(2026) 01 KL CK 1696

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26253, 36140 & 37944 Of 2025

Rukkiya K.T — APPELLANT

Vs

IDBI Bank Ltd, Kalpetta Branch Kalpetta Business Centre — RESPONDENT

Date of Decision : 23-01-2026

Acts Referred:

Contract Act, 1872 — Section 128, 148, 171
Sale of Goods Act, 1930 — Section 2(7)
Transfer of Property Act, 1882 — Section 60, 100

Citation : (2026) 01 KL CK 1696

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

Bench : Single Bench

Advocate : Nirmal V Nair, M.S.Kiran, Remesh Kartha E.K.

Final Decision : Dismissed

Judgement

M.A.Abdul Hakhim, J

1. Since common issues arise in these Writ Petitions, I dispose these Writ Petitions by a common judgment.

2. The issue involved in these Writ Petitions is that, on closure of the loan by the borrower, whether the Bank is entitled to retain the original title deeds which were deposited with the Bank to create an equitable mortgage to secure the said loan, invoking the general lien under Section 171 of the Indian Contract Act, 1872, on the ground of other dues under a different loan from the borrower, either as borrower or as guarantor.

3. I heard the learned Counsel for the Petitioners/Borrowers, Sri.Nirmal V. Nair, Sri.Rameez Nooh and Sri.Anjana Kannath and the learned Standing Counsel for the Respondents/Banks, Sri.Jithesh Menon, Sri.Ramola Nayanpally and Sri. M.S. Kiran.

4. The learned Counsel for the Petitioners/Borrowers contended that the Banks have no right to retain the title deeds deposited with them to create an equitable

mortgage to secure the loan when the entire liability under the said loan is settled. When the Title Deeds are deposited for a specific loan, they are to be returned on settlement of the said loan. The Bankers' general lien under Section 171 of the Indian Contract Act cannot be invoked to retain the Title Deeds alleging arrears in some other loans. The Bankers' general lien under Section 171 of the Indian Contract Act cannot be invoked against immovable property, as it is available only against goods as defined under the Sale of Goods Act, 1930. The Title Deeds of the immovable property are not goods within the meaning of Section 171 of the Contract Act. A general lien under Section 171 of the Contract Act is available only in the absence of a contract to the contrary. When the borrower has created a mortgage to secure a particular loan, he is entitled to redeem the mortgage by payment of the debt. Such a mortgage is a contract contrary to the general lien provided under Section 171. The learned Counsel for the Borrowers cited the decisions of the Hon'ble Supreme Court and of various High Courts including this Court in Gurbax Rai and Others v. Punjab National Bank, New Delhi [(1984) 3 SCC 96], R.D.Saxena v. Balram Prasad Sharma [(2000) 7 SCC 264], Alekha Sahoo v. Puri Urban Co-operative Bank Ltd. and Others [AIR 2004 Ori 142], Biju Jacob v. The Authorised Officer, Federal Bank Limited and Others [2010:KER:20841], State Bank of India and Another v. Jayanthi and Others [AIR 2011 Mad 179], Syndicate Bank v. Sheela Julian [2018 (5) KHC 282], State Bank of India v. Joshy P.K. and Others [2019:KER:19625], Sunil Ratnakar Gutte v. Union Bank of India [AIR 2022 Bom 195], PNB Vesper Life Science Pvt. Ltd. v. Registrar of Co-Operative Societies [2023 (3) KHC 116], Thomas George v. Corporation Bank [2023:KER:68061], Balaram Choudhury v. Indian Bank, Bhubaneshwar [AIR 2024 Ori 107], Inkel Ltd. v. Federal Bank Limited [2024 KHC 1604], and Kerala Bank and Another v. Manarkattu Theatres (P) Ltd. [2024:KER:2707] in support of their contentions.

