
(2011) 04 KL CK 0113
In the High Court Of Kerala
Case No : C.R.P. No. 831 of 2004

Thankappan

APPELLANT

Vs

Muthukoya

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Contract Act, 1872 — Section 171, 174
Limitation Act, 1963 — Section 27
Penal Code, 1860 (IPC) — Section 109, 114, 409

Citation : (2011) 4 CivCC 186 : (2011) 2 ILR (Ker) 829 : (2011) 2 KLT 907 :
(2011) 6 RCR(Civil) 729

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : R.S. Kalkura, for the Appellant; T.H. Abdul Azeez, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The question involved in this revision is whether the second Petitioner Bank could exercise its general lien and adjust the amount payable to the Respondent under a cheque, towards an amount which was due to the bank from the Respondent and in respect of which the suit filed by the Bank was dismissed as time barred.

2. An amount of Rs. 19,588.50 was due from the Respondent to Syndicate Bank, Kilthan Branch. The Respondent is a native of Kilthan Island and is a contractor undertaking minor contract work of Lakshadweep administration under the PWD. For realization of amount due from the Respondent, the bank filed a suit. The suit was decreed by the trial court. On appeal by the Respondent, the appellate court set aside the decree of the trial court and dismissed the suit on the ground that the suit was barred by limitation.

3. After dismissal of the suit, an account payee cheque for Rs. 14,635/- dated 31.3.98, issued in favour of the Respondent, was presented by him before the Syndicate Bank, Kilthan Branch. The Bank collected the cheque and adjusted the

amount towards the debt which was barred and in respect of which the suit was dismissed. Intimation was given to the Respondent. Still, according to the bank, a sum of Rs. 4,953.50 was due to it as on 31.12.98.

4. The Respondent filed the present suit for realization of Rs. 14,635/- from the Bank, the amount which is covered by the cheque and for a further sum of Rs. 10,000/- as compensation. Originally, the manager of the Bank alone was made a party and later, the Bank was impleaded as additional Defendant. The Trial Court decreed the suit for Rs. 14,635/-. The claim for compensation was negatived. On appeal by the Bank, the decree of the trial court was confirmed. The bank as well as its manager challenge the concurrent decisions of the courts below.

5. The courts below held that the bank could not exercise their general lien as the debt due from the Respondent/Plaintiff was barred by limitation. The courts below held that the banker's lien cannot be exercised so as to recover a debt which was barred by limitation.

6. The learned Counsel for the Petitioner submitted that the Bank has general lien over securities and that it could be exercised even for realizing a barred debt. He referred to Section 171 of the Indian Contract Act, which states that bankers 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. The learned Counsel submitted that the right of general lien of the banker is statutorily recognized in Section 171 of the Contract Act and money is a species of goods over which lien may be exercised. Dismissal of the suit filed by the Bank on the ground of limitation is not a bar for the Bank in exercising its general lien, the counsel submits.

The learned Counsel for the Respondent submitted that, to exercise the general lien, there must be an offer of security and unless the cheque in question was offered as security in any debt, the bank could not exercise its general lien. He also contended that the bank had filed a suit for recovering the amount and the suit having been dismissed, the bank is not entitled to exercise its general lien, even assuming it had such a general lien otherwise.

7. In *Syndicate Bank Vs. Vijay Kumar and others*, , the Supreme Court considered the extent of banker's lien. It was 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 recognized as such.

In Brandao v. Barnett (1846) 12 CI & 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 recognized 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 FD Rs which are remitted the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FD Rs also which are deposited by the customer.

7. Applying these principles to the case before us we are of the view that undoubtedly the Appellant-Bank has a lien over the two FD Rs. In any event the two letters executed by the judgment-debtor on 17.9.80 created a general lien in

favour of the Appellant-Bank over the two FD Rs. Even otherwise having regard to the mercantile custom as judicially recognized 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.

