Supreme Court of India
Syndicate Bank vs Vijay Kumar And Others on 5 March, 1992
Equivalent citations: AIR 1992 SC 1066, 1992 (2) ARBLR 1 SC, I (1992) BC 324 SC, 1992 74 CompCas 597 SC, JT 1992 (2) SC 136, 1992 (1) SCALE 534, (1992) 2 SCC 331, 1992 (1) UJ 494 SC
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Bench: J Verma, K J Reddy
ORDER K. Jayachandra Reddy J.

1. The question involved in this appeal is; what is the meaning of "Banker's lien" in the legal terminology and how it is understood and exercised in the banking system. The appellant is Syndicate Bank. The firm by the name of M/s. Jullundur Body Builders, respondent No. 2 (hereinafter referred to as "Judgment-debtor") have been enjoying various types of credit facilities from the appellant Bank for the last so many years. They were also enjoying overdraft facility with a limit of Rs. 1,00,000/-. Respondent No. 1 (hereinafter referred to as 'Decree-holder" obtained a decree against the Judgment-debtor for Rs. 1,04,441.35 p. with future interest @ 9%. In the course of the execution proceedings the Judgment-debtor agreed to pay the decretal amount in the instalments of Rs. 5,000/- per month. To ensure compliance with the undertaking, the Judgment-debtor was required by the executing court to furnish a Bank guarantee for a sum of Rs. 90,000/- in favour of High Court of Delhi. On 10.9.80 the Judgment-debtor requested the appellant Bank to furnish a Bank guarantee for a sum of Rs. 90,000/- in favour of Registrar of High Court of Delhi. The Bank agreed to furnish the Bank guarantee on the condition that the Judgment-debtor should deposit the entire sum of Rs. 90,000/-as security for the guarantee with the Bank. Or. 17.9.80 respondent No. 3, partner of the Judgment-debtor firm deposited by way of two Fixed Deposits Receipts ("FRDs" for short) of Rs. 65,000/- and Rs. 25,000/- respectively after duly discharging them by signing on the reverse of each FDR. The FDRs were to mature on 17.12.83 and 1.7.85 respectively. The two covering letters were also executed on the Bank's usual printed forms on 17.9.80. As per the recital in the said letters the Judgment-debtor agreed that the deposits and renewals shall remain with the Bank so long as any amount on any account is due to the Bank from them i.e. M/s. Jullundur Body Builders. Thereafter the Bank issued a guarantee for a sum of Rs. 90,000/- in favour of Registrar of the High Court. On 27.10.80 a Division Bench of the High Court discharged the Bank guarantee by an order passed in an appeal preferred by the Judgment-debtor.Thus on that date the Bank guarantee stood discharged and the original Bank guarantee was returned to the appellant Bank. The Decree-holder made an interlocutory application in the pending execution petition for attachment of a sum of Rs. 35,OOO/- out of Rs. 90,000/- deposited as security for the Bank guarantee on the ground that the same belongs to the Judgment-debtor and therefore is liable to be attached. A learned Single Judge of the High Court made an order of attachment on 21.11.80. The counsel for Decree-holder addressed a letter to the appellant Bank that the said attachment has been made in execution of the decree. On 4.2.81 the appellant Bark appeared before the Court and raised objection against the attachment. On 5.3.81 the High Court passed an order rejecting the objection and directed the appellant Bank to deposit a sum of Rs. 35,000/- in the Court. Against the said order, the appellant Bank has filed the present appeal.

2. It was contended before us that the appellant Bank has a banker's lien over the amount deposited by the Judgment-debtor who is their client and as Bankers they have a right to hold the security in

respect of overdraft amount and therefore the attachment cannot be sustained. A similar contention was raised before the learned Single Judge but the learned Single Judge held that these two FDRs were deposited with the Bank as security for the Bank guarantee and when it was discharged the sum covered by the two FDRs belonged to the Judgment-debtor and the Bank cannot have a general lien on the security given for the Bank guarantee and in such cases it is only a case of particular lien and not a case of general lien and therefore the amounts covered by the two FDRs could be attached.

3. Shri P.P. Rao, learned Counsel appearing on behalf of the appellant Bank submitted that the letters executed on 17.9.80 by the Judgment-debtor at the time of deposit of the FDRs, clearly gave the authority to the Bank to retain the deposits "so long as any amount on any account" is due from the Judgment-debtor and therefore the Banker has a lien or a right to set off in respect of the deposits in as much as on the relevant date there was a larger liability due to the Bank. It is also his contention that on account of discharge of the Bank guarantee,the appellant Bank had a right to set off the amount in deposits against the liability of the Judgment-debtor due to the Bank. He also canvassed that the Banker's lien is legally recognised and it is of great importance to the entire Banking community and such a lien cannot be interfered with unless the liability in respect of which the lien is created, is fully discharged.

