(2019) 07 CAL CK 0080

In the Calcutta High Court

Case No : Writ Petition (WP) No. 12126 (W) Of 2019

Mohan Insurance And Financial Consultancy Private Limited & Another — APPELLANT

Vs

HDFC Bank Limited & Ors — RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:
Banking Regulation Act, 1949 — Section 5(c), 5(c)(a), 7
Indian Contract Act, 1872 — Section 148, 170, 171
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 CAL CK 0080

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Joy Saha, Arif Ali, Supriyo Singh, Tilok Bose, Ratnesh Rai, Siddhartha Banerjee, Anumoy Basu, A. Rai

Final Decision : Dismissed

Judgement

Debangsu Basak, J

The petitioners have sought a direction upon HDFC Bank Limited to unblock a current account maintained by the first petitioner with the Bank.

Learned Senior Advocate appearing for the petitioners has submitted that, the petitioners are not borrowers of the first respondent. They neither are

guarantors to the first respondent. No amount is due and payable by the petitioners to the first respondent.

The first respondent could not have blocked the current account of the first petitioner. Such action of the first respondent is arbitrary, illegal, without

any basis and should be quashed. Relying upon Sections 5(c) and 7 of the Banking Regulation Act, 1949 and All India Reporter 2019 Calcutta page 33

(Penguin Agro Products Pvt. Ltd. & Anr. v. Union of India & Ors.) learned Senior

Advocate appearing for the petitioner has submitted that, the

present writ petition is maintainable. He has relied upon Sections 148 and 171 of the Contract Act, 1872 and submitted that, unless, the first petitioner

bailed the goods in favour of the first respondent, which the petitioners did not do in the facts of the present case, the first respondent cannot exercise

the so-called bankerâ??s lien or any right of lien over the account of the first petitioner maintained with the first respondent. He has submitted that,

where, the first respondent has a policy which is contrary to law then, Constitutional Courts are entitled to enter into such arena and grant appropriate

relief. In this case, the action of the first respondent is contrary to law.

Relying upon Penguin Agro Products Pvt. Ltd. & Anr. (supra) learned Senior Advocate appearing for the petitioners has submitted that, Penguin

Agro Products Pvt. Ltd. & Anr. (supra) relied upon 2003 Volume 10 Supreme Court Cases page 733 (Federal Bank Limited v. Sagar Thomas &

Ors.). He has submitted that, Federal Bank Limited (supra) as well as Penguin Agro Products Pvt. Ltd. & Anr. (supra) do not say that, no writ

petition against a Bank is maintainable. In the facts of the present case, according to him, a writ Court should intervene.

Learned Senior Advocate appearing for the first and the second respondents has submitted that, the first petitioner maintains a current account with

the first respondent. The first respondent lent and advanced credit facilities to Mohan Motor Distributors Pvt. Ltd. There is common share holding and

directors between such entity and the first petitioner. The account of Mohan Motor Distributors Pvt. Ltd. with the first respondent became a non-

performing asset (NPA). The first respondent found that, Mohan Motor Distributors Pvt. Ltd. deposited a sum of Rs. 15,15,000/- in the account of the

first petitioner. According to him, such deposit is an attempt to siphon out funds of the NPA account to the first petitioner. The fact that, Mohan Motor

Distributors Pvt. Ltd. and the first petitioners are sister concerns cannot be disputed. Apart from bankerâ??s lien, the first respondent exercised the

right of tracing the money. The loan granted by the first respondent to Mohan Motor Distributors Pvt. Ltd. stood siphoned to the current account

maintained by the first petitioner with the first respondent. Therefore, the action taken by the first respondent in blocking the current account of the

first petitioner maintained with the first respondent cannot be questioned.

Learned Senior Advocate appearing for the first and second respondents has questioned the maintainability of the writ petition relying upon Penguin

Agro Products Pvt. Ltd. & Anr. (supra) and Federal Bank Limited (supra). He has relied upon 2019 SCC Online Cal page 282 (Star Battery Limited

& Anr. v. State Bank of India & Ors.) and submitted that, provisions of Section 171 of the Contract Act, 1872 was gone into and the question of

exercise of bankerâ??s lien was decided in the context of lifting or piercing of a corporate veil. In a given case, corporate veil can be lifted. He has

submitted that, in the facts of the present case the writ petition should be dismissed.

