

M/S.Omega Cables Limited vs State Bank Of India on 10 June, 2019

Author: V.Bhavani Subbaroyan

Bench: V.Bhavani Subbaroyan

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2019

CORAM

THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.5275 and 5276 of 2018
and
W.P.No.3419 of 2018

1. M/s.Omega Cables Limited,
Rep.by its Director,
Plot Nos.16 & 17,
Ambattur Industrial Estate,
Chennai - 600 058.

... Petitioner in W.P.Nos.5275 and
5276 of 2018 and third respondent
in W.P.No.3419/2018

Vs.

1. State Bank of India,
Rep.by its Assistant General Manager,
Industrial Finance Branch,
No.155, Anna Salai,
Chennai - 600 002.

... 1st respondent in W.P.Nos.5275
and 5276 of 2018 and Petitioner
W.P.No.3419 of 2018

2. East Coast Constructions and Industries Ltd.,
Rep.by its Directors,
Having Office at Buhari Buildings,
No.4, Moores Road,
Chennai - 600 006.

... 2nd respondent in W.P.Nos.5275
5276 of 2018 and fourth respondent
in W.P.No.3419 of 2018

3. Ashraf Abdul Rahman Buhari

4. Muthuswamy Ravi Vaidyanathan

<http://www.judis.nic.in>

2

5. Mr.Muhamed Mohideen Sheik

6. Mr.Ahmed Mustafa Hussain Shahib

7. Ms.Fathiha Fairoz

8. Ms.Najumunisa

9. Ms.Mariyam Sharafia

10. Ms.Thaseen Sadak

11. Ms.Hameed Ayesha

12. Ms.Ameem Sabeen @ Sabrina Sadak

13. Mrs.Dhaleela Khan

14. Mrs.Sadhira Fathima

15. Mr.Quthubudeen

16. The Registrar,
Debt Recovery Appellate Tribunal,
fourth Floor, Indian Bank Circle Office,
55 Ethiraj Salai,
Chennai - 600 008.

... Respondents in all the Writ Pet

Prayer in W.P.No.5275 of 2018 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records comprised in the order of proceedings dated 14.12.2017 passed by the Debts Recovery Appellate Tribunal in M.A.No.152 of 2017 and quash the same, to the extent of the two directions viz., direction that operates against the petitioner from alienation or creating third party interests on the property and the requirement that the petitioner to be a party to O.A.No.607 of 2016, in as much as the respondents are without properly appreciating the facts beyond the powers of the Tribunal.

<http://www.judis.nic.in>

3

DRAT and contrary to law.

Prayer in W.P.No.5276 of 2018 : Writ Petition is filed under Article 32 of the Constitution of India, to issue a Writ of Certiorari, calling for the records comprised in the order of proceedings dated 14.12.2017 passed by the Debts Recovery Appellate Tribunal in M.A.No.151 of 2017 and quash the same, to the extent of the two directions viz., direction that operates against the petitioner from alienation or creating third party interests on the property and the requirement of the petitioner to be a party to O.A.No.607 of 2016, in as much as the same are without properly appreciating the facts beyond the powers of the Tribunal and contrary to law.

Prayer in W.P.No.3419 of 2018 : Writ Petition is filed under Article 32 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order passed in M.A.No.152 of 2017 dated 14.12.2017 by DRAT, Chennai, and to quash the portion of the same by directing the petitioner bank to return the title deeds belonging to the third respondent.

For Petitioners : Mr.Rahul Balaji
For Respondents : Mr.M.L.Ganesh

COMMON ORDER

(Order of the Court was made by V.BHAVANI SUBBAROYAN.J.,) W.P.Nos.5275 and 5276 of 2018 are filed against the order passed by DRAT, Chennai, in M.A.Nos.151 & 152 of 2017 dated 14.12.2017.

