(2025) 11 KL CK 1879

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34654 Of 2025

Agi Kumar S APPELLANT

Vs

Divisional Manager & Assistant General Manager, Canara Bank RESPONDENT

Date of Decision : 14-11-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 21, 141, 226
Civil Procedure Code, 1908 — Section 60, 60(1A), 60(1)(i)
Contract Act, 1872 — Section 128, 171
Sale of Goods Act, 1930 — Section 2(7)
Recovery of Debts and Bankruptcy Act, 1993 — Section 29
Kerala Revenue Recovery Act, 1968 — Section 80

Citation : (2025) 11 KL CK 1879

Hon'ble Judges : M.A.Abdul Hakhim, J

Bench : Single Bench

Advocate : M.P.Shameem Ahamed, Ahamed Iqbal, P.Paulochan Antony, G.Viswanathan, Sreejith K., S.Nikhil Sankar, Aswni M.P.

Final Decision : Allowed

Judgement

M.A.Abdul Hakhim, J

1. There are three Petitioners in this Writ Petition. Petitioner Nos.2 and 3 are the daughter and the wife of Petitioner No.1. The Respondent No.1 is the Palakkad Divisional Manager & Assistant General Manager, Respondent No.2 is the Senior Manager of the Kanjikode Specialised SME Branch, and Respondent No.3 is the Palakkad Sultanpet Branch Manager of Canara Bank. The Respondent No.4 is the Banking Ombudsman.

2. Petitioner No.1 has been working as a Senior Technical Assistant with Fluid Control Research Institute, which is a Central Government undertaking. The Petitioner No.2 has been running a proprietorship by the name 'A & A Cartons', which is engaged in the manufacturing of corrugated carton boxes. The Petitioner No.1 has been maintaining his Salary Account with the Respondent No.3 Branch

of Canara Bank. The Petitioner No.2 availed a loan of Rs.40.54 Lakhs under Prime Minister's Employment Generation Scheme (PMEG Scheme) from the Respondent No.2 Branch of Canara Bank on 19.08.2023, which is repayable in 84 months. The Petitioner Nos.1 and 3 stood as guarantors to the said loan. Petitioner No.1 furnished his property, in which the Unit of Petitioner No.2 has been functioning, as collateral security for the loan.

3. The case of the Petitioners is that the Petitioners were compelled to default on the loan repayments on account of the delay on the part of the Respondent No.2 to apply for Margin Money subsidy of 35% of the project cost from the Khadi and Village Industries Commission. The Respondents initiated SARFAESI proceedings against the Petitioners and the Petitioner No.2 has challenged the same before the Debt Recovery Tribunal, Ernakulam, by filing S.A. No.484/2025, and the same has been pending. The Respondent/Bank attached the Salary Account of the Petitioner No.1, when the loan amount was sufficiently secured by collateral security. The prayer in this writ petition is for a direction to the Respondent No.1 to release the attachment/lien over the Salary Account No.116701017447 of the Petitioner No.1 maintained with the Respondent No.3.

2. The Respondent Nos.1 to 3 have filed Counter Affidavit opposing the prayers in the Writ Petition, mainly contending that the Respondents are entitled to attach the account of the Petitioner No.1, who is a guarantor to the loan availed by Petitioner No.2, who undertook to indemnify the Respondent No.1 against all losses and further covenanted to pay and satisfy on demand the general balance due from the Petitioner No.2/Borrower and that the Respondent No.1 is having a general lien for the general balance of account under Section 171 of the Indian Contract Act, 1872, and the Respondents have only invoked the said general lien by attaching the Salary Account of the Petitioner No.1.

3. I heard the learned Counsel for the Petitioners, Sri. M.P. Shameem Ahamed, and the learned Standing Counsel for the Respondents, Sri. Poulochan Antony.