5. Per Contra, the learned Counsel for the Banks contended that the issue is no longer res integra and it is well settled by the decisions of the Hon'ble Supreme Court and of various High Courts, including this Court. The Banks are entitled to retain all securities available with them to invoke the general lien provided under Section 171 of the Contract Act. Adv.Sri.Jithesh Menon invited my attention to the Memorandums of Deposit of Title Deeds dated 07.06.2014 and 24.08.2015 executed by the Petitioner in W.P.(C) No.36140/2025, in which it is stated that the security of equitable mortgage is for the credit facilities stated therein and for any other credit facilities that may be granted to him by the Bank thereafter. Learned Counsel further pointed out the recital in the Agreement of Loan dated 24.08.2015, executed by the said Petitioner, that nothing contained in the Agreement or any security documents shall be construed as excluding the general lien. Adv.Sri.Ramola Nayanpally contended that W.P.(C) No.37944/2025 is premature, as the Petitioner therein has not even settled the loan liability for which the title documents are deposited to create the equitable mortgage. The learned Counsel for the Banks cited the decisions in Syndicate Bank v. Vijay Kumar and Others [(1992) 2 SCC 330], Sadhna Gupta v. R.C. Gupta [2009 SCC

OnLine Del 2334], Thankappan V.K. and Another v. Uthiliyoda Muthukoya [2011 (2) KHC 738], Mohammad Maqbool Kunash v. Jammu and Kashmir Bank Ltd. [AIR 2013 J&K 14], Nakulan v. Deputy General Manager, Canara Bank, Kollam and Others [2014 (1) KHC 51], Nayabuddin v. Union of India and Others [2016 KHC 2950], Swapan Paul and Another v. State Bank of Bikaner & Jaipur and Others [2017 SCC OnLine Cal 12478], A.A. Associates and Another v. Indian Overseas Bank and Others [2019 SCC OnLine Mad 783], C.R.Ramachary v. Indian Overseas Bank and Others (Order dated 31.10.2018 of the Madras High Court in W.P. No.16812/2018], P.V.Hariharan v. The Indian Overseas Bank and Others [2019:KER:50206], Babu George v. State Bank of India [2022:KER:49612], Santhakumary Amma P. v. Indian Overseas Bank [2023 (7) KHC 440] in support of their contentions.

6. In the light of the arguments advanced before me, the following questions of law are to be answered in these Writ Petitions.

1. Whether the general lien under Section 171 of the Indian Contract Act, 1872, is available to immovable property?

2. Whether the lien under Section 171 of the Indian Contract Act, 1872, is available over the title deeds of immovable property deposited to create a mortgage?

3. Whether the mortgage created by the borrower to secure a specific loan is a ‘contract to the contrary’ mentioned in Section 171 of the Indian Contract Act, 1872, to deny general lien to the Bank?

4. Whether the Bank is entitled to retain the Title Deeds deposited to create an equitable mortgage even after closure of the loan, relying on the contract between the Bank and the borrower?

5. Whether the Bank has a right of lien, apart from the lien covered under Section 171 of the Indian Contract Act, 1872?

7. Since the above questions of law are to be decided with respect to Section 171 of the Indian Contract Act, 1872, it is apposite to extract Section 171 hereunder.

“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.”

8. 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.

9. Let me examine the ingredients of the general lien embodied in Section 171, going by its literal meaning. The ingredients for exercising lien under Section 171 are:

i. Bailment of goods.

ii. Existence of a general balance of account.

iii. Absence of a contract to the contrary.

10. When the above ingredients are satisfied, the five persons named in the Section shall have the right to exercise the statutory lien. The lien is to be exercised by retaining possession of the goods. The persons other than the five persons may have the right of lien only if there is a contract to that effect. In such a case, it is a contractual lien, and it is governed by the terms of the contract between the parties and not by Section 171 of the Contract Act. Bearing these principles in mind, let me examine the questions of law involved in these cases.