<http://www.judis.nic.in>

2. W.P.No.3419 of 2018 is filed to quash the portion of the impugned order passed in M.A.No.152 of 2017 dated 14.12.2017 by DRAT, Chennai, in directing the first respondent bank to return the title deeds belonging to the petitioner herein.

3. The brief facts of the case as submitted by the learned counsel for the petitioner in W.P.Nos.5275 and 5276 of 2018 is as follows:-

The petitioner, namely, M/s.Omega Cables Limited, which is a Public Limited Company, had requested the first respondent bank for a term loan of Rs.20 crores to meet out the cost of preliminary works for development of its property at Ambattur Industrial Estate. Based on the said request, the first respondent bank, through its Industrial Finance Branch, sanctioned one-time cash credit of Rs.15 Crores by their letter dated 24.01.2013. The securities offered by the petitioner company were movable and immovable assets, apart from the land admeasuring 16.31 acres situated at Ambattur Industrial Estate. The petitioner company had also executed loan agreements, apart from guarantee agreement. The first respondent bank, by letter

dated 01.02.2016 and 17.02.2016, asked the petitioner company to settle <http://www.judis.nic.in> the one-time cash credit facility immediately, and further informed that if the amount is not settled within 15 days from the date of the letter, they would proceed under the SARFAESI Act against the petitioner company. In order to settle the debts due to the first respondent bank, the petitioner had entered into a Memorandum of Understanding with one company, namely, M/s.ETA Star Infopark to jointly develop the land, to which, the said M/s.ETA Star Infopark agreed to pay the dues to the first respondent bank and thereby, clear the security.

4. In furtherance of the Memorandum of Understanding, the said M/s.ETA Star Infopark remitted a sum of Rs.15,15,19,500/- on 22.03.2016 by way of RTGS, including the outstanding interest amounts till then. Thereafter, by letter dated 29.04.2016, the petitioner company approached the respondent bank to release the original documents and to provide statement of accounts, confirmation of balance and no due certificate. The first respondent bank did not reply to that letter immediately, and later, by its letter dated 04.05.2016, confirmed that the account has been closed on 29.03.2016 enclosing a statement of accounts showing NIL balance. However, the first respondent bank did not issue any No Due Certificate and return the original documents which were given as security for availing the above loan. The petitioner seems to have <http://www.judis.nic.in> received a notice in O.A.No.607 of 2016 from the file of the Debt Recovery Tribunal - II, Chennai, which was filed by the respondent bank, praying for an order to recover a sum of Rs.77,91,96,968.90/- from certain third parties. However, the petitioner company was not made as a party in the said O.A. proceedings.

5. The petitioner company came to know that I.A.No.637 of 2016 in O.A.No.607 of 2016 came to be filed by the first respondent bank, seeking an interim injunction restraining the petitioner company who was arrayed as 15th respondent therein, from alienating or encumbering over the schedule mentioned property. After coming to know that the petitioner's name is arrayed in the said I.A., the petitioner company seems to have filed I.A.No.143 of 2017 in I.A.No.637 of 2016 in O.A.No.607 of 2016, praying to delete its name which was arrayed as 15th respondent in I.A.No.637 of 2016 and seeking a direction to the first respondent bank to return the title deeds of the property. Thereafter, the said I.A.No.143 of 2017 was being adjourned on several occasions, and despite the Tribunal giving opportunity to the first respondent bank to file their written statement and counter in I.A.No.143 of 2017, the first respondent bank was continuously taking time, and hence, the petitioner had filed C.R.P.No.1937 of 2017 before this Court, praying to dispose of <http://www.judis.nic.in> I.A.No.143 of 2017 in a time bound manner. This Court, by order dated 21.06.2017 directed the DRT-II, Chennai, to dispose of I.A.No.143 of 2017 in I.A.No.637 of 2016 in O.A.No.607 of 2016 in a time bound manner.

