(2008) 01 MAD CK 0100

In the Madras High Court

Case No : C.R.P. (NPD) No. 3019 of 2007 and M.P. No. 1 of 2007

State Bank of India APPELLANT

Vs

Chokkalingam and Others RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Contract Act, 1872 — Section 171
Transfer of Property Act, 1882 — Section 60

Citation : (2008) 1 MLJ 1009

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : K. Sankaran, for the Appellant; S.R. Kalyani, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This revision petition under Article 227 has been preferred by State Bank of India, Kotagiri Branch, against order

dated 10th Sept., 2007, passed by Debts Recovery Appellate Tribunal, Chennai, (hereinafter referred to as ''DRAT'') in M.A. No. 40/2007. By

the said order, DRAT dismissed the appeal affirming the order dated 17th Jan., 2007, passed by Debts Recovery Tribunal, Coimbatore,

(hereinafter referred to as ''DRT'').

2. The case of the petitioner-Bank is that respondents 1 to 3, who are the partners of the firm, M/s. Sree Vari Corporation, initially obtained crop

loan on 14th Dec., 1996. Subsequently, the partnership firm, through respondents 1 to 3, on 23rd Jan., 1998, also obtained loan to the tune of Rs.

70 lakhs, Rs. 20 lakhs towards cash credit and Rs. 50 lakhs towards term loan. While taking such loan, properties at survey No. 678 and 679 of

Thekkampatti village were mortgaged. The original documents were deposited with the bank. Pursuant to one time settlement in respect of loan

amount of Rs. 70 lakhs, the borrower, partnership firm, paid a sum of Rs. 74,34,485/= in full and final settlement of the loan account. Thereafter,

respondents 1 to 3, who are the guarantors, requested the bank to return the documents of title in their favour. The bank refused to return the

documents on the ground that the crop loan taken on 14th Dec., 1996, which was renewed twice, on 23rd Oct., 1997 and 5th Feb., 1997, have

not been returned by respondents 1 to 3. DRT, Coimbatore, after hearing the parties, by its order dated 17th Jan., 2007, directed the bank to

return those original mortgaged documents, which was affirmed by DRAT by impugned order dated 10th Sept., 2007.

3. Learned Counsel appearing on behalf of the bank submitted 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 ordinary course of banking business. Reliance was placed on Supreme Court

decision in Syndicate Bank Vs. Vijay Kumar and others, . On the other hand, learned Counsel for the respondents 1 to 3 referred to Section 171

of the Indian Contract Act and Section 60 of the Transfer of Property Act, 1882, and submitted that the bank has no right by virtue of Section 171

of the Indian Contract Act to exercise general lien over the properties mortgaged by respondents 1 to 3 in respect of the credit facility availed by

the 4th respondent, partnership firm.

4. We have heard the parties, noticed the impugned order dated 10th Sept., 2007, passed by DRAT and the judgment of the Supreme Court in

Syndicate Bank Vs. Vijay Kumar and others, as referred to by counsel for the petitioner. We find that giving reference to Section 171 of the

Indian Contract Act and Section 60 of the Transfer of Property Act, 1882, the Tribunal was of the view that after the total amount in respect of

loan amount taken by 4th respondent, partnership firm having paid, the bank cannot exercise general lien over the properties mortgaged by

respondents 1 to 3 in respect of such credit facility availed by the 4th respondent.

5. The question of bankers lien/general lien fell for consideration before the Supreme Court in Syndicate Bank Vs. Vijay Kumar and others, . The

provision of Section 171 of the Indian Contract Act, 1872 was also noticed in the said case. Taking into consideration Halsbury''s Laws of

England and provisions of the Contract Act in respect of bankers lien, the following observation was made by the Supreme court:

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 extent 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.

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 C&F 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.

6. In view of the finding of the Supreme Court, we are of the view that the bank has a general lien over the securities and other instruments

deposited by respondents 1 to 3 in the ordinary course of banking and such general lien being valuable right of the banker, as per Supreme court

decision, it cannot be ignored in absence of an agreement to the contrary.

7. We, accordingly, set aside the impugned order dated 10th Sept., 2007, passed by DRAT as also the order dated 17th Jan., 2007, passed by

DRT, Coimbatore. But this order will not stand in the way of respondents 1 to 3 to pay back the dues to the bank and, thereafter, to request the

bank to release the documents. The civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. But there shall be

no order as to costs.