QUESTION OF LAW NO.1

11. Bailment of goods is essential to invoke the general lien under Section 171 of the Contract Act. Under Section 148 of the Contract Act, 'bailment' 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. In the case of bailment, possession of the goods is with the bailee. As per Section 171, the Bank, as a bailee, is allowed to retain possession of the goods by exercising lien. Possession of goods with the Bank is essential to exercise the lien. When lien is exercised, the Bank is entitled to retain possession till payment of the debt. In the case of an equitable mortgage by deposit of title deed, the Bank with which the Title Deed is deposited will not be having possession of the property covered by the Title Deed deposited. Even assuming that the lien under Section 171 of the Contract Act is exercisable over immovable properties, the Bank could not exercise the same without possession of such immovable properties.

12. Section 2(7) of the Sale of Goods Act, 1930, defines "goods" as every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. It does not include immovable property. Hence, lien under Section 171 of the Contract Act could not be created over immovable property. If a security is created over an immovable property by act of parties or operation of law for the payment of money to another and the transaction does not amount to a mortgage, it is a charge within the meaning of Section 100 of the Transfer of Property Act, 1882, and it could not be called as a lien over immovable property. In the case of charge under Section 100 of the Transfer of Property Act, there is

no requirement that possession of immovable property shall be with the person in favour of whom the security is created, whereas for exercising lien under Section 171 of the Indian Contract Act, possession is mandatory. In short, when security is created over an immovable property, it is called charge, and when security is created over movable property, it is called lien. Both charge and lien are for securing debt. In the case of a statutory lien under Section 171 of the Indian Contract Act, the creditor gets a security even before instituting the litigation for the realisation of debt. The creditor has to approach the Court of law to realise the debt by enforcing the lien. In Sheela Julian (supra), the Division Bench of this Court held that a lien means a right which a person in possession of property holds and retains it against the other in satisfaction of a demand due to the party retaining it. When the parties create security over immovable property by contract between them to secure debt by referring to it as lien, it is to be construed as a charge over immovable property, as the intention of the parties is to create security over the immovable property.

13. The decision of the Hon’ble Supreme Court in Syndicate Bank (supra) is cited as the binding precedent by the Counsel for the Banks in all the cases involving the general lien of the Banks. In this case also, the learned Counsel for the Banks rely on the said decision. In this decision, the Hon'ble Supreme Court considered the common law principle of Banker's general lien with reference to English decisions and Texts. The Hon'ble Supreme Court was considering the question of lien over the two Fixed Deposit Receipts of the borrower. The Hon'ble Supreme Court held that applying the English principles to the case before it, undoubtedly, the appellant - Bank has a lien over the two Fixed Deposit Receipts of the borrower. The Hon’ble Supreme Court further entered a finding 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. This finding made by the Hon’ble Supreme Court is without reference to Section 171 of the Indian Contract Act. The Hon’ble Supreme Court did not consider Section 171 of the Indian Contract Act while addressing the Banker's general lien in the said decision. Accordingly, I hold that the general lien under Section 171 of the Indian Contract is not available to immovable property.

QUESTION OF LAW NO.2.

14. Adv.Sri.Jithesh Menon contended that the Bank is entitled to exercise lien under Section 171 over the title deeds deposited by the borrower. By retaining the title deeds, the Bank is not exercising lien over the immovable property covered by the title deeds, but the Bank is exercising lien over the title deeds as goods.

15. In R.D. Saxena (supra) cited by Sri.Rameez Nooh, the Hon’ble Supreme Court considered the question of Advocate’s lien over the files entrusted by the client for securing the unpaid fees. The Hon’ble Supreme Court found that the Advocate has no lien over the records entrusted by his client. The Hon’ble

Supreme made certain categorical findings in the said decision that files containing copies of the records (perhaps some original documents also) cannot be equated with the "goods" referred to in Section 171 of the Contract Act; that the word "goods" mentioned in Section 171 is to be understood in the sense in which that word is defined in the Sale of Goods Act; that "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; that the goods referred to in Section 171 of the Contract Act are saleable goods; and that there is no scope for converting the case files into money, nor can they be sold to any third party.

16. In Sadhna Gupta (supra) cited by Adv.Sri.Jithesh Menon, the Delhi High Court held that the Defendant Bank has a general lien over the papers deposited by Defendant No.1 with the Bank at the time of raising the loan for and on behalf of Defendant No.2, and that Title Deeds are goods within the meaning of Section 171 and cannot be considered as immovable properties.