6. The DRT-II, Chennai, after being directed by this Court, finally passed a common order on 25.07.2017 by allowing I.A.No.143 of 2017 filed by the petitioner to delete his name as 15th respondent and dismissing I.A.No.637 of 2016 filed by the respondent bank. Thereafter, based on the said order, the petitioner sent a notice to the first respondent bank, requesting to return the title deeds of the property. However, the first respondent bank did not return the title deeds, which forced the petitioner to approach this Court, by filing W.P.No.23394 of 2017 seeking for a Writ of

Mandamus, directing the first respondent bank to return the title deeds, which were mortgaged by the petitioner for the loan availed on 04.01.2013. When the said petition is pending, the first respondent bank, filed M.A.No.151 of 2017 against the order passed in I.A.No.637 of 2016 in O.A.No.607 of 2016, and M.A.No.152 of 2017 against the order passed in I.A.No.143 of 2017 in I.A.No.637 of 2016 in O.A.No.607 of 2016 before the DRAT, Chennai. The DRAT, by a common order dated 14.12.2017, modified the order passed by DRT-II, Chennai, to the extent that the name of <http://www.judis.nic.in> in the petitioner will continue in the O.A., and with regard to the return of title deeds was affirmed as directed by DRT-II, Chennai. However, restricted the petitioner to alienate the property or create third party interest. Hence, aggrieved by the said order dated 14.12.2017, the present Writ Petitions are filed.

7. As far as W.P.No.3419 of 2018 is concerned, the State Bank of India is the petitioner, and it is filed against the order passed by DRAT, Chennai, dated 14.12.2017 on the ground that the respondents 3 to 17 in W.P.No.3419 of 2018 are due and liable to pay a sum of Rs.77,91,96,968.90 as on 31.08.2016. The fourth respondent therein, i.e. M/s.East Coast Construction and Industries Limited, is a Public Limited Company, represented by the respondents 5 to 9 as directors. The respondents 7 to 17 stood as guarantors for the loan liability of M/s.Omega Cables Limited, the third respondent in the Writ Petition.

8. The further claim of the petitioner bank in W.P.No.3419 of 2018 is that M/s.East Coast Construction and Industries Limited was not operating its business to an optimum level and despite various credit facilities extended to them from time to time by the respondent bank, failed to complete the projects which were taken up by them in time, which resulted in certain third parties invoking bank guarantee <http://www.judis.nic.in> provided by the bank. The fourth respondent M/s.East Coast Constructions and Industries Limited, approached the consortium banks for additional fund based limit of Rs.75 Crores and Non-fund based limit of Rs.75 Crores, which the petitioner bank had processed its share of fund based limit of Rs.19 Crores as corporate loan and Non-fund based limit of Rs.17.11 Crores, for which, the third respondent M/s.Omega Cables Limited offered the property situated at Plot.Nos.16 & 17, Ambattur Industrial Estate, Chennai - 58 as security. In fact, the petitioner bank had sanctioned excess drawing of fund to the fourth respondent company, based on the property of third respondent M/s.Omega Cables Limited, as the title deeds of M/s.Omega Cables is still with the petitioner bank. Hence, the petitioner bank has got general lien on the property of the third respondent until the fourth respondent discharges its loan liability, as the securities offered by the fourth respondent were not enough to recover the outstanding due amount of Rs.77,91,96,968.90/- as on 31.08.2016 payable to the petitioner bank. Based on which, O.A.No.607 of 2016 was filed by the petitioner bank before DRT-II, Chennai, to recover the same.

9. The petitioner bank in W.P.No.3419 of 2018 further claims that pending O.A. proceedings, the bank initiated SARFAESI <http://www.judis.nic.in> proceedings against the mortgaged property and sold in favour of auction purchaser and thus, appropriated the amount of Rs.13.60 Crores on 21.09.2017 and further, recovered a sum of Rs.9.87 Crores from PWD, the Government of Tamilnadu on 26.10.2017 after filing appropriate Garnishee applications in the O.A. proceedings before DRT-II, Chennai. Even after appropriation of the above said amount, the fourth respondent M/s.East Coast Construction and Industries Limited is still due and liable to pay a sum of Rs.86.30

Crores approximately as on 31.12.2017 to the petitioner bank.