The first petitioner claims itself to be a company within the meaning of the Companies Act, 2013. It maintains a current bank account with the first

respondent. Such current account was blocked by the first respondent. The petitioners approached the first respondent about such blocking and

ultimately was informed by the first respondent that, the blocking was due to overdue inventory funding in the accounts of Mohan Motors Group. The

statement of the account of the current account of the first petitioner, maintained with the first respondent, shows a credit entry of a sum of Rs.

15,66,324.73 made by Mohan Motor Distributors Pvt. Ltd. The fact that, account of Mohan Motor Distributors Pvt. Ltd. maintained with the first

respondent is a NPA is not disputed. The other fact that, Mohan Motor Distributors Pvt. Ltd. and the first petitioner are sister concerns with the two

legal entities having common shareholders and directors are not disputed.

Section 5(c) of the Banking Regulation Act, 1949 defines a banking company. Section 5(c) of the Act of 1949 is as follows:-

â??5.(c) â??banking companyâ?? means any company which transacts the business of banking (in India);â??

Section 7 of the Act of 1949 prescribes the limitation on the user of the words Bank, Banker, Banking or Banking Company. It lays down the

parameters when such words can be used.

Section 148 of the Contract Act, 1872 defines bailment, bailor and bailee. Section 171 of the Act of 1872 lays down the right of lien of bankerâ??s,

factors, wharfingers, attorneys and policy brokers.

Sections 148 and 171 of the Act of 1872 are as follows:-

â??148. â??Bailmentâ??, â??bailorâ?? and â??baileeâ?? defined.â?"A â??

bailmentâ?? is the delivery of goods by one person to another for some

purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the

person delivering them. The person delivering the goods is called the â?? bailorâ??. The person to whom they are delivered is called the

â??baileeâ??.

171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.â?"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.â??

The first respondent is a banking company. It is governed by the Act of 1949 amongst others. Whether the fact that, the first respondent is governed

by the Act of 1949 makes the first respondent amenable to a writ jurisdiction in respect of every activity that the first respondent undertakes, was

discussed in Federal Bank Limited (supra). Federal Bank Limited (supra) has noticed that, there are a number of companies carrying on the

profession of banking. It has held that, any business or commercial activity, may be banking, manufacturing units or related to any other kind of

business generating resources, employment, production and resulting in circulation of money no doubt, are such which do have impact on the economy

of the country in general. But such activities cannot be classified as one falling in the category of discharging duties, functions of public nature. It has

held as follows:-

â??32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or

sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does

not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These

are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these

provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted

norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party

whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution

or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become

necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon

it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory

provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any

such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action

being taken against its employee by the appellant Bank. The respondent's service with the bank stands terminated. The action of the Bank was

challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any

statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.â??

Federal Bank Limited (supra) was applied and followed in Penguin Agro Products Pvt. Ltd. & Anr. (supra). In the facts of that case, an action of a

private bank in freezing an account maintained by the writ petitioner was under challenge. In such context, the writ petition was found to be not

maintainable applying the ratio laid down in Federal Bank Limited (supra). It has also noticed a Division Bench of this Honâ??ble Court on the

subject reported at 2007 Volume 4 Calcutta High Court Notes page 369 (Standard Chartered Bank v. Standard Chartered Bank Pensionerâ??s

Association & Ors.). It has held as follows :-

â??So far as the maintainability of the writ petition is concerned, Federal Bank Ltd. (AIR 2003 SC 4325) (supra) is of the view that, a company incorporated under the Companies Act, 1956 is not amenable to a writ jurisdiction simpliciter on the ground that it has to comply with guidelines issued

under the Act of 1956. Similarly a banking company merely because, it has to follow the banking policy of the Reserve Bank of India or act in

accordance with the regulations formulated under the Banking Regulation Act is not amenable to the writ jurisdiction. However, a banking company is

amenable to the writ jurisdiction, if it is found that, it is discharging any public function or that it is necessary to compel such bank to enforce any

statutory obligation or such obligations which are of public nature casting positive obligations upon it. Applying the ratio laid down in Federal Bank Ltd.

(supra) the Division Bench of our Court in Standard Chartered Bank Pensioner's Association & Ors. (supra) found that, in the facts of that case that,

the writ petition was not maintainable. It found that, the writ petitioner was wanting to enforce a contractual settlement. The remedy of filing a suit

was found to be available to the petitioners therein.â??

