IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 03-06-2025**

CORAM

**THE HONOURABLE MR JUSTICE N. ANAND VENKATESH**

**WP No. 6726 of 2024**
**WMP No. 30239 of 2024**

S.Ajitha

Petitioner(s)

Vs

1. The General Manager,
Indian Bank,
No.254-260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.

2.The Branch Manager,
Indian Bank,
George Town Branch,
No.321, Thambu Chetty Street,
Chennai-600 001.

Respondent(s)

**PRAYER** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, direction to the 2nd respondent to release the sale deed dated 29.04.1999 registered as Doc. No.2035/1999 on the file of SRO-Kundrathur, Kanchipuram District, deposited with the respondent bank as guarantor, within a time frame that may be fixed by this Court.

For Petitioner(s): Mr.T.E.Ekambaram

For Respondent(s): Mr. P.V.Murlidhar for R1
M/s.Aiyar & Dolia for R2

**ORDER**

This writ petition has been filed for issue of writ of mandamus directing the 2nd respondent to release the Sale Deed dated 29.04.1999 registered as Document No.2035 of 1999, within the time frame fixed by this Court.

2.The case of the petitioner is that she is the owner of the subject property by virtue of a registered Sale Deed dated 29.04.1999 registered as Document No.2035 of 1999. The petitioner obtained a loan from the 2nd respondent and executed a mortgage by deposit of title deeds on 09.11.2012 which was registered as Document No.13357 of 2012. This loan amount was repaid by the petitioner on 20.07.2016. As a result, the mortgage was cancelled through a registered Document No.11296 of 2016.

3.The petitioner thereafter stood as a guarantor for two other loans that were availed by M/s.Y.R.S. Garments and M/s.Mani Enterprises. Even here, the petitioner had mortgaged by deposit of title deeds. Both these loan amounts were settled. In view of the same, the petitioner made a representation to the 2nd respondent to release the original Sale Deed which was given as a guarantee. The 2nd respondent through communication dated 21.12.2023 informed the petitioner as to why the Sale Deed cannot be released. Even thereafter, representation was made and it did not evoke any response. It is under these circumstances, the present writ petition came to be been filed before this Court.

4.The respondents have filed a counter affidavit. In the counter affidavit, the respondents have taken a stand that the petitioner stood as a guarantor for M/s.Maran Garments and as on today, the borrower owes a sum of Rs.5.89 Crores. Hence, the bank has exercised its general lien under Section 171 of the Indian Contract Act. An original application was also filed against the proprietor of M/s.Maran Garments for recovery of this amount and application has been filed for attachment of the property belonging to the petitioner. In view of the same, the respondents have sought for the dismissal of this writ petition.

5.Heard Dr.S.S.Swaminathan, learned counsel appearing on behalf of the petitioner, Mr.P.V.Muralidhar, learned counsel appearing on behalf of the 1st respondent and M/s.Aiyar & Dolia, learned counsel appearing on behalf of the 2nd respondent.

6.The short issue that arises for consideration in the present writ petition is as to whether the respondent Bank can exercise general lien under Section 171 of the Indian Contract Act for the loan taken by M/s.Maran Garments.

7.There is no dispute with regard to the fact that the petitioner initially availed a loan for which the petitioner executed a mortgage by deposit of title deeds and this loan amount was repaid back. Likewise, for two other loans, the petitioner stood as a guarantor and created mortgage by deposit of title deeds for those two loans also. Those two loans also were repaid back. However, the original Sale Deed continued to be in possession of the respondent Bank and they sought to exercise a right of general lien under Section 171 of the Indian

Contract Act on the ground that the loan that was advanced to M/s.Maran Garments which is being run by the petitioner's husband, was not repaid back and a huge amount is due and payable.

8.The issue is answered in an earlier order passed by me in W.P.(MD)No.7045 of 2021 dated 23.11.2023, by relying upon the earlier Division Bench order passed in W.P.(MD)No.12613 of 2016 dated 09.08.2017. The relevant portions are extracted hereunder:

> *12. A Division Bench of Orissa High Court in the case of Alekha Sahoo v. Puri Urban Co-operative Bank Ltd. and another, reported in AIR 2004 ORISSA 142 had occasion to deal with almost similar situation and held that the general lien of Bankers under Section 171 of Contract Act can be enforced on the security of principal debtor and not the guarantor. The petitioner before the High Court availed the gold loan of Rs.12,000/- each on 20.08.2001 from the respondent Bank on pledge of gold ornaments and cleared the gold loans on 22.07.2003. When the petitioner demanded return of gold ornaments, the respondent Bank stated that before availing the gold loans, the petitioner stood as*