10. The petitioner bank in W.P.No.3419 of 2018, also claims that since sufficient security was not available to recover the huge outstanding due amount from the fourth respondent M/s.East Coast Construction and Industries Limited, the petitioner bank had filed I.A.No.637 of 2016 in O.A.No.607 of 2016 for attachment of property of the third respondent M/s.Omega Cables Limited as the promoters and directors of the third respondent didn't deny the relationship with the fourth respondent M/s.East Coast Construction and Industries Limited. At the same time, I.A.No.143 of 2017 was filed by the third respondent, directing the petitioner bank to return the original title deeds and to delete it's name arraying as 15th respondent in I.A.No.637 of 2016 filed by the petitioner bank, seeking an injunction <http://www.judis.nic.in> restraining the third respondent from alienating or transferring the schedule mentioned property in favour of third parties. The DRT-II, Chennai, by a common order dated 25.07.2017, allowed I.A.No.143 of 2017 and dismissed the I.A.No.637 of 2016 as infructuous.

11. The petitioner bank in W.P.No.3419 of 2018 further claims that challenging the common order dated 25.07.2017, M.A.Nos.151 & 152 of 2017 filed by the petitioner bank before DRAT, Chennai. The DRAT, by order dated 14.12.2017, modified the common order passed in I.A.No.637 of 2016 and I.A.No.143 of 2017, and since the modification made in M.A.No.152 of 2017 in I.A.No.637 of 2016 in O.A.No.607 of 2016 was not in favour of the bank totally, W.P.No.3419 of 2018 was filed by the bank.

12. Heard the learned counsel for the petitioners and the learned counsel for the respondents, and perused the materials available on record.

13. M/s.Omega Cables Limited, the third respondent in W.P.No.3419 of 2018, is referred as petitioner in W.P.Nos.5275 & 5276 of 2018 and the State Bank of India, the petitioner in W.P.No.3419 of 2018 is referred as first respondent in W.P.Nos.5275 & <http://www.judis.nic.in> 5276 of 2018 and M/s.East Coast Construction and Industries Limited, the fourth respondent in W.P.No.3419 of 2018, is referred as second respondent in W.P.Nos.5275 & 5276 of 2018.

14. On perusal of the entire records and on appreciation of the arguments put forth by the learned counsel on both sides and a conjoint reading of the order passed by DRAT and DRT-II, Chennai, the following issues arises for consideration:

- i) Whether the petitioner is entitled for return of the security documents from the bank having settled the dues in full.
- ii) Whether general lien can be exercised under Section 171 of Indian Contract Act, 1872, by the bank on the security documents furnished by the petitioner to the loan availed by M/s.East Coast Construction and Industries Limited.
- iii) Whether the DRT-II, Chennai, had granted injunction by way of interlocutory order beyond the scope of the main O.A. filed by the bank.

15. The learned counsel for the petitioner in W.P.No.5275 & 5276 of 2018, would contend that when M/s.Omega Cables Limited <http://www.judis.nic.in> submitted the title deeds of properties belonging to their company, seeking loan for the purpose and expenses of Real Estate Project and when the same have been paid in full by their company within the stipulated time, it has got no nexus to the loan obtained by M/s.East Coast Construction and Industries Limited, as they have neither stood as a guarantor nor their properties were secured by the bank for the loan obtained by M/s.East Coast Construction and Industries Limited. So, the petitioner M/s.Omega Cables Limited, having settled the entire dues after entering into a Memorandum of Understanding with one M/s.ETA Star Infopark as early as on 22.03.2016 by remitting a sum of Rs.15,15,19,500/- by way of RTGS, which includes the outstanding interest amount, and having issued the nil balance statement of accounts from the bank as on 29.03.2016, the bank had intentionally withheld the release of original documents pertaining to a separate loan agreement with the bank.