4. Learned Counsel for the Petitioner contended that Section 171 of the Contract Act provides a general lien only over any goods bailed to the banker for a general balance of account. Section 2(7) of the Sale of Goods Act, 1930, defines 'goods' as every kind of movable property other than actionable claims and money. Hence, the Respondent/Bank does not have the right to exercise its lien over the money lying in the Salary Account of the Petitioner No.1. The loan availed by the Petitioner No.2 is sufficiently secured by the valuable property belonging to the Petitioner No.1 and the Respondent/Bank is entitled to proceed against the said collateral security for realisation of the loan amount in case of default. Only if the collateral security is not sufficient to satisfy the loan arrears, the Respondent/Bank is entitled to proceed against Petitioner Nos.1 and 3 who are the guarantors to the loan availed by Petitioner No.2. In the case of recovery from salary, the same could be done only after adjudication of the liability and that too only within the limit prescribed under Section 60 of the Civil Procedure Code, 1908. The attachment of the Salary Account of the Petitioner No.1 in effect amounts to

the attachment of the entire amount of salary credited in the account of the Petitioner No.1, which is clearly impermissible in law. Such attachment is violative of Articles 14 and 21 of the Constitution of India. The Respondent/Bank did not issue any prior notice before attaching the Salary Account of the Petitioner No.1. If the Salary Account of the Petitioner No.1 is allowed to remain under attachment, the Petitioners will not be able to survive. Learned Counsel relied on the decision of the Chhattisgarh High Court in Dr. Achinto Chakraborty v. Chairman and Managing Director, State Bank of India and Others [Writ Petition (Art.227) No.375/2017] in which it is held that it is quite vivid that the money deposited by a person to the bank does not constitute a case of bailment and Section 171 of the Contract Act would not be applicable and as such, the banker's right of lien would not be applicable in the case of deposit of money by the customer with the Bank, after entering a finding that 'any goods' means that the article has to be a tangible movable article; that the Sale of Goods Act defines 'goods' under Section 2(7) to mean any kind of movable property other than actionable claims and money; that for the operation of Section 171 of the Contract Act, the deposits made in the bank accounts cannot be treated as goods and the right of the banker as lien over the deposit is not applicable; that the principle of bailment shall not apply in a case where a customer has deposited his money in the account to a bank and the bank promises to pay back the same upon demand with interest or under any term as it may exist. Learned Counsel cited the decision of the Andhra Pradesh High Court in Arevarapu Indira v. Indian Overseas Bank and Others [2021 Supreme (AP) 904], in which the Court permitted the operation of the bank account of the Petitioner therein, rejecting the claim of lien over pension amounts.

5. Per contra, the learned Counsel for the Respondent/Bank contended that the Writ Petition itself is not maintainable since the issue raised is a purely private contractual dispute between the bank, borrower, and guarantor. The learned Counsel cited the decision of the Hon’ble Supreme Court in ABL International Limited v. Export Credit Guarantee Corporation of India and Others [(2004) 3 SCC 553] to substantiate the point that the Writ Petition under Article 226 of the Constitution is not maintainable to enforce a contractual obligation by an aggrieved party. It is well settled that bankers’ lien provided under Section 171 of the Contract Act could be exercised in respect of the deposit of money of the borrower or guarantor available with the bank. Learned Counsel cited the decision of this Court in Santhakumary Amma P. v. Indian Oversees Bank [2023 (7) KHC 440] in which it is held that a combined reading of Section 128 and Section 171 of the Contract Act makes it clear that the general balance of account would take in the liability due towards a loan account of which a person is a guarantor inasmuch as Section 128 provides that the liability of the surety is co-extensive with that of the principal debtor. The bank has the right to set off the amounts in deposit against the liability of the borrower or guarantor. Learned Counsel cited the decision of the Hon'ble Supreme Court in Syndicate Bank v. Vijay Kumar and Others [(1992) 2 SCC 330] in support of his contention.