4. To appreciate these contentions it becomes necessary to refer to some of the relevant documents and then examine the meaning and scope of the expressions "Banker's lien" and "Bank guarantee" in the light of some settled principles.

5. The two FDRs were duly discharged by signing on the reverse of each of them by the Judgment-debtor and were handed over alongwith two covering letters on the Bank's usual printed forms on 17.9.80 at the time of obtaining the guarantee. The relevant clause of the letter reads as under:

The Bank is at liberty to adjust from the porceeds covered by the aforesaid Deposit.Receipt/Certificate or from proceeds of other receipts/Certificates issued in renewal thereof at any time without any reference to us, to the said loan/OD account.We agree that the above deposit and renewals shall ramain with the Bank so long as any amount on any account is due to the Bank from us or the said M/s. Jullundur Body Builders singly or jointly with others.

To the same effect is the other letter. The above recital in the letter clearly go to show that a general lien is created in favour of the appellant Bank in respect of those two FDRs, The Bank is given the authority to retain the FDRs so long as any amount on any account is due from the Judgment-debtor. Thus the appellant Bank had a right to set off in respect of these FDRs if there was a liability of the Judgment-debtor due to the Bank. In this context it is useful to refer to some passages in the text-books on the scope and meaning of the expression "banker's lien".

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 oridinary 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 cirumstances 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 proceeds 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 lock 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 staled 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 to the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which arc 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 FDRs. In any event the two letters executed by the Judgment-debtor or

17.9.80 created a general lien in favour of the appellant Bank over the two FDRs. Even otherwise having regard to the mercantile custom as judicially recognised the Ranker 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. The High Court, however, found that the two FDRs were given only by way of securities for the Bank guarantee and when once the guarantee is discharged, the amounts covered by the said two FDRs would belong to the Judgment-debtor since the charge is limited to the amount of the Bank guarantee. The High Court, in this context relied on the words "Lien to BG 11/80" which are found on the back of each FDR and according to the High Court in view of this endorsement, the Bank has no right to hold the security in their own favour after the Bank guarantee has been released and they are bound to return it to the customer namely the judgment-debtor when he makes a demand on the Bank. The High Court also observed that the terms of the Contract namely furnishing FDRs as security for the bank guarantee are inconsistent with the general lien that the Bank claims and the Bank can claim only a particular lien for the bank guarantee. It also observed that since the Bank guarantee has been discharged, the Bank has no right to hold the security for something more than what was agreed upon. We are unable to agree with this reasoning. As already noticed, the recital in the covering letters as extracted above clearly established that a general lien was created in favour of the Bank on the two FDRs. Merely because the two FDRs were also furnished as security for the issuance of the bank guarantee, the general lien thus created cannot come to an end when the Bank guarantee is discharged. The words "Lien to BG 11/80" do not make any difference.

9. In this context it becomes necessary to examine the meaning and scope of a Bank guarantee and the respective rights created thereunder.

10. It is in common parlance that the issuance of guarantee is what that a guarantor creates to discharge liability when the principal debtor fails in his duty and guarantee is in the nature of collateral agreement to answer for the debt. It is well-settled that the Bank guarantee is an autonomous contract and imposes an absolute obligation on the Bank to fulfill the terms and the payment in the Bank guarantee becomes due on the happening of a contingency on the occurrence of which the guarantee becomes enforceable.

11. The Guarantee has been defined in Halsbury's Laws of England Vol.20, Fourth Edn. page 49 para 101 as that" A guarantee is an accessory contract whereby the promisor undertakes to be answerable to the promisee for the debt, default or miscarriage of another person whose primary liability to the promise must exist or be contemplated.

12. In the banking system it is understood that Bank guarantee has an dual aspect. In the case of a Bank guarantee the banker is the promisor. It is a contract between the Bank and the beneficiary of the guarantee and it is also a security given to the beneficiary by a third party. Now, it is a well-known business transaction in the World of commerce and it has become the backbone of the banking system. Now coming to its enforceability the same depends upon the terms under which the guarantor has bound himself. He cannot be made liable for more than what he has undertaken.

