

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.26178 of 2023**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Balaram Choudhury **Petitioner(s)**

-versus-

Indian Bank, Bhubaneswar **Opp. Party(s)**

Advocates appeared in the case:

For Petitioner(s) : **Ms. Pami Rath, Sr. Adv.**
Along with associates

-versus-

For Opp. Party(s) : **Mr. Tuna Sahoo, Adv.**

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-22.02.2024

DATE OF JUDGMENT:-28.03.2024

सत्यमेव जयते

Dr. S.K. Panigrahi, J.

1. The present Writ Petition has been filed by the Petitioner challenging the notice dated 05.08.2023 issued by the Indian Bank, Bhubaneswar and praying for return of his title deed on the ground of payment of the loan amount.

I. FACTUAL MATRIX OF THE CASE

2. Succinctly put, the facts of the case goes as follows:

- (i). The petitioner acquired a home loan of Rs.6,71,000/- vide A/c No.6572029945 with both the petitioner and his wife, Saswati Choudhury, listed as joint borrowers.

- (ii). For the said loan, the Petitioner had deposited the original title deeds of his self acquired property details of which are: Flat No. WIG-1108, in Ground Floor, along with Land situated on Plot No. 312 (p) in Khata No. 142/143 with Area: Ac.0.01.15 Dec out of total area of Ac. 9.77dec in District Puri, D.S.R. Puri, P.S. Puri Sadar, No. 78 of Mouza Sipasurubuli.
- (iii). The Petitioner's wife Saswati Choudhury has a separate business with one Mrs. Anita Dutta under the partnership Firm namely M/s. Koshish.
- (iv). The partners availed a loan from the same bank, on behalf of the firm, of Rs.20 Lakh dated 06.02.2018 under Loan account No.OCC6609955107 and also availed a Term Loan of Rs.30 Lakh dated 06.02.2018 under Term Loan account No.6605504055.
- (v). Due to non-operation of the Open Cash Credit Account and non-payment of instalment in respect of the aforementioned OCC and Term Loan, both the accounts became NPA on 28.12.2019.
- (vi). On 05.08.2023, the Petitioner was issued with a notice by the bank stating therein that the CIA (Certified Internal Auditor) number of his wife would be link to the debt account of M/s. Koshish indicating the outstanding amount Rs.21,63,291/- in respect of the Open Cash Credit Account No.6609955107 and Rs.24,66,361/- in respect of Term Loan Account No.6605504055.
- (vii). The notice further stated that if the dues are not cleared, then the personal CIF of the wife of the Petitioner would get linked to the loan dues of the firm.

- (viii). The impugned notice dated 5.8.2023 also indicated that the loan account of the Petitioner would be classified as NPA only because the loan account of the firm has been classified as NPA even when the Petitioner had made no default in home loan account.
- (ix). After getting the said notice, the petitioner immediately rushed to the bank and paid the outstanding amount of Rs.3,30,000/- of the home loan account and closed the account.
- (x). Even though the Petitioner has already cleared the debts and closed the account, the title deeds have not been returned.

II. SUBMISSIONS:

A. On behalf of the Petitioner:

3. Mrs. Pami Rath, learned Senior Counsel with Ms. S. Gumansingh, learned counsel appearing on behalf of the petitioner urged the following submissions:
- (i). The notice dated 05.08.2023 was baseless for there was no reason to assert that the loan account should be made NPA only because the firm which has a separate juristic entity, has its account declared NPA.
- (ii). In the said partnership firm, the Petitioner has no business interest nor has any kind of financial relation. Petitioner is neither associated with the firm as a borrower, partner, guarantor, nor has the property in question been mortgaged. It is not a Secured Asset as far as the loan to M/s. Kosish is concerned. No Security-Interest

has been created in favour of the bank as regards to the property and the loan of M/s. Kosish is concerned.

- (iii). The bank has made an illegal demand to the Petitioner that the overdue amount along with all legal and other charges should be cleared up by 20.8.2023. It did not mention which loan(s) have to be cleared. The request for clearance is ambiguous. As on 05.08.2023, the only legal due which the Petitioner vis-a-vis the bank is for the home loan as for Rs.6,71,000/-.
- (iv). The Petitioner has made no default against the home loan account. In order to avoid any further complication, the Petitioner after getting the said notice, immediately rushed to the bank and paid the outstanding in the home loan account. With the payment of the entire home loan amount, the relationship of banker and customer comes to an end.
- (v). The title deed of the property was handed over only for the purpose of home loan. But the loan having been satisfied by the petitioner for which the security was given, it cannot exercise any 'General Lien' over the said property.

B. On behalf of the Opposite Party:

4. Per Contra, Mr. Tuna Sahu, learned counsel appearing on behalf of the Opposite Party/ Indian Bank, made the following submissions:
- (i). The grievances of the petitioner with regard to quashing the letter dated 05.08.2023 issued by the O.P. bank and return of title deeds is

not at all permissible under the law as well as the facts, at least, at this stage.