*guarantor for the cash credit loan advanced to a third party on 25.06.2001. Since the principal borrower and the guarantor are jointly and severally liable for the outstanding amount, the Bank took a stand that they have a general lien on the gold ornaments pledged by the petitioner under Section 171 of the Contract Act. It was held that the Bank can retain as security for general balance of an account of a customer, goods bailed to them by that customer and not goods bailed to them by the guarantor (some other customers). Para 8 to 12 of the judgment are relevant and hence extracted below:*

> *"8. The next question to be decided in this writ petition is whether the Bank could in exercise of its right of general lien under Section 171 of the Indian Contract Act retain the gold ornaments of the petitioner as additional security for the loans granted to Manmohan Sahoo, Proprietor M/s. Bimala Bhandar for whom the petitioner was a guarantor. Section 171 of the Indian Contract Act is quoted herein below:*
>
> *"771. 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."*

*The aforesaid Section states that bankers 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. The said Section 171 does not extensively deal with the cases in which a banker can retain as security for a general balance of account any goods bailed to it. Section 171 of the Contract Act, however, is a recognition of the right of general lien of bankers under English Mercantile Law and therefore the decision of Court in England as to in which cases such lien can be exercised by bankers and in which cases such lien cannot be exercised by bankers will, equally apply to exercise of lien under Section 171 of the Contract Act.*

*9. In Wolstenholm v. Sheffield Union Banking Co. Ltd. (1886) 54 L.T. 746, the question that arose for decision was as to whether the Bank can retain a property belonging to a* *partner to satisfy the general account of his firm and Lord Esher, M. R. held that the Bank cannot exercise such hen over the private property of a partner for satisfying the general balance of account of his firm. To quote Lord Esher, M. R.:*

*"The bank said, 'we shall not account to Wing's trustees for the surplus, although the lease was his private property, because we have a right to keep it to satisfy the general account of his firm'. That was tantamount to saying, 'we are now claiming your surplus to pay the debt of somebody else. The claim in effect was that, in virtue of the bank's general lien, they were entitled to retain the property of one man to pay the debt of another. That claim was based, not upon agreement, but on a supposed custom that bankers should in such a case have a general lien. There never was or could be a custom, however, by which you could take the property of one man to pay the debt of another. No such proposition was put forward in the cases cited, and no such proposition has ever been laid down in any of the cases respecting a banker's lien."*

*In Cuthbert v. Roberts, Lubbock & Co, (1909) 2 Ch. 226,* *C.A., the bankers applied to claim the plaintiffs' shares or the proceeds thereof to the liquidation of the debit balance of Chancellor's Current Account and Joyce J. held that the bankers were not entitled to do so. Joyce J. in particular held :*

*"... It is true that the bankers have a general lien on the securities of any customer deposited by him with them otherwise than for a particular purpose, to secure any sum in which the customer may be indebted to the bankers. This, however, is a lien upon the securities of the customer and not upon those of other persons, and the general lien of a banker does not attach even upon money or securities of the customer known to the bankers to be affected by a trust...."*

*This view taken by Joyce J. that the lien of the Bank is upon the security of the customers and not upon those of other persons was upheld by Buckley L.J. and Kennedy L.J. and the appeal against the decision of Joyce J. was dismissed. It is thus clear from the aforesaid decision of the Courts of England that under the English Mercantile Law relating to Banker's General Lien the Bank can retain as security for general balance of an account of a customer, goods bailed* *to them by that customer and not goods bailed to them by some other customer.*

*10. The contention of Mr. Kanungo is that the petitioner is a guarantor for the loan account of M/s. Bimala Bhandar and is therefore liable for the outstanding balance of M/s. Bimala Bhandar by virtue of the provisions of Section 128 of the Contract Act which provides that the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. But there is no provision in the Contract Act to the effect that the properties of the surety can be retained by the creditor as security for the debts due from the principal debtor to the creditor. On the other hand, Courts have taken a view that Bank in exercise of its general lien cannot retain the private property of a partner to satisfy the outstanding balance in the general account of his firm notwithstanding the settled position of law that the partners are jointly and severally liable for the debts of a firm of which they are the partners. The aforesaid decision in Wolstenholm v. Sheffield Union Banking Co. Ltd. (supra) has been followed by a Division Bench of the Punjab High Court in Punjab National Bank Ltd. v. Arura Mal Durga Das and Anr., AIR 1960 Punjab 632, for coming to* *the conclusion that:*

*"a bank has no lien on a partner's private account for an overdraft on partnership account or vice versa for want of reciprocity."*