16. In fact, the learned counsel for the petitioner would also contend that O.A.No.607 of 2016 filed on the file of DRT-II, Chennai, for recovery of a sum of Rs.77,91,96,968.90/- from certain third parties including M/s.East Coast Construction and Industries Limited, in which, the petitioner M/s.Omega Cables Limited was not made as a party. However, subsequently, they were arrayed as 15th respondent <http://www.judis.nic.in> in I.A.No.637 of 2016 which was filed by the bank, claiming injunction as against the petitioner that not to alienate the properties of third parties, and the documents are still with the bank.

17. The learned counsel for the petitioner M/s.Omega Cables Limited would further contend that when they moved I.A.No.143 of 2017 in O.A.No.607 of 2016, praying the Tribunal to delete it's name arraying as 15th respondent from I.A.No.637 of 2016, the DRT-II, Chennai, has categorically accepted their version based on the legally established guidelines. However, in the appeal filed by the bank before the DRAT, Chennai, the DRAT had modified the orders passed by DRT- II, Chennai, which is perse illegal as the Appellate Tribunal, though partly concurred with DRT-II, Chennai, had directed the bank to return the security documents to the petitioner, however, imposed a restriction on the petitioner that there will be no alienation of the property or creation of third party interest in the mortgaged security immovable property, merely because few directors of M/s.Omega Cables Limited are connected to M/s.East Coast Construction and Industries Limited as directors, which is totally contrary to the Rules established under various Judgments passed by this Court as well as the Honourable Supreme Court. That apart, the learned counsel for the petitioner would contend that the orders passed in Interlocutory <http://www.judis.nic.in> Proceedings is beyond the scope of main O.A., filed by the respondent bank. Further, merely because, the persons in the company are related or even holding the position of directors in the other company, both the companies are two independent identity and liability of one company, cannot be saddled on the other company in the absence of any such contractual agreement to bail out such liability of the other company.

18. In support of his claim, the learned counsel for the petitioner relied upon various Judgments and Orders, reported by the Honorable Supreme Court of India as well as this Court, which are as follows:-

(2010) 11 SCC 186 (Zonal Manager, Central Bank of India Vs. Devi Ispat Limited and Others), for the proposition, Scope of Judicial reviews/interference in contractual matters, where public sector bank discharging public functions and having status of "State", despite clearance of its outstanding dues in entirety by borrower, failed to return the title deeds, the Honourable Supreme Court held that the High Court rightly issued Writ of Mandamus for returning the title deeds.

2017-2-Writ L.R. 584 (M.Shanthi Vs. Bank of Baroda, Represented by its Chief Manager, Namakkal <http://www.judis.nic.in> Branch, Namakkal), for the proposition whether the bank can exercised the right of general lien in respect of the properties of the guarantor, given as security by way of deposit of title deeds in respect of and in connection with a demand of loan obtained by the guarantor independently from the bank.

(2007) 5 SCC 388 (Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd and another), for the proposition, unspecific and vague allegations in notice, devoid of details or unintelligible allegation in the show cause notice, held, implies denial of proper opportunity. When notice not attributing any specific role to the franchisee nor alleging that the franchisee was a party to the said agreement amongst the franchiser companies or that such agreement was within its knowledge held that when there is no allegation that the respondents were parties to the agreement in the show cause notice lacking information and vague not sufficient to proceed against the respondent.

(2002) 9 SCC 463 (Alemibic Glass Industries Ltd Vs. Collector of Central Excise & Customs Vs. Collector of Central Excise & Customs), for the proposition that public limited companies holding share in each other and having common directors, held, not ipso facto covered.