Therefore the Bank guarantee, as alredy noticed, is in the nature of a special contract depending upon the happening of a specific event and when once it is discharged the guarantee comes to an end. It has to be borne in mind that the obligations arising under the Bank guarantee arc independent of the obligations arising out of a specific contract between the parties. Therefore the endorsement of the words "Lien to BG 11/80" cannot have a bearing on the. banker's lien on the two FDRs. Merely because on the basis of the security of the two FDRs the appellant Bank gave a guarantee it cannot be said that the banker had only a limited particular lien and not a general lien on the two FDRs. In our view this finding of the High Court is erroneous.

13. In this context it is also necessary to consider the extent to which the Court can go into the nature of the securities offered for the Bank guarantee in the light of the banker's lien.In United Commercial Bank v. Bank of India and Ors. this Court referred to a passage from R.D. Harbottle (Mercantile) Ltd. and Anr. v. National Westminster Bank and Ors. (1977) 2 All ER 862 with approval which runs as under:

It was only in exceptional cases that the courts would interfere with the machinery of irrevocable obligations assumed by banks. They were the life blood of international commerce. The machinery and commitments of banks were on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise trust in internal commerce could be irreparably damaged.

In R.D. Harbottle (Mercantile) Ltd. case it was stated in the Headnote as under:

(i) Only exceptional cases would the courts interfere with the machinery of irrevocable obligations assumed by banks. In the case of a confirmed performance guarantee, just as in the case of a confirmed letter of credit, the bank was onl concerned to ensure that the terms of its mandate and confirmation had been complied with and was in no way concerned with any contractual disputes which might have arisen between the buyers and sellers....

The above passage has also been referred in U.P. Cooperative Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. wherein this Court held that the aforesaid represents the correct state of the law. In this case, this Court has affirmed the obligation of payment without dispute by the Bank in the Indian context in cases relating to Bank guarantees. But it is equally obvious that the same liability or obligation on the part of the Bank will not be there when the Bank guarantee is discharged and this needs no emphasis.

14. From the above discussion it can be gathered that the Bank guarantees are on different level and they must be allowed to be honoured free from interference by the courts and a Bank which gives a guarantee must honour the same according to its terms and it is only in exceptional cases that the court will interfere with the machinery of irrevocable obligations assumed by the banks. Afortiori the same principle applies in respect of Bank guarantees which are discharged. When once the Bank guarantee is discharged the obligation of the Bank ends and there is no question of going behind such discharged Bank guarantee. The court should refrain from probing into the nature of the transactions between the Bank and the customer which led to the furnishing of the Bank guarantee.

15. Now the next question is whether the FDRs which are with the Bank and on which the Bank claims a general lien can be attached. So far as the attachment is concerned, the banker's lien cannot by itself be a bar for such attachment. In para 89 of Vol.3 of Halsbury's Laws of England, 4th Edn. the law is stated as under:

For the purpose of satisfying a High Court or country court judgment for the payment of money,any sum standing to a person's credit in a deposit account in a bank is deemed to be a sum due or accruing due to that person, and to be attachable accordingly, notwithstanding that any condition applying to the account requiring that, before withdrawal, notice be given, or personal application be made, or a deposit book or a receipt for money deposited by produced, has not been satisfied.

From this it follows that if a deposit is payable at a future date or after the lapse of a Specified time it is still liable to attachment. What is attached is the money in the deposit account. The banker as a garnishee, when an attachment notice is served, has to appear before the court and obtain suitable directions for safeguarding its interest. This also become clear from the perusal of Order 21 Rule 46(a) of the Civil Procedure Code. The court, in such a situation has to take into account the banker's lien over the securities or deposits regarding which garnishee notice is issued.

16. We have already held that the appellant Bank has a general lien over those two FDRs. The High Court having held that the two FDRs can be attached gave a further direction dismissing the objection of the Bank that the Bank should deposit an amount of Rs. 35,000/-. As rightly contended by the learned Counsel for the appellant Bank, the Bank in the instant case has the liberty to adjust from the proceeds of the two FDRs towards the dues to the Bank and if there is any balance left that will only be the amount which would belong to the depositor namely the Judgment-debtor in this case and only such amount, if any, can be attached in discharge of a decree. It is also submitted that the liability of the Judgment-debtor to the appellant Bank was far in excess of the amounts covered by the two FDRs and therefore nothing is due from the Bank to the Judgment-debtor. This is a matter for verification. However, in the view taken by us above namely that the Bank has a general lien over the two FDRs we set aside the order of the High Court directing the appellant Bank to deposit an amount of Rs. 35,000/-. The High Court shall, however, consider the objections raised by the Bank, namely that no amounts are due to the Judgment-debtor, in the light of the above principles laid down by us and then decide whether there is any amount left for being attached by the Decree-holder in execution of his decree. With the above directions the appeal is accordingly allowed. In the circumstances of the case, there will be no order as to costs.