*Similarly, in Gurbax Rai and Ors. v. Punjab National Bank (supra) cited by Mr. Patnaik, learned counsel for the petitioner, the Supreme Court has held that goods which are offered by the firm as security for the cash credit facility could not be utilized for adjusting the liability of the partners to the Bank. The relevant portion of the said judgment of the Supreme Court in Gurbax Rai and Ors. v. Punjab National Bank (supra) is quoted herein below :*

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

*destruction of the pledged goods of the firm was recovered from the insurer, it must be given credit only in the cash credit account and to that extent the liability in the cash credit account would be reduced. "*

*11. In Syndicate Bank v. Vijay Kumar and Ors. (supra) cited by Mr. Kanungo, the judgment-debtor who owned two Fixed Deposits executed two letters on 17.9.1980 creating a lien in favour of the Bank over the two Fixed Deposit Receipts and on these facts the Supreme Court held that the two letters executed by the judgment-debtor on 17.9.1980 created a lien in favour of the Bank over the two Fixed Deposit Receipts, this is thus a case where the owner of the Fixed Deposit Receipts had expressly agreed that the Bank would have lien over the Fixed Deposit Receipts. In this case, the Supreme Court has not laid down any law that the Bank can exercise its general lien under Section 171 of the Contract Act over the properties of the surety for the liabilities of the principal debtor to the Bank, In S. Vasupataiah v. The Vysya Bank, Kudagenahalli Branch (supra) and in City Union Bank Ltd. v. C. Thangarajan (supra) cited by Mr. Kanungo, the learned single Judges of the Karnataka High Court and the Madras High Court respectively have referred to the aforesaid* *decision of the Supreme Court in Syndicate Bank v. Vijay Kumar and Ors. (supra) and have held that the Bank can exercise lien over the properties of a guarantor or a co-promisor for recovery of the outstanding dues of the principal debtor or the promisor to the Bank. But as we have discussed above, Courts in England and in India have held that the Bank can exercise general lien over the properties of a customer for the general balance in such customer's account and not for the general balance of some other customer's account. Unless therefore a customer has expressly agreed that his properties can be retained as security for the outstanding balance in the account of some other customer, a Bank cannot exercise lien over the properties of such customer under Section 171 of the Contract Act. In the guarantee agreement executed by the petitioner for the cash credit account of M/s. Bimala Bhandar, a copy of which has been annexed to the counter-affidavit as Annexure-R/2, there is no such provision that the Bank can retain the properties of the petitioner as security for the outstanding balance in the loan account of M/s. Bimala Bhandar. In fact, the Bank has also not relied on any such provision in the guarantee agreement and instead has relied on the bye-laws of the Bank and the general lien of* *the Bank as provided in Section 171 of the Contract Act. As we have seen, the Bank has no such right under the bye-laws or Section 171 of the Contract Act to retain the gold ornaments of the petitioner as security for the outstanding balance in the loan account of M/s. Bimala Bhandar.*

*12. Since we have found that the Bank has no right whatsoever either under its bye-laws or under Section 171 of the Contract Act to retain the gold ornaments of the petitioner after the petitioner had cleared the outstanding balance in the two gold loan accounts for which the gold ornaments were pledged as security, the retention of the gold ornaments of the petitioner by the Bank was without any authority of law and is arbitrary and the impugned notice dated 30.7.2003 is liable to be quashed."*

9.The ratio that can be deduced from the above judgments is that where the mortgage has been created over an immovable property by deposit of title deeds, it is relateble only to the concerned loan and it cannot be utilized by exercising the power of general lien under Section 171 of the Indian Contract Act for any other loan. In other words, the lien is primarily concerned as a right to retain security and the Bank cannot retain the title deed of the mortgage or proceed further to bring the property for sale towards dues in connection with a different transaction which is not covered by the mortgage.

10.In the light of the above legal position, the respondents cannot retain the title documents belonging to the petitioner towards the loan amount that is repayable by M/s.Maran Garments. They cannot exercise the right of general lien under Section 171 of the Indian Contract Act. In view of the same, the respondent Bank has to necessarily return back the original title document to the petitioner.

11.In the result, there shall be a direction to the 2$^{nd}$ respondent to release the Sale Deed dated 29.04.1999 to the petitioner, within a period of one week from the date of receipt of copy of this order. It goes without saying that this order will not stand in the way of the respondents from proceeding further for recovering the loan from M/s.Maran Garments in the manner known to law.

12.Accordingly, this writ petition stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

**03-06-2025**

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To

1. The General Manager,
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**N.ANAND VENKATESH J.**

ssr

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