
(2019) 02 CAL CK 0069
In the Calcutta High Court
Case No : Writ Petitions (Wp) No. 524 Of 2017

Star Battery Limited & Anr.	Vs	APPELLANT
State Bank Of India & Ors		RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Indian Contract Act, 1872 — Section 171

Citation : (2019) 02 CAL CK 0069

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Noelle Banerjee, Dipanjon Dey Krishnendu Bhattacharya, Saibal Guha Roy, Somsuvra Mukherjee

Final Decision : Dismissed

Judgement

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Debangsu Basak, J

The petitioner has sought a direction upon State Bank of India to release a fixed deposit lying in the name of the first petitioner being STDR No. 30681865193 for the principal amount of Rs. 18,52,000/- along with all accrued interest thereon.

Learned Advocate appearing for the petitioner has submitted that, the first petitioner enjoyed credit facilities from the bank. Such credit facilities were secured by deposit of title deeds and pledge of fixed deposits. The account of the first petitioner became a Non Performing Asset (NPA). Thereafter, the petitioners approached bank for settlement. The proposal for settlement was accepted. The petitioners discharged all their liabilities owed to the bank, to the full satisfaction of the bank. The bank issued a 'no due' certificate. Consequent upon the petitioners settling the claim of the bank, the petitioners became entitled to return of all securities including the fixed deposits. There were several deposits of the first petitioner lying with the bank. The bank released all such fixed deposits save and except one fixed deposit for the amount of Rs. 18,52,000/-.

According to her, the contention of the bank that, the bank has exercised bankers' lien on such fixed deposit is not available to the bank in the facts and circumstances of the case. She has drawn the attention of the Court to the fact that, the bank had issued the 'no due' certificate. Subsequent to the issuance of the 'no due' certificate, the bank cannot contend that, there is any amount outstanding on account of the petitioners for the bank to exercise bankers' lien. She has submitted that, the contention that, the bank had exercised bankers' lien over such fixed deposit for outstanding amount on account of a different company is without any basis. The claim of the bank is against a different legal entity. The petitioners cannot be made liable for such claim of the bank against a different legal entity. Corporate veil cannot be pierced in the facts of this case. In support of her contentions, learned Advocate for the petitioners has relied upon 1984 Volume 3 Supreme Court Cases page 96 (*Gurbax Rai & Ors. v. Punjab National Bank, New Delhi*), All India Report 2004 Orissa page 142 (*Alekha Sahoo v. Puri Urban Co-operative Bank Ltd. & Ors.*), All India Report 2006 Punjab & Haryana page 73 (*M/s. Jay Kay Synthetics v. Punjab Financial Corporation, Chandigarh & Anr.*), 2014 Volume 9 Supreme Court Cases page 407 (*Balwant Rai Saluja & Anr. v. Air India Ltd. & Ors.*) and All India Report 2016 Calcutta page 172 (*Md. Nayabuddin v. Union of India & Ors.*). Referring to *Md. Nayabuddin* (supra), learned Advocate for the petitioner has submitted that, even if the ratio laid down in *Md. Nayabuddin* (supra) are attracted then also, the bank cannot exercise bankers' lien over the fixed deposit of the petitioner for a claim of the bank against a different legal entity. She has submitted that, the bank should be directed to return the proceeds of the fixed deposit along with accrued interest therein.

Learned Advocate appearing for the bank has submitted that, the account of the petitioner became NPA and that, there was a settlement between the bank and the petitioner. There was a settlement between the bank and a separate legal entity. However, the persons in control are same. The father of the petitioner is the person in control of such entity. In all likelihood, the petitioner also has a say in the affairs of such entity. Upon the bank finding that a sum of Rs. 18 lakhs and odd not being adjusted in respect of a bill discounting facility, enjoyed by such separate legal entity, the bank exercised bankers lien under Section 171 of the Indian Contract Act, 1872 over the concerned fixed deposit. The bank is entitled to do so. He has relied upon 1992 Volume 2 Supreme Court Cases page 330 (*Syndicate Bank Ltd. v. Vijay Kumar*) in support of his contentions.

The first petitioner enjoyed credit facilities from the bank. Such credit facilities became a NPA. The bank had initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 for recovery of its loan. The petitioners proposed a compromise at a sum of Rs. 10.06 crores in respect of the outstanding in such loan account. The bank had accepted such proposal. The petitioners had paid the entire amount under the compromise. Upon the petitioners paying the entire compromise amount, the bank had issued a 'no due' certificate in favour of the

petitioners. It had also issued instructions for release of all mortgaged and hypothecated assets. The bank, in fact, had released the same excepting a fixed deposit lying with it. The petitioners had requested the bank to release such fixed deposit to which, the bank did not do so.

