

(2011) 11 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 24808 of 2011

Mr. V. Srinadha Reddy

APPELLANT

Vs

The Branch Manager, Indian Bank, Chintaparthi Branch,
Chittoor District and another

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Contract Act, 1872 — Section 171

Citation : (2011) 11 AP CK 0024

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : Ch. Siva Reddy, for the Appellant; Ambapudi Satyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar

1. The writ petitioner seeks a Mandamus against the respondent - bank, which in effect amounts to seeking declaration that the "banker's lien" exercised by the bank over the gold and jewellery of the petitioner is illegal and arbitrary and seeks a consequential direction to the respondent - bank to return/release the gold ornaments.

2. Both the learned counsel have advanced detailed arguments in support of their respective case and have cited number of decisions. While the petitioner has placed strong reliance upon a decision of the learned single Judge of this Court in K. Jagdishwar Reddy v. Manager, Andhra Bank 1988 (1) ALT 605 the learned counsel for the respondent - bank has placed reliance upon the decision of the Supreme Court in Syndicate Bank v. Vijay Kumar (1992) 2 SCC 330 . While the decision cited by the learned counsel for the petitioner, undoubtedly, supports his case, there are several later judgments, which are referred to hereunder, which would show that the aforesaid decision in JAGDISHWAR

REDDY's case (1 supra) cited was not accepted as the correct legal position. It is, therefore, necessary to set out, as hereunder, the brief facts to appreciate the legal position.

BRIEF FACTS:

3. Petitioner states that he has availed a gold loan for Rs.5,17,000/-on 16.10.2010 from the respondent - bank by pledging gold jewellery against the said account. Petitioner states that he has paid back the entire amount with interest on 12.05.2011 and in view of the said loan amount having been cleared, petitioner sought return of the gold jewellery but the respondent - bank, it is alleged, has declined to return the same on the ground that petitioner stood as guarantor for the loan availed by one K. Keshava Reddy of Chintaparty village and respondent - bank claims that in order to recover the amount from the borrower in the said loan account, the gold jewellery of the petitioner (as guarantor to the loan account of Keshava Reddy) is withheld by the bank.

4. It is also alleged by the petitioner that the said Keshava Reddy claims that he has paid excessive amount in the loan account and for refund of the excess amount, he has filed a case against the respondent - bank before the Debts Recovery Tribunal, Hyderabad and that the bank has many more securities and mortgages of immovable properties held by it against the loan account of Keshava Reddy. Petitioner, therefore, claims that there is no debt crystallized against him and the respondent - bank cannot retain his gold jewellery in spite of petitioner clearing the gold loan account.

5. The aforesaid case pleaded by the petitioner is contested by the respondent and it is pleaded that while sanctioning the gold loan itself, on various terms and conditions, the petitioner has agreed under clause (7) of the sanctioned terms that the bank shall have a lien on the ornaments pledged in respect of any other sums of money, which the borrower may be liable to pay to the bank either solely or jointly with other person or persons. The petitioner having stood as a guarantor to the loan facility availed by the said K. Keshava Reddy, being not in dispute, since the said borrower is liable to pay Rs.9,08,997.70 ps. to the bank, the petitioner is also liable to pay the same. The bank also pleaded that it has also filed a suit being O.S.No.41 of 2011 before the Senior Civil Judge, Piler, Chittoor District for recovery of the outstanding amount. A copy of the plaint in the said suit is annexed to the counter affidavit, which shows that a joint and several decree is sought against all the defendants, which includes the petitioner herein. The respondent - bank, therefore, justifies the exercise of its lien over the pledged gold ornaments, though the bank accepts that liability under gold loan was discharged by the petitioner.

6. The respondent - bank also accepted that the said borrower has filed proceedings before the Debts Recovery Tribunal, Hyderabad in S.A.No.236 of 2010 wherein action taken by the bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, is

stayed. To the extent of other securities available with the bank as against the other borrower - Keshava Reddy - is concerned, the bank asserts that as a creditor it has exclusive right to proceed against all or any of the securities including that of the guarantor. A copy of the gold loan application sanctioned to the petitioner is also appended to the counter affidavit in support of clause (7) thereof, which is already referred to above. In addition to that the agreement of guarantee dated 31.05.1999, for the loan advanced to K.G. Rice Mill, Proprietor A. Keshava Reddy, executed by the petitioner is also appended wherein the guarantor has undertaken jointly and severally to pay to the bank on demand all principal, interest, costs and expenses concerned due from the borrower and that the guarantee is continuing etc. The deed of guarantee also contends specific clause as though between borrower and guarantor, the guarantors agreed that they are debtors jointly with the borrower. Clause 15 of the deed of guarantee, as relied upon, is as follows:

So long as any money remains owing under this guarantee, the bank shall have a lien on all monies standing to the credit of Guarantors and on any securities or goods in the hands of the Bank belonging to the Guarantors under its control

The statement of accounts is also filed but that is not relevant and as such, no reference to it need be made.

