
(2023) 09 CHH CK 0013
In the Chhattisgarh High Court
Case No : Writ Appeal No.246 Of 2020

Nand Kumar Adil	Vs	APPELLANT
State Bank Of India		RESPONDENT

Date of Decision : 05-09-2023

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Transfer of Property Act, 1882 — Section 60
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2)
Indian Contract Act, 1872 — Section 148, 160, 171
Sales of Goods Act, 1930 — Section 2(7)

Citation : (2023) 09 CHH CK 0013

Hon'ble Judges : Sanjay K. Agrawal, J; Radhakishan Agrawal, J

Bench : Division Bench

Advocate : Vivek Chopda, Sharad Mishra

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This writ appeal is directed against the impugned order dated 28-8-2019 by which the appellant's writ petition being W.P.(C)No.328/2015 has been dismissed by the learned Single Judge finding no merit and in view of the fact that the appellant has right under Section 60 of the Transfer of Property Act, 1882 to file suit for redemption of the mortgaged property.

2. Challenge to the impugned order has been made by the appellant in the following factual backdrop: -

3. The writ appellant herein / writ petitioner was granted term loan by the respondent Bank and in lieu of that, the appellant had created an equitable mortgage in favour of the respondent Bank by way of deposit of his title deeds in respect of the property comprising of Khasra No.276/6, area 0.105 hectare, situate at Hathbandh, Tahsil Simga, Distt. Baloda Bazaar-Bhatapara and Khasra

No.2, area 1.316 hectares, situate at Village Kukarachunda, Tahsil Simga, Distt. Baloda Bazaar-Bhatapara, but the appellant could not repay the term loan leading to issuance of notice by the Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and possession notice / demand notice was also issued against the appellant pursuant to which on 28-11-2013, the appellant deposited the entire loan amount and the execution case levied against him was withdrawn by the respondent Bank and consequently, since the entire loan amount was paid-off by the appellant, on 29-11-2013, he requested the bank to return the original title deeds deposited by him by way of equitable mortgage, which were not returned by the respondent Bank referring to other liabilities of the appellant herein in the Neora Branch of the respondent Bank as a result of which 15 civil suits of ₹ 7,50,000/- each have been decreed with 10% interest with effect from 11-1-2012 along with cost and consequently, the appellant filed writ petition seeking writ of mandamus directing the respondent Bank to return the title deeds deposited by way of mortgage, as the entire loan amount has already been paid-off. The learned Single Judge dismissed the writ petition filed by the appellant herein holding that under Section 60 of the Transfer of Property Act, 1882, the writ petitioner / appellant has right to redeem the mortgaged property by filing appropriate suit before the civil court and in that view of the matter, the writ petitioner is not entitled for writ of mandamus as sought for against which the writ petitioner / appellant has preferred the instant writ appeal.

4. Since the writ petition was dismissed summarily and the Bank did not have an opportunity to file return, an affidavit has been filed in the writ appeal stating that though the liabilities of loan account has been paid-off by the appellant herein, but other liabilities of repayment of loan is existing in the Neora Branch and other branches of the respondent Bank amounting to ₹ 1,12,50,000/- and interest payable on the said amount along with cost as decreed by the jurisdictional civil court. In that view of the matter, the respondent Bank is within its legal right to retain the mortgaged deed as huge amount of public money is still to be recovered from the appellant and payment of the questioned amount would not create any legal right in favour of the appellant to obtain mortgaged title deeds from the respondent Bank in light of the provisions contained in Section 171 of the Indian Contract Act, 1872, as the respondent Bank has exercised Banker's lien / general lien over all the properties of the appellant as the appellant has failed to discharge his liability in respect of other 16 loans, as such, the Bank is not legally obliged to return the title deeds which were furnished as guarantee by the appellant in the term loan account and therefore the writ appeal deserves to be dismissed.