Kali Pigment Pvt. Ltd. is a company which had enjoyed credit facilities from the bank. According to the bank, Kali Pigment Pvt. Ltd. and the first petitioner are associate companies. The father of the second petitioner was the Director of both Kali Pigment Pvt. Ltd. and the first petitioner. The addresses of both the companies are same. Kali Pigment Pvt. Ltd. had enjoyed Bill discounting limit facility with the bank. Kali Pigment Pvt. Ltd. was discounting bills drawn on the first petitioner upon such bills being placed before the bank by Kali Pigment Pvt. Ltd. for discounting. Bank used to pay the amount to Kali Pigment Pvt. Ltd. by credit to the current account of Kali Pigment Pvt. Ltd. debiting the bill discounting account of Kali Pigment Pvt. Ltd. On receipt of payment on the due date of the bill from the first petitioner, the bank used to credit the bill discounting account of Kali Pigment Pvt. Ltd. Thus, the debit and the credit transactions in the bill discounting account were being reconciled. On July 21, 2005 the bank had received a cheque for a sum of Rs, 7,10,000/- on account of inward clearing. Such cheque was drawn on by Kali Pigment Pvt. Ltd. from its current account maintained with the Bank. The payee of such cheque was UCO Bank, Kolkata Main Branch account Kali Pigment Pvt. Ltd. Inadvertently, such cheque was posted in the bill discounting account of Kali Pigment Pvt. Ltd. instead of the current account. Kali Pigment Pvt. Ltd. thereafter closed their current account with the bank on January 24, 2011. Subsequently, during reconciliation of the bill discounting amount, the error was detected. However, when such error was detected in 2013, such error should not be rectified as Kali Pigment Pvt. Ltd. closed their account with the bank. Bank brought the matter to the notice of the first petitioner and Kali Pigment Pvt. Ltd. through several letters for repayment of outstanding amount. Both the companies did not respond to such demands. The demands were made in 2013. Thereafter, the compromise between the bank and the first petitioner was entered into in 2015-2016.

Section 171 of the Contract Act, 1872 is as follows :-

"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 failed to them, unless there is an express contract to that effect."

Md. Nayabuddin (supra) has held as follows:-

"8. Section 171 of the Contract Act, 1872 has two parts. In the first part it recognises that bankers, factors, wharfingers, attorneys of a High Court and policy-brokers have a right of general lien over goods coming into their

possession in the usual course of their business for amounts outstanding to them. This right of general lien exists in favour of these five categories of persons unless there is an express contract to the contrary entered into between the bailor and those five categories of bailee. The second part of Section 171 of the Contract Act, 1872 provides that apart from the five categories of persons named therein any other bailee may have the right of general lien once such right is conferred upon the bailee by an express contract."

Balwant Rai Saluja & Anr. (supra) has considered a labour dispute and in such context, explained the doctrine of piercing of the corporate veil. It has held as follows:-

"71. In recent times, the law has been crystallized around the six principles formulated by Munby, J. in Ben Hashem v. Ali Shayif. The six principles, as found at paragraphs 159- 64 of the case are as follows:

- (i) Ownership and control of a company were not enough to justify piercing the corporate veil;
- (ii) The Court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice; 3
- (iii) The corporate veil can be pierced only if there is some impropriety;
- (iv) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;
- (v) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and
- (vi) The company may be a "façade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The Court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

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74. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar

facts and circumstances of each case."

Gurbax Rai & Ors. (supra) has considered a suit for rendition of accounts. In such suit, it has held after appreciating the facts of that case that, the bank was not entitled to exercise bankers' lien in respect of the properties coming into its hands belonging to the individual partners for dues of the partnership firm. M/s. Jay Kay Synthetics (supra) has considered the refusal of a State Financial Corporation in handing over the original title deeds of the land. It has found in the facts of that case, that the borrower cleared the entire liability of the Financial Corporation. Alekha Sahoo (supra) has held in the facts of that case, the right of lien was exercised incorrectly.

Vijay Kumar (supra) has considered the concept of bankers' lien. It has held as follows:-

"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, Twenty-sixth Edition, Page 389, Paragraph 3032 the Banker's lien is explained as under:

"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 process 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. and 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 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."

In the facts of the present case, whether the exercise of bankers' lien over the fixed deposit, standing in the name of the first petitioner is correct or not, is the issue that has fallen for consideration.

There are sufficient materials available on record to establish nexus between the petitioners and Kali Pigment Pvt. Ltd. No doubt the first petitioner and Kali Pigment Pvt. Ltd. are separate legal entities. They are corporate entities. They are to be treated as separate and distinct entities as that of the individuals who are shareholders and directors of such legal entities. However, such a concept is not absolute in the sense that, corporate veil can be pierced in given circumstances. One of the circumstance when a corporate veil can be pierced is when the corporate veil is used for an improper purpose. In the facts of the present case, the father of the second petitioner was a director of the first petitioner as well as Kali Pigment Pvt. Ltd. Kali Pigment Pvt. Ltd. and the first petitioner entered into transactions with the bank. There are outstandings on account of Kali Pigment Pvt. Ltd. Therefore, the inference that, the corporate entity has been used for the purpose of an improper purpose of not discharging the liability of Kali Pigment Pvt. Ltd. vis-à-vis the bank, is not unfounded. The materials placed before the Court in the present writ petition does not establish that, Kali Pigment Pvt. Ltd. is a separate legal entity with the petitioners not having any connections therewith. On the contrary, the connections as noted above are deep and pervasive. If the corporate veil is lifted then it would be found that, the same person is in control and management of both the legal entities. Such a natural person cannot be permitted to misutilize the corporate veil in order to defeat a just claim of the bank. The petitioners had a choice of filing a suit for rendition of accounts. The petitioner chose not to do so.

On the materials made available to the Court, in the facts of the present case, it

cannot be said that, the lien exercised by the bank over the fixed deposit in the name of the first petitioner is incorrect.

In view of the discussion above, W.P. No. 524 of 2017 is dismissed. No order as to costs.