Learned Counsel contended that procedural law cannot override substantive law. The right of lien available to the banker under Section 171 of the Contract Act could not be curtailed by Section 60 C.P.C. Learned Counsel invited my attention to Sub-Section (1A) of Section 60 C.P.C., which provides that an agreement by which a person agrees to waive the benefit of any exemption under the Section shall be void, and contended that the said provision does not cover statutory waiver. Section 171 of the Contract Act is a statutory waiver to the provision contained in Section 60 C.P.C. Learned Counsel cited the decision of this Court in Lakshmi v. State Bank of Travancore [1987 KHC 230] to substantiate the point that Section 60(1A) C.P.C. does not apply to mortgage decrees and the question of waiver could arise only in the context of attachment and sale in execution of a decree. As per Section 128 of the Contract Act, the liability of the guarantor is co-extensive with that of the principal debtor, and hence a guarantor cannot dictate or claim that he shall be proceeded against only after proceeding against the principal debtor. The Respondent/Bank has not recovered any money from the Salary Account of the Petitioner No.1. The Respondent/Bank has exercised only the right of lien over the Salary Account of the Petitioner No.1 in order to enable the Respondent/Bank to secure recovery of the loan amount due from the Petitioners. The decision of the Hon'ble Supreme Court in Syndicate Bank (supra) holds the field, and hence, the decision of the Chhattisgarh High Court in Dr. Achinto Chakraborty (supra) is liable to be ignored.

6. I have considered the rival contentions.

7. The first question to be considered in this writ petition is whether the Respondent/Bank has the right to exercise its lien over the money in the Salary Account of the Petitioner No.1. It is an admitted fact that the Petitioner No.1 is a guarantor to the loan availed by the Petitioner No.2 and that the Petitioner No.1 has furnished his immovable property as collateral security for the loan. There could not be any dispute that the liability of the Petitioner No.1/guarantor is co-extensive with that of the Petitioner No.2/Principal Debtor. The Respondent/Bank can exercise a general lien under Section 171 of the Contract Act for a general balance of account on any goods in the possession of the Respondent/Bank belonging to Petitioner No.1. The banker’s general lien is a common law principle. The common law principle of general lien got statutory recognition under Section 171 of the Indian Contract Act, 1872. When a common law principle is embodied in a statute, the principle has to be interpreted with reference to the statutory provision and not with reference to the common law principle. Of course, the Court can seek aid from the common law to understand the principle. Section 171 of the Contract Act says that the lien is available only to the goods bailed. Going by the definition of ‘goods’ under the Sale of Goods Act, 1930, money will not come under the definition of goods. If money does not come under the definition of goods mentioned under Section 171 of the Contract Act, the Respondent/Bank cannot enforce lien against the money in the Salary Account of Petitioner No.1. In the decision of the High Court of Chhattisgarh in Dr. Achinto Chakraborty (supra) cited by the Counsel for the Petitioner, though the decision

of the Hon’ble Supreme Court in Syndicate Bank (supra) is referred to, the applicability of the principle laid down in the decision is not seen discussed. In Syndicate Bank (supra), the Hon’ble Supreme Court did not consider Section 171 of the Indian Contract Act while addressing the banker’s general lien but considered the common law principle of banker’s general lien with reference to English decisions and Texts. The Hon’ble Supreme Court held that applying these principles to the case before it, undoubtedly the appellant - Bank has a lien over the two Fixed Deposit Receipts and that 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. Even if Section 171 of the Contract Act is not considered, the law declared by the Hon’ble Supreme Court is a binding precedent in view of Article 141 of the Constitution of India. As rightly contended by the learned Standing Counsel for the Respondent/Bank, the decision of the Hon'ble Supreme Court in Syndicate Bank (supra) holds the field. In view of the decision of the Hon'ble Supreme Court in Syndicate Bank (supra), I hold that the Respondent/Bank is entitled to exercise its right of lien available under Section 171 of the Indian Contract Act with respect to the money lying in the Salary Account of the Petitioner No.1.

8. The next question to be considered is, whether it is permissible for the Respondent/Bank to attach the entire amount of money standing in the Salary Account of the Petitioner No.1. The contention of the learned Standing Counsel for the Respondent/Bank is that the attachment is made to enable the Bank to recover the said amount standing in the Salary Account of the Petitioner No.1. Since the Salary Account of the Petitioner No.1 is attached, the Petitioner No.1 will not be able to withdraw any part of his salary from his account. It is, in effect, an attachment over the entire salary of the Petitioner No.1 credited to the account every month. The Bank has no right to invoke its right of lien under Section 171 of the Contract Act, making the borrower/guarantor penniless by snatching away his entire salary. It was not in the contemplation of the parties that the entire salary of the borrower/guarantor would be taken away by the Bank in case of default in repayment of the loan, without enforcing the collateral security given to the Bank. The action of the Respondent/Bank is in violation of the fundamental right of the Petitioner No.1 to earn his livelihood, which is integral to the dignity of an individual. I am of the view that the attachment of the entire salary of the Petitioner No.1 in order to enable the Respondent/Bank to secure recovery of the loan amount from it is plainly illegal and unreasonable and amounts to negation of the fundamental rights guaranteed under Articles 14, 19(1)(g), and 21 of the Constitution of India, especially when the Respondent/ Bank is having collateral security for the loan and the Bank does not have a case that it is insufficient to recover the loan arrears. When fundamental rights of the Petitioner No.1 are violated by the action of the Respondent/Bank, Writ Petition under Article 226 of the Constitution of India is perfectly maintainable to challenge the said action.

