withheld for any amount due from the petitioners and wherefore in the absence of any specific authorisation or lien conferred upon the appellant-Bank to retain the security towards the discharge of any debt in respect of other Companies, the Bank is not at all justified in retaining the security as Section 171 of the Contract Act would only enable the Bank to retain the security for repayment of debt borrowed by the same person. In the present case as no amount is due to be paid by the petitioners, the contention that the Director of the first petitioner-Company as also the guarantor for the transaction is also a Director in MFEL against which recovery proceeding has been initiated in the Debt Recovery Tribunal. That would not be a justifiable ground to withhold securities in the absence of any express clause in the Contract entered into by the petitioners and the Bank.

xxx xxx xxx”

(Emphasis Supplied)

⁴ 2003 SCC OnLine Kar 779



22. Holding that the bank had no authority to hold documents of a mortgaged property, to secure the loan transaction pertaining to a company in which the borrower had stood as a guarantor, Division Bench of Madras High Court in its judgment in the case of *State Bank of India Versus Jayanthi and Others*⁵, held as follows:

“xxx xxx xxx

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 transaction. 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. Aarti 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.

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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

⁵ 2011 SCC OnLine Mad 269



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 a 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 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.

xxx xxx xxx"

(Emphasis Supplied)

23. Reliance by the respondent on the case of *Syndicate Bank Versus Vijay Kumar and Others*⁶ is totally misplaced. The respondent has relied

⁶ (1992) 2 SCC 330



upon paragraphs 6, 7 and 8 of the aforesaid judgment, which read as under:

“xxx xxx xxx

6.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 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.

7. Applying these principles to the case before us we are of the view that undoubtedly the appellant Bank has a lien over the two FDRs. In any event the two letters executed by the Judgment-debtor on September 17, 1980 created a general lien in favour of the appellant Bank over the two FDRs. Even otherwise having regard to the mercantile custom as judicially recognised the Banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business. The recital in the two letters clearly creates a general lien without giving any room whatsoever for any controversy.

8. The High Court, however, found that the two FDRs were given only by way of securities for the Bank guarantee and when once the guarantee is discharged, the amounts covered by the said two FDRs would belong to the Judgment-debtor since the charge is limited to the amount of the Bank guarantee. The High Court, in this context relied on the words “Lien to BG 11/80” which are found on the back of each FDR and according to the High Court in view of this endorsement, the Bank has no right to hold the security in their own favour after the Bank guarantee has been released and they are bound to return it to the customer namely the Judgment-debtor when he makes a demand on the Bank. The High Court also observed that the terms of the contract namely furnishing FDRs as security for the bank guarantee are inconsistent with the general lien that the Bank claims and the Bank can claim only a particular lien for the bank guarantee. It also observed that since the Bank guarantee has been discharged, the Bank



has no right to hold the security for something more than what was agreed upon. We are unable to agree with this reasoning. As already noticed, the recital in the covering letters as extracted above clearly established that a general lien was created in favour of the Bank on the two FDRs. Merely because the two FDRs were also furnished as security for the issuance of the bank guarantee, the general lien thus created cannot come to an end when the Bank guarantee is discharged. The words "Lien to BG 11/80" do not make any difference.

xxx xxx xxx"

24. The aforesaid judgment in the case of **Syndicate Bank** (*supra*) has no application to the present case. In the said case, a firm by the name of M/s Jullundur Body Builders, to secure a bank guarantee issued by Syndicate Bank, had furnished two Fixed Deposit Receipts ("FDRs") as security with the bank. Subsequently, the bank guarantee was discharged and the firm sought release of the FDRs. However, Syndicate Bank sought to retain the two FDRs by exercising its general lien for an overdraft facility, also obtained by the same firm, i.e., M/s Jullundur Body Builders. In these facts, wherein the credit facilities were enjoyed by the same borrower, the Supreme Court held the general lien of the bank to be applicable.

25. However, facts of the present case are totally different, as admittedly the petitioner-company has already discharged its liability. Undisputedly, the general lien can be extended by the respondent-bank only for the dues of the Borrower, i.e., the petitioner-company which has furnished the security, and not for the dues of any other entity.

26. The facts of the present case show that the respondent had issued a provisional NOC dated 12th October, 2022 indicating the amounts to be paid for closure of the loan and release of the title documents. On the



basis of the said provisional NOC, in order to raise capital to repay the loan, the petitioner entered into a Share Purchase Agreement dated 28th October, 2022 for transfer of its 100% shareholding. Thus, the petitioner repaid the entire outstanding loan amount and the respondent-bank issued a No Dues Certificate dated 01st November, 2022, giving its no objection to release the original title documents. The shares were transferred on 01st November, 2022 itself by recording the name of the new shareholder on the Share Certificates. Thus, it cannot be said that there was any violation of Clause 11 of the Loan Agreement between the parties which stipulated that ‘The Borrower(s) undertakes that the Bank shall be promptly advised of all changes in their constitution or style’.

27. A bare perusal of Clause 11 of the Loan Agreement shows that no approval as such is required from the respondent-bank for any change in constitution. There is no requirement of even prior intimation to the respondent-bank, which is apparent from the words ‘promptly advised’, as used in Clause 11. Admittedly, there are no outstanding dues of the petitioner and on issuance of the No Dues Certificate, the banker-customer relationship between the petitioner and respondent ceased to exist. On that account, the situation that emerges is that Clause 11 of the Loan Agreement has no application.

28. Further, the E-mail dated 28th October, 2023 issued by the Enforcement Directorate does not confer any right upon the respondent-bank to withhold the title documents. Even otherwise, said E-mail issued by the Enforcement Directorate is more than one year after the issuance of ‘No Dues Certificate’ by the respondent-bank. The said E-mail only seeks information regarding the two bank accounts of the petitioner with



the respondent-bank. The E-mail does not refer to the title documents of the subject property or makes any request to the respondent-bank to withhold the same.

Conclusion:

29. Accordingly, it is held that neither Clause 22 of the Loan Agreement nor Section 171 of the Contract Act confers any entitlement upon the respondent-bank to withhold the title documents of the mortgaged property, once there are no outstanding dues of the petitioner towards the respondent-bank. There is no basis for the respondent-bank to not handover the original title documents of the subject property in view of the fact that entire outstanding sum towards the Term Loan stands paid. There is no other amount pending against the petitioner qua any other Loan Account of the petitioner with the respondent-bank.

30. Consequently, the respondent-bank is directed forthwith to release the original title documents of the subject property to the petitioner in terms of the 'No Dues Certificate' dated 01st November, 2022.

31. The present petition is allowed in the aforesaid terms.

**(MINI PUSHKARNA)
JUDGE**

FEBRUARY 29, 2024
Ak/Au