<http://www.judis.nic.in> (2010) 5 SCC 306 (Indowind Energy Limited Vs. Wescare (India) Limited and another), for the proposition, having common shareholders or common board of directors, neither make the two companies a single entity nor leads to an inference that one company will be bound by the acts of the other.

(2011) 6 SCC 529 (Shehla Burney (Dr.) and others Vs. Syed All Mossa Raza and Others), to postulate that Grant of relief against impleaded party against whom no relief claimed and absence of any pleading and prayer in the original plant is not within the Jurisdiction of the Court to grant against the defendant, against whom, no relief has been claimed.

(1992) 2 SCC 377 (Sree Jain Swetambar Terapanthi Vid(S) Vs. Phundah Singh and Others), for the purpose of holding relief in interlocutory proceedings cannot be granted beyond the scope of the suit.

(2008) 17 SCC 491 (Bachhaj Nahar Vs. Nilima Mandal and another), wherein, the Honourable Supreme Court held that without pleading and an opportunity, no amount of evidence, held, can be looked into to grant any relief.

CDJ 1992 SC 224 (Syndicate Bank Vs. Vijay Kumar), for the proposition, the banker's lien under Section 171 of Contract Act 1872, bank cannot be made <http://www.judis.nic.in> liable for more than what it has undertaken, obligations arising out of bank guarantee are independent of obligations arising out of specific contract between the parties.

2011 (2) CTC 465 (State Bank of India Vs. Jayanthi) for the proposition that when general lien can be exercised, bank retained title deeds by excessing power of general lien on the ground that there is balance due in different loan account, held, bank cannot exercise lien in respect of different loan account, for which, the borrower had not deposited his title deeds.

19. On the other hand, the learned counsel for the respondent bank vehemently relied on Section 171 of Contract Act 1872, which provides the general lien as against the petitioner security for the loan secured by M/s.East Coast Construction and Industries Limited, as the directors of both the companies are one and the same.

20. After hearing the rival contentions made by the learned counsel for the petitioner and the learned counsel for the respondent bank, it would be appropriate to extract the conclusion arrived by DRT- II, Chennai, in I.A.No.637 of 2016 in O.A.No.607 of 2016 and I.A.No.143 of 2017 in O.A.No.607 of 2016. Hence, it is extracted hereunder:-

<http://www.judis.nic.in> "11. Though the Directors of the petitioner M/s.Omega Cables Limited are the Directors in R2 M/s.East Coast Constructions and Industries Limited, both are independent legal entities. Therefore, both are different from each other. The proposal about the petitioner's property to be given as mortgage to 1st respondent bank was made only by M/s.East Cost Constructions and Industries Limited and not by the petitioner M/s.Omega Cables Limited. The petitioner has not created any mortgage in respect of the subject property for the loan availed by R2 company from 1st respondent bank.

Therefore, the 1st respondent bank has no interest over the subject property as mortgagee. Hence, the 1st respondent bank is not entitled to proceed against the petitioner's property which is mentioned in the schedule to I.A.No.637 of 2016.

12. Learned Counsel for the 1st respondent bank stated that the 1st respondent bank has general lien over the subject property of the petitioner. The 1st respondent bank has general lien only over the property of principal borrower R2 M/s.East Cost Constructions and Industries Limited and not over the subject property of M/s.Omega Cables Limited. Hence, I find that there is no substance in the submissions of the 1st respondent bank and the 1st respondent bank is not entitled to proceed against the petitioner's property as mortgagee. Point (i) is answered accordingly.

<http://www.judis.nic.in>

13. In the result, it is ordered as under:

The application - I.A.No.143 of 2017 is allowed. No costs.

Since the I.A.No.143 of 2017 is allowed, I.A.No.637 of 2016 becomes infructuous. Hence, I.A.No.637 of 2016 is dismissed as infructuous. No costs."

