(2000) 01 KAR CK 0030

In the Karnataka High Court

Case No : C.R.P. No. 3790 of 1996

Smt. K.S. Nagalambika APPELLANT

Vs

Corporation Bank and Another RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:
Contract Act, 1872 — Section 171

Citation : AIR 2000 Kar 201 : (2001) 106 CompCas 509 : (2000) 2 KCCR 1237

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Manjula, for K.S. Gourishankar, for the Appellant; G. Janardhana, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Vallinayagam, J.—The plaintiff has preferred the above revision against the dismissal of his suit for recovery of money from the Bank.

2. The case of the plaintiff is that in October, 1991, the first plaintiff deposited a sum of Rs. 30,000 as fixed deposit in the Bank in her individual name. On the same day, the second plaintiff deposited a sum of Rs. 30,000 in his name and both the plaintiffs jointly deposited a sum of Rs. 20,000. All the three deposits matured on October 23, 1994. The second plaintiff '' had borrowed a sum of Rs. 20,000 on the security of his individual deposit and the maturity value of the same was Rs. 44,034. The amount due to the defendant-Bank in respect of the loan of Rs. 20,000 borrowed by him on the security of the deposit, including the interest was a sum of Rs. 35,334 and deducting this from the deposit amount, a sum of Rs. 8,700 had to be paid to him by the defendant. The same was not paid on the ground that he was a surety for a loan borrowed by his second wife Nagamma and this amount was adjusted towards the loan account of the said Nagamma. Claiming such adjustment as illegal, a suit came to be filed for recovery of Rs. 8,285 apart from interest.

3. The defendant contended that the Bank has got a general lien and therefore they are entitled to adjust the amount towards the loan account. They also claimed compensatory costs at Rs. 2,000.

4. The first plaintiff being a member of the Bar has conducted the case on her own. The second plaintiff is a retired sheristedar of one of the Courts of the district. The Trial Court, found on the evidence that in view of the dictum of the Supreme Court in Syndicate Bank Vs. Vijay Kumar and others, , the Banker''s lien can be exercised in respect of a Joint account also. In that case, it was a joint account and the Supreme Court has upheld the contention of the Bank and held that the Bank has a general lien even in respect of the fixed deposit. Reference has been made to Halsbury''s Laws of England and Banking Law Contracts and the following passage was referred to (page 603 of 74 Comp Cas):

"The above passages go to show that in the 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 available 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 the 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.

4. Applying these principles to the case before us we are of the view that undoubtedly the appellant-Bank has a lien over the two FDRs. In any event, the two letters executed by the judgment debtor on September 17, 1980, created a general Hen in favour of the appellant-Bank over the two FDRs. 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. The recital in the two letters clearly creates a general lien without giving any room whatsoever for any controversy."

5. The Trial Court also found that the entire amount of the fixed deposit has not been adjusted and only a portion of the deposit has been adjusted over which portion the first defendant, according to the Trial Court, is having a right. In fact Section 171 of the Contract Act, is clear and categoric that unless a contract to the contrary is established by the plaintiffs, the Bank''s right of lien will have to be accepted. Taking the legal position as well as the evidence available on record, the Trial Court has dismissed the suit.

6. Learned Counsel, Mrs. Manjula appearing for the petitioner has relied upon the dictum of the Lahore High Court in Simla Banking and Industrial Company Ltd. v.

Mt. Bhagwan Kuar AIR 1928 Lah 316, which is to the following effect (headnote) :

"A Bank issued a fixed deposit receipt for Rs. 500 in favour of B and R, the amount being payable to either or survivor. R obtained an overdraft from the Bank. The Bank credited the amount due under the fixed deposit receipt to this overdraft and on B demanding payment informed him of the action taken on it and refused to pay. B thereupon brought an action against the Bank for the recovery of the amount due under the fixed deposit receipt.

Held, that the Bank could not appropriate the money towards the debt due by R alone."

7. But in the light of the Supreme Court dictum, I do not think that the judgment relied upon by learned Counsel can be accepted.

8. As rightly pointed out by the Trial Court. Section 171 of the Contract Act, gives a general lien to the Bank and it has got to be recognised. Further, in my opinion, the dictum of the Supreme Court in Syndicate Bank v. Vijay Kumar, (supra) referred to above is certainly and directly applicable to the facts of this case.

In this view, holding that there is no merit, the revision petition is dismissed.