17. In Nayabuddin (supra), the Calcutta High Court held that the Bank has Banker’s lien over a security which has come in its possession in its usual course of business, namely, the title deeds of the immovable property pledged as security in respect of the home loan account.

18. In Swapan Paul (supra), the Calcutta High Court held that the Bank is entitled to exercise Banker’s lien in respect of title deeds that have come into the possession of the Bank in its usual course of business so long as the account in which one of the petitioners is a guarantor is not squared off.

19. In A.A. Associates (supra), the Madras High Court held that the respondent Bank has a general lien over the instruments deposited by the petitioners with the Bank in the ordinary course of banking and such Banker’s lien is a valuable right of the Bank, which cannot be ordinarily interfered with by this Court.

20. In C.R. Ramachary (supra), the Madras High Court following the decision of the Hon’ble Supreme Court in Syndicate Bank (supra) held that the respondent Bank has general lien over the securities and other instruments deposited by the petitioner with the Bank and that the respondent Bank is well within its rights to retain the documents furnished by way of collateral security in relation to the earlier two loan accounts which were settled, as the third loan was not settled.

21. In the decision of this Court in P.V. Hariharan (supra), the contention advanced by the borrower was that general lien is available only against goods that are bailed to the Bank and deposit of title deed will not enable the Bank to apply Section 171 of the Contract Act since it relates to an immovable property. The learned Single Judge of this Court held that even though learned Counsel for the petitioner has advanced a contention that Section 171 of the Contract Act will not apply to immovable properties, this Court is of the view, the Bank has exercised its general lien as per Section 171 against the title deed deposited by the petitioner against the loan availed by him, and since the petitioner is still

indebted to the Bank on account of other transactions, Bank is entitled as of right to exercise the general lien under Section 171 of the Contract Act and that a title deed available with the Bank is a 'goods bailed' to the Bank for the purpose of Section 171 of the Contract Act. This Court did not consider the categorical finding of the Hon'ble Supreme Court in R.D. Saxena (supra) by distinguishing the said decision, holding that the facts and circumstances of the case and the legal principles laid down are entirely different.

22. In Balaram Choudhury (supra), the Orissa High Court refused to uphold the general lien of the Bank holding that no document has been placed before the 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 the purpose of any other loan, other than the purported home loan; that mortgage has to be construed as a 'contract to the contrary'; that 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 and that there will be no bailment in the case of title deeds.

23. In Inkel Ltd. (supra), the learned Single Judge of this Court found that the borrower is entitled to get back the title deeds as the mortgage was given for securing the debt of an LLP, which is settled, and there is no mortgage for a Private Limited Company from which amounts are outstanding. This Court did not consider the Banker's right of lien.

24. The Counsel for the Banks tried to distinguish the said decision of the Hon'ble Supreme Court in R.D. Saxena (supra), arguing that files are entrusted by the clients with the Advocates not to create security, whereas Title Documents are entrusted by the borrowers with the Banks for creating security and hence the aforesaid findings are contextual in nature and could not be made applicable to the case on hand. I am unable to accept the said contention of the learned Counsel for the Banks. The Hon'ble Supreme Court has made the aforesaid categorical findings interpreting Section 171 of the Contract Act, and it could be applied in all cases under Section 171. Hence, I am unable to subscribe to the views of the Delhi High Court, Calcutta High Court, and Madras High Court in the aforesaid decisions and follow the binding precedent of the Hon'ble Supreme Court in R.D. Saxena (supra) and accept the view of the Orissa High Court in Balaram Choudhury (supra). The purpose of a lien is to raise money by the sale of the item over which the lien is exercised for adjusting the same against the outstanding dues of the Bank. In the case of Title Deeds, money could not be raised by the sale of the same. I hold that the Title Deeds deposited by the borrower with the Bank to secure the debt are not goods, as they do not have marketability and are not saleable to dispose of them for money, and hence the lien under Section 171 of the Indian Contract Act could not be exercised over the same.