5. Mr. Vivek Chopda, learned counsel appearing for the appellant, would submit that since the term loan which had been taken by the appellant herein has already been deposited on 28-11-2013 to the satisfaction of the Bank and execution levied by the Bank has already been withdrawn, the appellant is entitled for issuance of a writ of mandamus directing the respondent Bank to

return the title deeds, as the respondent Bank is a public sector bank discharging public functions and having the status of 'State' within the meaning of Article 12 of the Constitution of India, therefore, once the loan amount is paid-off, the Bank is absolutely unjustified in not returning the title deeds in favour of the appellant. He would rely upon the decision of the Supreme Court in the matter of Zonal Manager, Central Bank of India v. Devi Ispat Limited and others (2010) 11 SCC 186 in support of his submission and further submit that the finding recorded by the learned Single Judge relegating the appellant to file suit for redemption in line with Section 60 of the Transfer of Property Act, is liable to be set aside. He would also submit that once the appellant has paid-off the entire term loan amount which he has taken by deposit of title deeds by creating equitable mortgage, the Banker's lien under Section 171 of the Indian Contract Act, 1872, cannot be exercised and the Bank is legally obliged to return the title deeds, as the provisions contained in Section 171 of the said Act would not apply. As such, the writ appeal deserves to be allowed and writ of mandamus be issued to the respondent Bank directing return of title deeds to the appellant within the stipulated time.

6. Mr. Sharad Mishra, learned counsel appearing for the respondent – State Bank of India, would submit that the learned writ court has rightly held that the writ petition as framed and filed under Article 226 of the Constitution of India is not maintainable in view of the provisions contained in Section 60 of the Transfer of Property Act, 1882, as the right of the petitioner / appellant herein is to file suit for redemption of the mortgaged property and as such, the writ petition was not maintainable and consequently, the instant writ appeal is liable to be dismissed. He would further submit that by virtue of Section 171 of the Indian Contract Act, 1872, the respondent Bank has exercised its Banker's right of lien / general lien over all the properties of the appellant, as the appellant has failed to discharge his liabilities in respect of other 16 loans and consequently, the Bank is well within its right not to return the documents relating to the properties which were furnished as guarantee by the appellant in respect of the earlier loan account. Since huge public money is still to be recovered from the appellant, the respondent Bank is absolutely justified in not returning the title deeds of the mortgaged property and therefore the writ appeal deserves to be dismissed. He would rely upon the decisions of the Supreme Court in the matters of Syndicate Bank v. Vijay Kumar and others (1992) 2 SCC 330 and Board of Trustees of the Port of Bombay and others v. Sriyanesh Knitters (1999) 7 SCC 359 to buttress his submissions.

7. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. In view of the submissions made by learned counsel for the parties, following two questions arise for consideration in this writ appeal: -

1. Whether the writ petition preferred by the appellant under Article 226 of the

Constitution of India claiming writ of mandamus directing return of title deeds after payment of the entire decretal amount, was not maintainable in light of Section 60 of the Transfer of Property Act, 1882?

2. Whether the respondent Bank is justified in retaining the title deeds of the appellant's properties after payment of the entire decretal amount, which he had taken, invoking its general power of lien as envisaged under Section 171 of the Indian Contract Act, 1872?

Answer to question No.1 – Maintainability of Writ Petition: -

9. It is not in dispute that the term loan amount which the appellant had taken in the year 2004 from the respondent Bank had already been fully paid on 28-11-2013 and consequently, the respondent Bank has withdrawn the execution so levied against the appellant and in that view, the appellant has sought writ of mandamus directing the respondent Bank to return his title deeds of the mortgaged properties from the respondent Bank which the respondent Bank has refused to return.

10. State Bank of India is a public sector bank discharging public functions as a "State" under Article 12 of the Constitution of India. It is the case of the appellant that he has paid the entire decretal amount and he is entitled for issuance of writ of mandamus directing for return of title deeds. In Zonal Manager, Central Bank of India (supra), their Lordships of the Supreme Court in identical fact- situation have held that "the appellant Bank (therein), being a public sector bank, discharging public functions is "State" under Article 12" and writ of mandamus directing for return of its title deeds would be maintainable. It was observed by their Lordships in paragraph 29 of the report pertinently as under: -

"29. In the case on hand, it is not in dispute that the appellant Bank, being a public sector bank, discharging public functions is "State" under Article 12. In view of the settlement of the dues on the date of filing of the writ petition by arrangement made through another nationalised bank, namely, State Bank of India and the statement of accounts furnished by the appellant Bank subsequent to the same i.e. on 14-5-2009 is 0.00 (nil) outstanding, we hold that the High Court was fully justified in issuing a writ of mandamus for return of its title deeds."