8. In *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, , a Constitution Bench of the Supreme Court held that when a debt becomes time barred, it does not become extinguished but, only becomes unenforceable in a court of law. In *Punjab National Bank and others Vs. Surendra Prasad Sinha*, , a security bond was executed by a guarantor and a Fixed Deposit receipt was handed over by him which would mature on 1.11.1988. The debt for which the concerned party stood as surety became barred by limitation, on 5.5.1987. After the period of limitation provided for filing a suit against the principal debtor, the bank enforced the security and adjusted the amount due from the FD of the surety. The surety filed a complaint against the bank alleging offences under Sections 409 and 109/114 of the Indian Penal Code. Dealing with that case the Supreme Court held thus:

Though the right to enforce the debt by judicial process is barred u/s 3 read with the relevant Article in the Schedule, the right to debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody.

9. In *S. Vasupalaiah v. Vysya Bank* (1 (2002) BC 405), the Karnataka High Court dealt with a case where the Bank enforced their lien over the amount due to the surety, for the realization of the amount due from the principal debtor. By the time the amount was adjusted, the claim against the principal debtor was barred by limitation. In exercise of the general lien, the bank adjusted the amount due to the surety under the Janatha Cash Certificate. The Janatha Cash Certificate was produced after the loan was availed by the principal debtor. The Karnataka High Court held that though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists and the bank is entitled to appropriate the debt due from the amounts which are in its possession either belonging to the principal debtor or the surety. It was held:

13. From the aforesaid decisions it is amply clear that though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists and the Bank is entitled to appropriate the debt due from the amounts which are in its possession either belonging to the principal debtor or the surety,

as it is settled law that the liability of the surety is coextensive with that of the principal debtor. 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 to the Banker judiciously recognized and in the absence of agreement to the contrary by virtue of statutory provision u/s 171 of the Contract Act the Banker has a general lien over such securities and amounts in its possession. He has the right to use the proceeds towards adjustment of the debt due to him from the customer. Such a lien is also applicable to negotiable instruments including FD Rs of the customer which are lying with the Bank. Merely because the said fixed deposit was created subsequent to the loan transaction it would not make any difference. The Bank has a right to adjust all the amounts which are in their possession and which belong to the customer on the date they adjust the said amount irrespective of the date on which the transaction which gave rise to the said claim took place.

10. The Banker's lien was recognized by the courts in *K. Sita Vs. Corporation Bank, East Godavari District*, *Punjab National Bank Ltd. v. Satyapal Virmani* (AIR 1956 Punj. 118), and *State Bank of India, Kanpur Vs. Deepak Malviya and others*, . The Andhra Pradesh High Court in 1999 A.P. 367 (supra) relied on the decisions of the Madras High Court and held that the law regarding to general lien is laid down in Section 171 of the Indian Contract Act and the Bankers have such a lien on things bailed with them, unless there is a contract to the contrary. It was also held that the banker's lien contemplated u/s 171 has an overriding effect on general provisions of Section 174 of the Contract Act. In *State Bank of India, Kanpur Vs. Deepak Malviya and others*, , it was held as follows:

16. Section 171 of the Act refers to the lien of banker's etc. The right of security for general balance on account of any goods bailed to them. In other words if certain sum is due to the Bank in one account it may retain as security money or other movable that comes into its hands in another account.

11. In *Punjab National Bank Ltd. Vs. Satyapal Virmani*, a Division Bench of the Punjab High Court held that:

According to the law merchant, the banker can look to his general lien as a protection against loss on account, or loss on loan or overdraft. And money has been held to be a species of goods over which lien may be exercised: "*Punjab National Bank Ltd. v. Harnam Singh*", Civil Revn. No. 40 of 1953 (Punj.) (A), where reliance is placed on "*Lloyds Bank Ltd. v. Administrator-General of Burma*", AIR 1934 Rang. 66(B), "*Devendrakumar Lalchandji v. Gulal Singh*", (AIR 1946 Nag. 114(C) "*Mercantile Bank of India, Ltd. v. Rochaldas Gidumal and Co.* AIR 1926 Sind 225(D), and "*Union Bank of Australia v. Murray Aynsley*", (1898) A.C. 693(E).