9. This leads me to the next question as to how much of the portion of the salary should be allowed to be attached by the Respondent/Bank for securing the recovery of the loan amount in the exercise of the right of lien under Section 171 of the Contract Act.

10. The banks have several modes to recover the defaulted loan amount from the borrowers and guarantors. The doctrine of election is also not applicable to the banks. If the claim is within the limits of the jurisdiction of the Civil Courts, Section 60 C.P.C. is applicable, and in such case, the Bank will be able to attach the salary only within the limit and period permitted therein for recovery of the loan. It is useful to extract Section 60(1)(i) of the Code of Civil Procedure hereunder.

"(i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree."

11.If the claim comes within the jurisdiction of the Debt Recovery Tribunal, the recovery proceedings are subject to Rule 10(1) of the Second Schedule of the Income-Tax Act, 1961, which is made applicable as per Section 29 of the Recovery of Debts and Bankruptcy Act, 1993. It is useful to extract Rule 10(1) of the Second Schedule of the Income-Tax Act hereunder.

"10. Property exempt from attachment.— (1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a Civil Court shall be exempt from attachment and sale under this Schedule'"

12.If it is permissible for the bank to recover the loan through revenue recovery proceedings under the Kerala Revenue Recovery Act, 1968, the recovery is subject to Section 80. It is useful to extract Section 80 of the Kerala Revenue Recovery Act, 1968, hereunder.

"80. Attachment of salaries and debts of defaulters.— The salaries or allowances and debts due to a defaulter may be attached and realised for the recovery from him of any arrear of public revenue due on land, in the manner and to the extent provided for attachment and realisation of debts and salaries in the Code of Civil Procedure, 1908 (Central Act 5 of 1908)."

13. Under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the proceedings could be initiated by the bank only against the secured asset for recovery, and hence, the question of

attachment of salary does not arise.

14. The aforesaid provisions of law make it abundantly clear that in all the modes of recovery available to the bank, the bank can recover salary only to the extent and for the period permitted as per Section 60(1)(i) C.P.C. The limits and period of salary attachment are prescribed under Section 60(1)(i) C.P.C. with the worthy object of ensuring the survival of the judgment debtors. Section 171 of the Contract Act embodied the principle of the banker’s general lien to ensure the survival of the banking system. While ensuring the survival of the banking system, the survival of the loanees is also to be ensured. By exercising the right of lien under Section 171 of the Contract Act with respect to salary, banks should not be allowed to bypass and defeat Section 60(1)(i) C.P.C. Justice would survive only if I hold that the right of lien of the banks under Section 171 of the Indian Contract Act, 1872, is subject to the limit and the period permitted under Section 60(1)(i) of the Code of Civil Procedure when the lien is exercised with respect to the salary amount lying in the account of the borrower or guarantor and that any attachment in excess of the permissible limit and period in violation of Section 60(1)(i) is illegal and unsustainable. I hold so.

15. In view of the aforesaid findings, I allow this Writ Petition, in part, directing the Respondents Nos.1 to 3 to permit the Petitioner No.1 to operate his above-mentioned Salary Account forthwith, limiting the lien of the Respondent/Bank over the salary of the Petitioner No.1 to the extent and to the period permissible under Section 60(1)(i) of the Code of Civil Procedure. I make it clear that the direction in this judgment will not be applicable if amounts other than salary belonging to the Petitioner No.1 are credited in his account.