The facts scenario obtaining in the present case is similar to that of Penguin Agro Products Pvt. Ltd. & Anr. (supra). There also, an action of freezing

of the bank account by a private banking company was under challenge as is here. In view of Federal Bank Limited (supra) and Penguin Agro

Products Pvt. Ltd. & Anr. (supra), the present writ petition is held to be not maintainable. The transactions between the first petitioner and the first

respondent are commercial in nature. Private rights, if any, stands affected by the decision of the first respondent in blocking or freezing the account

of the first petitioner maintained with the first respondent, such an action cannot be called into question under Article 226 of the Constitution of India.

Section 148 of the Contract Act, 1872 defines bailment, bailor and bailee. Section 171 of the Act of 1872 recognises the right of lien of a banker.

A lien is understood to be a right by which a person coming into lawful possession of a property of another is entitled to withhold possession of such

property towards repayment of the dues of the second person to the first person. Lien can be consensual, statutory or created by an order of a Court.

Contract Act, 1872 codifies consensual lien. The Act of 1872 recognises a baileeâ??s particular lien in Section 170, general lien of bankers, factors,

wharfingers, attorneys and policy brokers in Section 171 and an agentâ??s right to retain sums received on principalâ??s account. The right of lien exercised is however subject to the decision of the Court in a suit for accounts, if the parties litigate on the exercise of the right of lien. Section 148 of

the Act of 1872 defines bailment. A â??bailmentâ?? is the delivery of goods by one person to another for some purpose, upon a contract that they

shall, when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. Bailor is the

person delivering the goods. Bailee is the person to whom the goods are delivered. Section 170 of the Act of 1872 recognises the right of lien of a

bailee. The right of lien is limited to the particular goods bailed to the bailee and arise from service rendered by the bailee in exercise of labour or skill

in respect of the goods bailed. The bailee can retain the goods bailed till he is paid due remuneration for the services rendered for the goods bailed.

The parties to the contract of bailment, however, can contract out of the right of lien of the bailee. Section 171 of the Act of 1872 enlarges the scope

of right of lien for the bankers, factors, wharfingers, attorneys and policy broker. This specified class of persons is recognised to have a right of lien

not only on the particular goods bailed but anything coming to their possession lawfully belonging to the bailor, unless there is a contract to the

contrary. A banker, therefore, can exercise a right of lien over sums coming into their lawful possession even though they may not form part of the

security created by the person affected.

Section 171 of the Act of 1872 has been considered in Star Battery Limited & Anr. (supra). In the facts of that case, the bank exercised right of lien

over a fixed deposit standing in the name of the writ petitioner for dues owing to the Bank by a company which was an associate company of the writ

petitioner and where, the father of the second writ petitioner was a director of the defaulting company. In such factual background it has been held

that, the bank correctly exercised its right of bankerâ??s lien over the subject fixed deposit.

A company is a juristic entity. Its liability is separate and distinct from that of the persons in its management and control. However, this principle is

subject to an exception that, the corporate veil, which permits segregation of liability between the juristic entity and the persons in its management, can

be lifted or pierced in a given case. If the company is guilty of fraud, then, the corporate veil can be lifted. If, the company defrauds the revenue, the corporate veil can be lifted. Largely, if, the corporate veil is misutilized for the purpose of making illegal gains then, in a given circumstance, the

corporate veil can be lifted. In the present case, the persons in control and management of the petitioner are in control and management of another

company whose account was declared as NPA by the Bank. The other company deposited a cheque in the account of the petitioner maintained with

the bank. The bank considered such deposit to be made to defraud the bank so far as the other company is concerned. According to the bank the

deposit is an attempt to siphon of the funds of the other company into the petitioner. According to the bank, the corporate veil is being misutilized for

the purpose of perpetuating such misdeed. The misdeed is of trying to siphon of funds of the other company so as to make it unavailable for the

purpose of realisation of the claim of the bank against the other company. In such circumstances, in my view, the corporate veil can be lifted. Once

the corporate veil is lifted, then the persons in the management and control of both the juristic entities are the same. In such a case, the bank has

essentially a right of lien under Section 171 of the Contract Act, 1872 in respect of the same natural persons. In the facts of the present case, bank

cannot be faulted for doing so.

In the facts of the present case, the decision to block the current account of the first petitioner maintained with first respondent cannot be said to be

arbitrary or illegal.

W.P. No. 12126 (W) of 2019 is dismissed. No order as to costs.

Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.