QUESTION OF LAW NO.3.

25. In Jayanthi (supra) cited by Sri.Rameez Nooh, the issue considered by the Division Bench of the Madras High Court was whether there is any contract to the contrary which prevents the Bank from exercising its general lien under Section 171 of the Contract Act. In the said case, the Bank refused to release the Title Deeds to the legal heirs of the borrower on settlement of the loan, alleging the borrower is a guarantor to a loan availed by another establishment by the name M/s. Somerset Tea Plantation and the same has been outstanding. The Madras High Court found that the property in question was not bailed to the appellant Bank by the deceased borrower at any point of time; that the property in question was offered by the borrower to cover his liability in respect of the loans, which he had borrowed in the accounts of M/s. Sanjay Bala Tea Plantation and M/s. Aarthi Bala Tea Plantation and his self- acquired properties were mortgaged to secure this specific loan transaction; that no document has been placed to show that the borrower had given any authorisation to the Bank to hold the documents of the mortgaged property, given to secure the loan transaction for M/s. Sanjay Bala Tea Plantation and M/s. Aarthi Bala Tea Plantation, for the purpose of any other loan availed in any other branch by M/s. Somerset Tea Plantation in which the borrower stood as a guarantor. It is held that the contract/mortgage had been created by the deceased borrower for a specific purpose and for a specific loan and the contract was self-contained and the terms and conditions were binding upon both the borrower as well as the Bank; that in other words, the deposit of Title Deeds by which the mortgage was created by the deceased borrower was for a specific purpose to cover an advance for a specific loan; that when such is the situation, the borrower having deposited the documents in order to secure a specific transaction, the Bank cannot contend that they could hold the documents for a balance due in a different loan account where the deceased is not a borrower. The Madras High Court distinguished the decision of the Hon'ble Supreme Court in Syndicate Bank (supra) and held that 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; that therefore, this agreement/mortgage has to be construed as a 'Contract to the Contrary' and therefore, it has 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.

26. In Biju Jacob (supra) cited by Adv.Sri.Nirmal V. Nair, the learned Single Judge of this Court rejected the claim of general lien by the Bank relying on the right of the borrower to redeem the mortgage separately or simultaneously under Section 61 of the Transfer of Property Act, 1882. In the said case, the borrower had availed loans from the 2nd respondent and the 3rd respondent branches of the same Bank by mortgaging separate properties. The request of the borrower to redeem the property from the 2nd respondent branch was refused by the Bank stating that the Title Deeds deposited with the 2nd respondent would be released only if the borrower clears the entire liability with the 3rd respondent branch. The learned Single Judge ordered that once the entire liability due to the

2nd respondent Branch is cleared, the Title Deed pertaining to the said property shall be returned by the Bank.

27. In the decision of this Court in Thomas George (supra), the learned Single Judge of this Court ordered the Bank to release the title deeds deposited by the borrower on closure of the loan, rejecting the general lien under Section 171 of the Contract Act claimed by the Bank following the Division Bench judgment of the Chhattisgarh High Court construing mortgage as a 'contract to the contrary'.

28. In the decision of this Court in Joshy P.K. (supra), the Division Bench of this Court confirmed the judgment of the learned Single Judge ordering the Bank to release the title deeds deposited by the Guarantor on closure of the loan, rejecting the general lien under Section 171 of the Contract Act claimed by the Bank on the ground that the Petitioner is a guarantor to another loan. This Court held that the right of the mortgagor to redeem the mortgage on payment of the loan dues is recognised by Section 60 of the Transfer of Property Act, 1882; that the general lien claimed by the Bank under Section 171 of the Contract Act cannot overweigh the right to redeem the mortgage, permitted under Section 60 of the Transfer of Property Act; that the general lien claimed under Section 171 of the Contract Act has to be recognised only in the absence of a contract to the contrary; that in the present matter, the mortgagee did create a contract to contrary, in favour of the respondents/writ petitioners; and that the right under Section 60 of the Transfer of Property Act is in furtherance of the constitutional right granted under Article 300(A) of the Constitution of India which stipulates that no person shall be deprived of his property, save by authority of law. This Court distinguished the decision of the Hon'ble Supreme Court in Syndicate Bank (supra) holding that the concerned Fixed Deposit Receipts in the case before the Supreme Court, contained specific recitals whereby, the depositor agreed that the said deposit and renewal shall remain with the Bank so long as any amount on any account is due from the depositors to the Bank; that it was in that factual context the general lien right was recognised in favour of the Bank by the court, under Section 171 of the Contract Act; that such is not the position in the present case where admittedly, the title deeds were never deposited with such undertaking and recitals, enabling the Bank to retain the same for discharge of other loan liabilities.