- (ii). As per the R.B.I. Circular of 2015, the classification of the accounts as NPA occurs Borrower-wise, i.e. Account wise. Cunningly by that time the borrower i.e. Balaram Choudhury and Saraswati Choudhury closed the House Building loan on dated 08.08.2023.
- (iii). Even though the Housing Loan Account was closed after receipt of the letter dated 05.08.2023 but one of the Co-borrower of the House Building Loan is also defaulter to the Partnership loan account. If the petitioner intends to take back their title deeds, the wife of the petitioner has to close that account standing in the name of the partnership firm. Or else the bank has every right to exercise its General Lien i.e. section 171 of the Indian Contract Act, 1972 by keeping that title deed till the loan account of partnership firm i.e. M/S. Koshis is closed.

C. Legal Arguments:

- (i). Learned counsel for the Petitioner contended that the deposit of title deeds for the home loan amounts to creation of a mortgage for the home loan. Further, a mortgage by deposit of title deeds amounts to transfer of immovable property. It does not amount to "any goods bailed to Bank".
- (ii). In order to attract Section 171 of the Indian Contract Act, 1872, the bank has to show that mortgage for home loan would amount to

"any goods bailed to them". It is brought to the notice that Section 171 comes under the chapter of "Bailment" under Contract Act, 1872.

- (iii). Bailment is declared as delivery of goods under Section 148. Mortgage is not a charge; rather it is a transfer of an immovable property. "Goods" are every kind of movable property. Title deeds per se are not property, nor have marketability. Title deed per se cannot be disposed of for consideration of money. And, if the bank wants to emphasize upon the fact that by way of deposit of title deeds for home loan, a charge was created in favour of the bank, in that event such charge was not over the goods, but the landed property which is immovable property. But bailment is always on goods which have to be movable. Thus, there is no question of application of Section 171 of the Indian Contract Act, 1872.
- (iv). It is also contended that the RBI guideline is only a procedural guideline, but does not per se create any right over the petitioner's property for the loan taken by the firm. It does not give the bank any right to retain the title deeds of the petitioner's property in question which was mortgaged for the Home Loan.

III. COURT'S ANALYSIS AND REASONS:

5. Heard both the learned counsels for the parties.
6. Lien is the right to retain property belonging to another until a debt due from the latter is paid. This is a possessory lien. It has judicially been defined as an "implied pledge".

7. The bank is claiming in this case a general lien because they say that they have a right to retain the deposit receipts for all the general balance due from the debtors associated vide different loan accounts. In other words, they claim a banker's lien which is a special form of general lien. They assert a right to retain such documents of their customer's property as has come into their bands in the ordinary course of business as a banker.
8. In *Brandao v. Barnett* (12 Cl F 787) Lord Campbell made the classic statement. He said :
- “Brandao 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 the lien.”*
9. It is contended by the counsel of the respondent-bank that the against the general lien of the bank, the debtors and the securities handed over to them are entitlement of the bank, not only for the guarantee they issued but also for the general balance due in the overdraft account. In other words, it is claimed by the bank that they have a further right as bankers to hold the securities in respect of the overdraft account. In other words, it is claimed by the bank that they have a further right as bankers to hold the securities in respect of the overdraft account.
10. Now, the moot question is whether the respondent-Bank has 'General lien' over the documents of security under Section 171 of the Indian Contract Act, 1872. The provision of Section 171 of the said Act reads as under :

“Section 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.”

On a careful perusal of the Section 171 of the Indian Contract Act, it comes to notice that 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.

11. No law for time being in force, permits the bank to retain the title deeds alleging dues in respect of any other transaction, under section 171 of the Indian Contract Act. Bank is bound to receive the balance and issue a 'No Due Certificate' in respect of the loan and return all the documents deposited by the petitioner.
12. The mortgage was created for a specific loan transaction. Upon repayment of said loan under no stretch of imagination, the bank would claim general lien and retain the documents. Title deeds deposited as security is not a form of security in respect of which Section 171 of the Contract Act can be applied.
13. The case of the Respondent-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 co-debtor, is discharged. As noticed above, Section 171 of the Act states that the bankers like the Respondent-Bank, in the absence of a contract to the contrary, retain as security for a general balance account, any goods bailed to them

14. 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 Respondent-Bank by the petitioner for any other loans except the home loan secured by the petitioner where his wife was a co-debtor.
15. No document has been placed before this court to show that the borrower had given any authorization to the Bank to hold the documents of the mortgaged property, given to secure the loan transaction for, for the purpose of any other loan, other than the purported home loan.
16. In Chitty on Contracts, 29th Edition (2004) Volume-II, Page 496 on Bankers' Lien, it is stated:

“... 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."