21. After the above conclusion of DRT-II, Chennai, it would be also appropriate to extract the conclusion arrived by DRAT, Chennai, which is under challenge before this Court in M.A.Nos.151 of 2017 and M.A.No.152 of 2017. Hence, it is extracted hereunder:-

"12. At face value, at this stage, it cannot be expressed with full confidence and force that whether persons working for R1 M/s.Omega Cable Limited are also responsible for repayment of dues of R2 M/s.East Coast Construction and Industries Limited or not? Ultimately it will be a matter of trial to be adjudicated at the time of final adjudication of the O.A. Both Companies have some points of differences also and have some common factors <http://www.judis.nic.in> also. In such a situation, without expressing any opinion on the merits of the case, deletion of R1 M/s.Omega Cables Limited from the cause title is not proper. No prejudice will be caused to R1 Company if its name kept continued in adjudication of the dues of R2 Company. Insofar as return of title deeds is concerned, it appears to have been based on proper logic and reasoning. However, to ensure the dues and recovery of the Appellant Bank which is ultimately a pool of public money, R1 M/s.Omega Cables Limited is directed and restrained from alienation of the properties and from creating third party interest on the property of title deeds.

24. Accordingly, both I.A.No.637/2016 of Appellant Bank and I.A.No.143/2017 of R1 M/s.Omega Cables Limited are partly allowed. Impugned order is modified to that extent that name of R1 M/s.Omega Cables Limited will continue in the O.A. impugned order relating to return of title deeds to R1 M/s.Omega Cables Limited is hereby affirmed. However, there shall be a restriction on R1 M/s.Omega Cables Limited that there will be no alienation of the property or creation of third party interest in the mortgage security immovable property."

22. From the above said conclusion, it is clear that the DRAT, Chennai, though in principle has accepted partly to the conclusion arrived by DRT-II, Chennai, in I.A.No.143 of 2017 and accepted that <http://www.judis.nic.in> there is no substance for the respondent bank to proceed against the petitioner's property as mortgagee, however, modified the same by restricting the petitioner company from alienating the property or creating a third party interest in the mortgaged security immovable property.

23. It is not in dispute that M/s.Omega Cables Limited, petitioner in Writ Petition Nos.5275 and 5276 of 2018, who had requested the respondent bank for a term loan of Rs.20 crores on 04.01.2013 to meet out the cost of preliminary works for development of its property at Ambattur Industrial Estate and subsequently, it was sanctioned by the respondent bank, for which, the petitioner

M/s.Omega Cables Limited had furnished sufficient movables and immovables as security.

24. It is also not in dispute that when the petitioner was in default had approached the bank to settle the one time cash credit facility proceeded under the SARFAESI Act.

25. The bank has also not denied that the petitioner M/s.Omega Cables Limited entered into a Memorandum of Understanding with one M/s.ETA Star Infopark who agreed to pay the outstanding dues of the petitioner to the bank, and as agreed, has also remitted a sum of <http://www.judis.nic.in> Rs.15,15,19,500/- on 22.03.2016 by way of RTGS. Thus, it becomes an undisputed fact that the petitioner M/s.Omega Cables Limited has repaid the entire dues to the respondent bank. Moreover, the respondent bank, after clearing the dues, has also issued statement of accounts, showing nil balance with regard to the loan availed by the petitioner company. Therefore, the respondent bank has no authority to retain the title deeds of the petitioner M/s.Omega Cables Limited who had furnished documents pertaining to movable and immovable properties for the loan obtained by them.

26. The case decided by the Honorable Supreme Court of India, reported in (2010) 11 SCC 186 in the case of [Zonal Manager, Central Bank of India Vs. Devi Ispat Limited and Others] squarely applies to the present case. The relevant portion of the said Judgment is extracted hereunder:-

"28. It is clear that (a) in the contract if there is a clause for arbitration, normally, a writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative <http://www.judis.nic.in> of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power. In the light of the legal position, writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier paragraphs.