29. In Manarkattu Theatres (P) Ltd. (supra), the Division Bench of this Court confirmed the judgment of the learned Single Judge ordering the release of the title deeds, distinguishing the decision of the Hon'ble Supreme Court in Syndicate Bank (supra), finding to the effect that a mortgage is a 'contract to the contrary'.

30. The Division Bench decision of this Court in Babu George (supra), cited by Adv.Sri.Ramola Nayanpally, arose from a case where the learned Single Judge of this Court refused to order the release of gold ornaments on closure of the gold loan, accepting the contention of the Bank that Bank has got general lien under Section 171 of the Contract Act for the other defaulted loan accounts of the borrower, holding that the burden is always on the borrower to establish 'a

contract to the contrary' in order to displace the presumption in favour of the Bank under Section 171 of the Contract Act about the existence of a right of general lien, and the same was affirmed by the Division Bench.

31. In Nakulan (supra), this Court was dealing with the question of lien over gold ornaments pledged with the Bank and it is held that the burden is always upon the borrower to establish 'a contract to contrary' in order to displace the presumption in favour of the Bank under Section 171 of the Contract Act about the existence of right of general lien.

32. In view of the aforesaid authoritative pronouncements of this Court in Biju Jacob, Thomas George, Joshy P.K. and Manarkattu Theatres (P) Ltd., I hold that the mortgage created by the borrower is 'a contract to the contrary' mentioned in Section 171 of the Indian Contract Act, and the borrower has the right to redeem the mortgage and the Bank cannot deny the same citing statutory lien under Section 171 of the Contract Act.

QUESTION OF LAW NO.4.

33. As per Section 171 of the Contract Act, the persons other than the five persons mentioned therein may have the right of lien only if there is a contract to that effect. It would indicate that the said five persons can also have a right of lien on the basis of a contract, even if any of the ingredients mentioned in the said Section are absent. In such a case, it is a contractual lien, and it is governed by the terms of the contract between the parties and not by Section 171 of the Contract Act. The Bank is entitled to retain the Title Deeds deposited by the borrower to create an equitable mortgage even after closure of the loan if the contract between the Bank and the borrower permits the same. This question is answered in the affirmative.

34. The Memorandums of Deposit of Title Deeds dated 07.06.2014 and 24.08.2015 executed by the Petitioner in W.P.(C) No.36140/2025, in which it is stated that the security of equitable mortgage is for the credit facilities stated therein and for any other credit facilities that may be granted to him by the Bank thereafter. These documents would show that, as per the contract between the Bank and the Petitioner in W.P.(C) No.36140/2025, the Petitioner is entitled to redeem the mortgage only after the settlement of all the credit facilities availed by him. This is not a case of contractual lien. As per these documents, the mortgage created by the deposit of title deeds itself continues till the settlement of all the credit facilities availed by him, and he cannot demand the release of the title deeds.

QUESTION OF LAW NO.5.

35. In Mohammad Maqbool Kunash (supra), while considering the prayer of the borrower for Interim Injunction, referring to the terms of the Loan agreement, the Jammu and Kashmir High Court held that there is an express contract authorising the Bank to have a general lien and the right of set off for all or any

balance due to the Bank over all or any securities for the time being held by the Bank and all or any such security that may come in the hands of the Bank.