17. In the instant case, the petitioner has admittedly deposited the title deeds of the property to secure a home loan. This fact has not disputed by the Respondent-Bank. Therefore, this Court has no hesitation to hold that this contract/mortgage, had been created by the petitioner for a specific purpose and for a specific loan and the said 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 petitioner was for a specific purpose; to cover an advance for the aforementioned home loan. In such a case, the bank cannot contend that they could hold the documents for a balance due in a different loan account where the petitioner is not a borrower. This is reinforced due to the fact that the petitioner has closed the home loan account after the full repayment of the loan amount.

18. Many High Courts have relied on the case of *Syndicate Bank v. Vijaya Kumar*,¹ wherein the Supreme Court has held 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 Supreme Court, while interpreting such a letter covering the transaction executed by the borrower therein, rendered a finding that the bank is entitled to

¹(1992) 2 SCC 330

general lien over the FixedDeposit receipts given by the borrower therein.

19. 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, I 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.
20. The counsel for the petitioner has argued that the title deeds which were offered as a security, cannot be deemed as goods bailed, so as to attract Section 171 of the Indian Contract Act. The Madras High Court has affirmed the above contention in *Sri Ginning Industries Private Limited vs. Tamil Nadu Mercantile Bank*² which is extracted below:

"21. Section 171 of the Contract Act confers the statutory right to a banker to retain, as a security for a general balance of account, any goods bailed to them. The said statutory right is only for recovery of their legitimate dues. When Section 171 of the Contract Act contemplates only retention of 'goods', it has to be seen whether the title deeds of the plaintiffs can be deemed as 'goods' as defined under the Sale of Goods Act. The term 'goods' contemplated in Section 171 of the Contract Act is to be understood in the sense that it should be converted in terms of money or in other words, the goods should have marketability.

²2015 SCC OnLine Mad 441

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 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."*(Emphasis Supplied)

21. In *M. Shanti v. Bank of Baroda*,³ the Madras High Court concluded that the joint and several accounts managed by two or more individuals cannot be offset against the separate deposits of any one of them. The bank is not permitted to lay claim to the deposit of one partner, made in his distinct account, with the intention to utilize another deposit against the debt owed by the firm. In essence, partnership deposits cannot be employed to offset the individual debt of any one of the partners and vice-versa. The Court relied on the Division Bench judgment of Punjab High Court in the case of *Punjab National Bank Ltd., v. Aruna Mal Durga Das*,⁴ and held that:

³W.P.(MD)No.12613 of 2016

⁴AIR 1960 Punjab 632

“In order to exercise the Banker’s lien or right to set off, the demands must be mutual and between same parties. It was further held that the Bank has no lien on a partner’s private account for an overdraft on partnership account or vice versa for want of reciprocity. Para 14 to 17 of the judgment are extracted below:

(14) The rule of English law that the Bank has a lien or more appropriately, a right to set off against all monies of his customers in his hands has been accepted as the rule in India. According to this rule when monies 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 monies of the depositor in his hands and is at liberty to transfer the monies 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, AIR 1934 Rang 66 and Devendrakumar Lalchandji v. Gulabsingh, AIR 1946 Nag 114.

(15) 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 AIR 1934 Rang 66).

(16) 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 v. Chota Nagpur Banking Association Ltd., AIR 1944 Pat. 368 and Punjab National Bank Ltd. v. Satyapal Virmani, AIR 1956 Punj 118.

(17) 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. Mckewan (1872), 8 Ex. 10). It is of essence to the validity of a banker's lien, that there should be a mutually 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.

On this reasoning the joint and several accounts operated by two or more persons cannot be adjusted against the individual deposit of one of them. It is not open to the bank to claim the deposit of one partner made on his separate account in order to utilise other deposit against the debt due from the firm. In other words partnership deposits cannot be applied to the individual indebtedness of one of the partners."

22. Ergo, in light of the aforementioned discussion, since the petitioner had cleared the outstanding balance in the home loan account where he had pledged the titled deeds of the purported land as security; the Bank has no right whatsoever either under its bye-laws or any guidelines under Section 171 of the Contract Act to retain the title deeds of the petitioner. The retention of the title deeds of the petitioner by the Bank was without any authority of law and is arbitrary. Hence, the impugned notice dated 05.08.2023 is liable to be quashed and accordingly, quashed.

IV. CONCLUSION:

23. In view of the findings arrived at by this Court, the Writ Petition filed by the Petitioner stands allowed and the Opposite Party/Bank is directed to return the documents within one month in respect of the properties belonging to the Petitioner which were given as security by way of deposit of title deeds in respect of the aforementioned loan account.
24. The Writ Petition is disposed of being allowed.

*Orissa High Court, Cuttack,
Dated the 28th March, 2024/*



*(Dr. S.K. Panigrahi)
Judge*