12. In *London and Midland Bank v. Mitchell* (1899 (2) Ch. 161), it was held that: Though the debt is barred in the sense that a personal action can no longer be

brought to recover it, the debt is not gone; nor is the right of property destroyed, for there is no provision in any Statute of Limitations with reference to personal property similar to that contained in 3 & 4 Will. 4, c.27, Section 34, whereby the title to land is extinguished after the lapse of a certain period.

13. In "The Banking Law in Theory and Practice" by S.N. Gupta Third Edition page 527, it is stated that:

16. Banker's Lien and Limitation Act. The banker's right of lien is not barred by the Law of Limitation. The effect of the Limitation Act is only to bar the remedy and not to discharge the debt. Consequently, it does not affect the property over which the banker has a lien. A reference can be made to London and Midland Bank v. Mitchell, in which it was held that so far as the effect of the Limitation Act, 1963 on the rights to exercise lien is concerned, it only bars a personal remedy, it does not affect property over which the banker has a lien. Hence it is lawful for the banker to hold securities which become subject-matter of the lien against debt which have become barred by limitation. This rule is applied in India as well in all respect. In Bombay Dying and Manufacturing Company, it has been held by the Hon'ble Supreme Court that when a creditor has a lien for obtaining satisfaction of the debt, this right is not affected by limitation even though an action thereon is barred by limitation.

14. In the light of the authorities mentioned above, the principles are fairly clear. The bank has general lien over the securities which come to its hands. It may be in the form of money, negotiable instrument or any form of security or it may be goods. Section 171 of the Indian Contract Act statutorily recognizes the banker's lien. To apply the banker's lien, it is not necessary that the debt in respect of which and for the recovery of which the lien is exercised should be one which is not barred by limitation. Bar of limitation for realization of a debt does not destroy or extinguish the right of the creditor for the debt. It only destroys the remedy. The creditor is not precluded from appropriating or adjusting the amounts of the debtor which come to his hands and from appropriating it towards a barred debt. The law of limitation only bars the remedy and it does not confer any right except in the contingencies mentioned in Section 27 of the Limitation Act. Section 27 provides that on the expiry of the period of limitation for filing a suit for possession, the right itself gets extinguished. The extinguishment of right is because there is vesting of right on the opposite party. In the case of a debt barred by lapse of time, the right of the creditor to recover the debt is not transferred to or conferred upon the debtor. It becomes dormant and becomes unenforceable in a court of law. That does not mean that debt is destroyed or extinguished and that the creditor is not entitled, under any circumstances, to claim or recover it in any manner whatsoever. Exercise of banker's lien is one method by which even a barred debt can be recovered by adjusting from the amount of the debtor which later comes to the hands of the bank. The position does not change even if the bank was defeated in the suit filed by it, the suit having been dismissed on the ground of limitation. By

dismissing the suit as barred by limitation, the court only held that the bank was not entitled to recover the amount by filing a suit. Dismissal of the suit on the ground of limitation does not mean that the debt is extinguished. There cannot be any difference between a case where the bank did not file a suit and a case where the bank filed a suit but it was dismissed on the ground of limitation. In either case, the rights which the bank otherwise would have in respect of the debt would still be available to the bank.

For the aforesaid reasons, I am of the view that, the courts below committed error of jurisdiction and error of law in holding that the Defendant bank is not entitled to exercise its lien and that the Plaintiff is entitled to recover the amount covered by the cheque. The courts below, in my view, were not justified in decreeing the suit. The Plaintiff cannot complain against the exercise of banker's lien made by the Defendant bank. The Plaintiff is not entitled to get a decree as prayed for. The Civil Revision Petition is allowed and the judgments and decrees of the court below are set aside and the suit is dismissed. No order as to costs.