36. In Alekha Sahoo (supra), the Orissa High Court refused to uphold the general lien of the Bank over gold ornaments. The borrower had stood as guarantor to a loan taken by another establishment. The Orissa High Court distinguished the decision of the Hon'ble Supreme Court in Syndicate Bank (supra) by holding that it is a case where the owner of the Fixed Deposit Receipts had expressly agreed that the Bank would have lien over the Fixed Deposit Receipts and that the Supreme Court has not laid down any law that the Bank can exercise its general lien under Section 171 of the Contract Act over the properties of the surety for the liabilities of the principal debtor to the Bank. With due respect, I am unable to subscribe to the view of the Orissa High Court in the said decision that unless a customer has expressly agreed that his properties can be retained as security for the outstanding balance in the account of some other customer, a Bank cannot exercise lien over the properties of such customer under Section 171 of the Contract Act. Even without any such Agreement, the Bank is entitled to exercise a statutory lien over the gold ornaments pledged by the borrower for securing another debt to which the borrower stood as guarantor, as the liability of the surety is co-extensive with that of the principal debtor as per Section 128 of the Contract Act.

37. In Sunil Ratnakar Gutte (supra), the Division Bench of the Bombay High Court directed the release of the title deeds deposited by the borrower on closure of the loan, holding that the Bank has no right to withhold the title deeds when there is no relationship as Banker and customer.

38. In Thankappan V.K. (supra), the learned Single Judge of this Court held that the Bank has general lien over the securities which come to its hands, which may be in the form of money, negotiable instrument, or any form of security, or it may be goods.

39. In Babu George (supra), the Division Bench of this Court affirmed the decision of the learned Single Judge of this Court refusing to order the release of gold ornaments on closure of the gold loan, holding that the Bank has general lien over all forms of security, including gold ornaments deposited by or on behalf of the borrower in the ordinary course of Banking business for the general balance of account due from him.

40. In PNB Vesper Life Science Pvt. Ltd. (supra), the learned Single Judge of this Court refused to uphold the contention of the Bank that it is entitled to retain the title deeds of a secured asset deposited by one company even after the closure of the loan as the directors of the said company are directors of another company from which dues are outstanding. This Court held that the said two companies are two different entities.

41. In Santhakumary Amma P. (supra), the learned Single Judge of this Court refused to follow the decisions in Alekha Sahoo (supra), Sunil Ratnakar Gutte

(supra) and PNB Vesper Life Science Pvt. Ltd. (supra) in view of the findings of the Hon'ble Supreme Court in Syndicate Bank (supra) that the Banker has 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.

42. In Syndicate Bank (supra), the Hon'ble Supreme Court considered the common law principle of Banker's general lien with reference to English decisions and Texts and not with reference to Section 171 of the Indian Contract Act, 1872. The said decision could not be an authority for the general lien covered by Section 171, as the ingredients for attracting the general lien therein are not considered by the Hon'ble Supreme Court. The Hon'ble Supreme Court entered a categorical finding 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 though this finding was made by the Hon'ble Supreme Court without reference to Section 171 of the Indian Contract Act, the said finding is a declaration of law made by the Hon'ble Supreme Court, and hence it is a binding precedent in view of Article 141 of the Constitution of India. Thus, the Bank has 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. Such a general lien declared by the Hon'ble Supreme Court is not subject to the conditions in Section 171 of the Indian Contract Act. Hence, the absence of a contract to the contrary mentioned in Section 171 of the Indian Contract Act is not applicable. For the application of the general lien over all forms of deposits or securities made by the borrower in the ordinary course of Banking business, there is no need to ensure the absence of a contract to the contrary. Bank is entitled to retain the title documents deposited by the borrowers to create security till all the dues are cleared by the borrower to the Bank, in view of the declaration of law by the Hon'ble Supreme Court in Syndicate Bank (supra). This Question is answered in the affirmative.

CONCLUSION

43. In view of the answer to Question of Law No.5, these Writ Petitions are liable to be dismissed, and hence it is ordered accordingly.