7. The principal question, therefore, which needs resolution is whether the bank is justified in withholding the pledged gold jewellery of the petitioner by exercising it's lien over it for unpaid amount from another borrower in another loan account to which petitioner is, admittedly, a guarantor.

8. Section 171 of the Indian Contract Act, which is relevant, is as follows:

171. General line 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.

9. The decision in JAGDISHWAR REDDY's case (1 supra) relied upon by the learned counsel for the petitioner holds that in view of the words in Section 171 of the Indian Contract Act "unless there is a intention expected 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 general lien over the specified security deposit for a specified purpose. Indisputably, there is no contract offering to take the gold ornaments pawned by the petitioner as a pawn for the debt due and payable by the petitioner as a surety of another. Therefore, it is not open to the bank to claim general lien over the gold ornaments pawned by the petitioner."

10. As has been noticed in the paragraphs above, in the present case, there is an express contract to the contrary viz. clause (7) of the conditions of gold loan, which distinguishes the present case on facts, from the facts, which were considered in the decision referred to above. As noticed from the narration of facts, noted above, petitioner, in the capacity as a borrower under gold loan as well as in the capacity as a guarantor to the other loan account of K. Keshava Reddy, has expressly agreed to the banker's lien over the gold ornaments vide clause (7) of the conditions of sanction of gold loan and clause (15) of the deed of guarantee respectively, referred to above. Thus, on facts, the decision first cited does not assist the petitioner.

11. The Supreme Court in SYNDICATE BANK's case (2 supra) has laid down the legal position with regard to banker's lien and para 6 thereof would be appropriate to be noticed, which is as under:

6. In Halsbury's Laws of England, Vol.20, 2nd Edn., p.552, para 695, lien is defined as follows:

Lien is in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract.

In Chalmers on Bills of Exchange, Thirteenth Edition Page 91 the meaning of "Banker's lien" is given as follows:

A banker's lien on negotiable securities has been judicially defined as "an implied pledge. "A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer.

In Chitty on Contract, 26th Edition, p.389, para 3032 the Banker's lien is explained as under:

Extent of lien.-By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business. The custom does not extend to valuables lodged for the purpose of safe custody and may in any event be displaced by either an express contract or circumstances which show an implied agreement inconsistent with the lien...

...The lien is applicable to negotiable instruments which are remitted to the banker from the customer for the purpose of collection. When collection has been made the proceeds may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked.

(emphasis supplied)

In Paget's Law of Banking, Eighth Edition, Page 498 a passage reads as under:

THE BANKER'S LIEN

Apart from any specific security, the banker can look to his general lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognised as such.

In *Brandao v. Barnett*, (1846) 12 Cl. & Fin. 787 it was stated as under:

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.

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.

The decision *JAGDISHWAR REDDY's case* (1 supra), referred to above was based upon the decision of the Delhi High Court in *Vijay Kumar Vs. Jullundur Body Builders and others*, which was reversed by the Supreme Court in the decision *SYNDICATE BANK's case* (2 supra).

12. The legal position, referred to above, was also considered by another learned single Judge of this Court in *K. Sita Vs. Corporation Bank, East Godavari District*, and identical issue arising in that case was decided against the borrower under gold loan account holding that banker has lien u/s 171 of the Indian Contract Act over the pledged gold ornaments.

13. Another learned single Judge of this Court was also called upon to decide the similar question with regard to return of title deeds of borrower in *M/S. Mohan Enterprises v. Andhra Bank, Narsapur Branch* 2008 (1) BC 476 (WP.No.16399 of 2006 dated 22.11.2007) wherein also the banker's lien u/s 171 of the Indian Contract Act was upheld.

14. The legal position, as discussed above, coupled with the documents executed by the petitioner and particularly, clause (7) and clause (15) of the gold loan and the deed of guarantee respectively clearly disentitle the petitioner from seeking the relief prayed for in the writ petition.

15. The writ petition is accordingly dismissed. However, in the circumstances there shall be no order as to costs.