11. As such, in view of the principles of law laid down by their Lordships of the Supreme Court in Zonal Manager, Central Bank of India (supra), writ petition for return of title deeds against the Bank, which is "State" under Article 12 of the Constitution of India, would be maintainable and Section 60 of the Transfer of Property Act, 1882 would not bar the appellant to avail the constitutional remedy under Article 226 of the Constitution of India. Even otherwise, the appellant having cleared all the bank dues which he had taken by mortgaging the subject property, cannot be relegated to file suit for redemption as right to hold property is a constitutional right as well as human right. A person cannot be deprived of

his property except in accordance with the provisions of a statute (see *Lachman Dass v. Jagat Ram and others* (2007) 10 SCC 448 and *Narmada Bachao Andolan v. State of Madhya Pradesh and another* AIR 2011 SC 1989). Question No.1 is answered accordingly.

Answer to question No.2: -

12. In order to consider the plea raised at the Bar that the respondent Bank has exercised the right of Banker's lien provided in Section 171 of the Indian Contract Act, 1872, it would be appropriate to notice the provisions contained in Section 171 of the said Act, which states as under:-

"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."

13. The aforesaid section is in two parts. The first part gives statutory right of lien to four categories only, namely, bankers, factors, wharfingers and attorneys of High Court and policy-brokers subject to their contracting out of Section

171. The second part of Section 171 applies to persons other than the aforesaid five categories and to them Section 171 does not give a statutory right of lien. It provides that they will have no right to retain as securities goods bailed to them unless there is an express contract to that effect. Whereas in respect of the first category of persons mentioned in Section 171 the section itself enables them to retain the goods as security in the absence of a contract to the contrary but in respect of any other person to whom goods are bailed the right of retaining them as securities can be exercised only if there is an express contract to that effect. {See *Board of Trustees of the Port of Bombay* (supra), paragraph 17.}

14. Section 171 of the Indian Contract Act, 1872, has employed the expression "goods bailed to them". The word "bailment" has been defined in Section 148 of the said Act to mean 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. Section 160 of the said Act stipulates that it is the duty of the bailee to return the goods bailed, without demand, or the purpose for which they were bailed having been accomplished.

15. The word "goods" has not been defined in the Indian Contract Act, 1872. It has been defined in Section 2(7) of the Sales of Goods Act, 1930 to mean, every kind of movable property other than actionable claims and money. Section 171 of the Indian Contract Act contemplates only retention of "goods", it has to be seen whether the title deeds of the appellant herein / writ petitioner can be deemed as

"goods" as defined under Section 2(7) of the Sales 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. As held by the Supreme Court in the matter of R.D. Saxena v. Balram Prasad Sharma (2000) 7 SCC 264, thus understood "goods" to fall within the purview of Section 171 of the Contract Act should have marketability and the person to whom it is bailed should be in a position to dispose it of in consideration of money. In other words the goods referred to in Section 171 of the Contract Act are saleable goods.

16. In the instant case, the appellant has deposited title deeds with the respondent Bank as security for a particular term loan and in our considered opinion, since title deeds have been deposited to the Bank as security for loan that has been borrowed by the appellant, in other words, the respondent Bank had lent money to the appellant for specific purpose and specific amount, it cannot be disputed that the property in question was bailed out to the respondent Bank by the appellant at any point of time.

17. The term "Banker's Lien" has been defined by Halsbury's Laws of England, 2nd Edn, vol 20, p 552, para 695, as under: -

"Lien 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."

18. In the matter of George Henry Chambers v. Patrick Davidson L.R. 1 PC 296, while discussing on the aspect regarding lien by the banks, Lord Westbury, observed as hereunder: -

"But lien is not the result of an express contract, it is given by implication of law. If, therefore, a mercantile relation, which might involve a lien, is created by a written contract, and security given for the result of the dealings in that relation, the express stipulation and agreement of the parties for security exclude lien, and limits their rights by the extent of the express contract that they have made. Expressum facit cessare tacitum. If a consignee takes an express security, it excludes general lien."

19. In order that the general lien may be excluded by a special agreement, whether express or implied from the circumstances, the agreement must be clearly inconsistent with the existence of such a lien. Where the contract between a borrower and his bank specifically showed that the property was given as security only for a particular transaction, the bank could not hold it as security for repayment of another loan.

20. In the matter of Brandao v. Barnett [1843-60] All ER Rep 719, it was stated as under: (All ER p 722-H) "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.”

21. Bearing in mind the provisions contained in Section 171 of the Contract Act and the principles of law laid down by their Lordships of the Supreme Court in the above-stated judgments, the respondent Bank has a statutory right of lien in absence of contract to the contrary, retain as a security for general balance of account, any goods bailed to them. Now, the questions for consideration would be, whether there is any “Contract to the Contrary”, which prevents the respondent Bank from exercising their general power of lien and as to whether any goods were bailed to them under Section 171 of the Contract Act? The appellant herein has deposited his title deeds by way of equitable mortgage to the Bank to take term loan in his account as such, it was for specific term loan transaction. No other document has been brought on record to demonstrate that the appellant had given any authorisation to the Bank to hold the title deeds of the mortgaged property given as security to serve some other loan(s).

22. In Chitty on Contracts, 29th Edition (2004) – Volume-II, Page 496 on Banker’s Lien, it is stated as follows: -

“... 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.”

23. In the present case, the appellant herein / borrower has admittedly deposited his title deeds in favour of the respondent Bank to secure the term loan in the year 2004 and this is the undisputed fact. As such, a contract/mortgage has been created by the appellant / borrower for specific purpose and for specific term loan and in other words, deposit of title deeds by way of mortgage was for specific purpose to cover an advance for specific term loan and when the appellant has deposited the title deeds for a specific transaction of loan, the respondent Bank cannot be allowed to contend that they are entitled to hold the title deeds of the appellant for other loan amounts which he had taken and more particularly, by virtue of Section 171 of the Contract Act, the bankers are entitled to retain as security “for general balance account”, which is not the case of the respondent Bank herein. Accordingly, it is held that there was a specific contract / agreement between the appellant and the respondent Bank and the appellant deposited the title deeds by way of mortgage to secure a particular term loan, which he had already paid and the Bank has withdrawn the execution case and therefore this “mortgage” has to be construed as “Contract to the Contrary” and as such, the respondent Bank cannot claim title deeds of the appellant by invoking the power of general lien under Section 171 of the Indian Contract Act, 1872. The respondent Bank is absolutely unjustified in exercising the general power of lien over the properties of the appellant under Section 171

of the Contract Act.

24. At this stage, the decision relied upon by Mr. Mishra, learned counsel for the respondent Bank, in *Syndicate Bank (supra)* may be noticed herein in which it has been contended that the Bank was justified in exercising the general power of lien under Section 171 of the Contract Act to retain the subject property even after the term loan was paid.

25. In *Syndicate Bank (supra)*, their Lordships of the Supreme Court while considering the meaning of the expression "Banker's lien" in legal terminology and the manner in which the same is understood and exercised in the banking system, observed as under in paragraph 6: -

"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."

26. It is to be noticed that the borrower therein issued a letter in favour of the Bank stating that the Bank is at liberty to adjust from the fixed deposit receipts without any reference to 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, their Lordships while interpreting such a letter covering the transaction executed by the borrower therein, rendered a finding that the Bank therein is entitled to general lien over the fixed deposit receipts given by the borrower therein. As such, the above-stated judgment in *Syndicate Bank (supra)*, upon which reliance has been placed by the learned counsel for the respondent Bank, does not support the case of the respondent Bank herein.

27. Accordingly, the question is answered in favour of the appellant and against the respondent holding that the respondent Bank has no general power of lien to retain the title deeds of the appellant for non-payment of other dues which the appellant had allegedly taken. The second question is answered accordingly.

28. While granting this writ appeal holding that the Bank has no general power of lien under Section 171 of the Contract Act to retain the property in question after the subject loan was repaid, we are not unoblivious of the scope of interference in banking machinery highlighted by the Supreme Court in the matter of *United Commercial Bank v. Bank of India and others* (1981) 2 SCC 766 in which their

Lordships referred to a passage from *R.D. Harbottle (Mercantile) Ltd. v. National Westminster Bank Ltd.* (1977) 3 WLR 752 with approval, which states as under: -

"It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the life-blood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain. Except possibly in clear cases of fraud of which the banks have notice, the courts will leave the merchants to settle their disputes under the contracts by litigation or arbitration as available to them or stipulated in the contracts. The courts are not concerned with their difficulties to enforce such claims; these are risks which the merchants take. In this case the plaintiffs took the risk of the unconditional wording of the guarantees. The machinery and commitments of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise, trust in international commerce could be irreparably damaged."

(emphasis supplied)

29. Finally, it is held that writ petition would be maintainable under Article 226 of the Constitution of India in terms of the decision of the Supreme Court in *Zonal Manager, Central Bank of India* (supra) and furthermore, the respondent Bank has no general power of lien under Section 171 of the Indian Contract Act, 1872, over the title deeds which were deposited by the appellant for securing term loan, as the loan amount had already been repaid by the appellant. Accordingly, the respondent Bank is directed to return the subject title deeds to the appellant forthwith.

30. Accordingly, the writ appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).