29. In the case on hand, it is not in dispute that the appellant bank, being a public sector bank, discharging public functions is "State" under Article 12. In view of the settlement of the dues on the date of filing of the writ petition by arrangement made through another nationalised bank, namely, State Bank of India and the statement of accounts furnished by the appellant bank subsequent to the same i.e. on 14.05.2009 is 0.00 (nil) outstanding, we hold that the High Court was fully justified in issuing a writ of mandamus for return of its title deeds.

30. In the light of the above conclusion, we are unable to accept the claim of the appellant bank and on the other hand, we are in entire agreement with the direction issued by the learned Single Judge affirmed by the Division Bench. Consequently, the

appeal of the bank is dismissed. The appellant bank is directed to return the title deeds deposited by the respondent company within a period of two weeks from today. With the above direction, the civil appeal is dismissed. No order as to costs."

<http://www.judis.nic.in>

27. In view of the above decision, it is clear that the bank has no right to hold the documents offered as security by the petitioner for the loan availed by them. The bank is under obligation to return the documents immediately after the borrower has fulfilled his obligations by repaying the dues appropriately. Accordingly, the first issue is decided in favour of the petitioner. After deciding the first issue in favour of the petitioner, it would be appropriate to consider Section 171 of Contract Act 1872, as to whether the respondent bank is entitled to retain the title documents, claiming a right of general lien under Section 171 of Indian Contract Act, 1872, over the loan obtained by M/s.East Coast Construction and Industries Limited.

28. Section 171 of Indian Contract Act, 1872, is explained as follows:-

"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 the security for a general balance of account, any goods bailed to them; but, no other persons have right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

<http://www.judis.nic.in>

29. The above Section, postulates that the persons who are entitled to general lien as a security for a general balance of accounts unless excluded by contract, who generally are bankers, factors, wharfingers, attorneys of a High Court and policy brokers.

30. The main contention of the learned counsel for State Bank of India in W.P.No.3419 of 2018 is that while filing I.A.No.637 of 2016, the following prayers were sought before the DRT-II, Chennai.

"a. Grant an order of interim injunction thereby restraining the respondents 2 to 15 from alienating or transferring or creating any encumbrance over the schedule mentioned property in favour of third parties and consequently direct the S.R.O Joint-II, Central Chennai not to effect any registration without the knowledge and information of the Applicant Bank pending disposal of the above O.A. and thus render justice.

b. Order and direct the respondents 2 to 14 to forthwith surrender his passport to the Registrar of this Hon'ble Tribunal and restrain him from leaving the Country without the written permission of this Hon'ble Tribunal pending the hearing and final disposal of the Application and pass such further orders as this Hon'ble Tribunal may

deem fit and proper in the circumstances of this case and thus render justice.

<http://www.judis.nic.in> c. Order and direct the respondents 1 to 14 to declare their personal assets by way of an affidavit on oath and hold and certify that individual properties of the respondents 1 to 14 are liable for attachment and sale if the outstanding dues with interest thereon remain unpaid and in the event of failure to disclose the personal assets on oath, to order for arrest of the respondents 2 to 14 and their detention in civil prison.

d. Order an interim injunction restraining the 15th respondent or its agents, administrators, successors in office from alienating, encumbering or transferring the schedule mentioned property in favour of any third parties and consequently direct the Sub-Registrar, Ambattur not to effect any registration pending disposal of the above O.A. and thus render justice."

31. To substantiate the prayers, the bank has impleaded M/s.Omega Cables Limited as 15th respondent in I.A.No.637 of 2016 (without making M/s.Omega Cables Limited as a party respondent in O.A.No.607 of 2016 filed against M/s.East Coast Construction and Industries Limited for recovery of Rs.77,91,96,968.90) on the ground that the value of the property mortgaged by the company M/s.East Coast Construction and Industries Limited, was very low as compared to the huge outstanding loan amount. The bank has also filed an <http://www.judis.nic.in> application for attachment of the mortgaged property belonging to M/s.Omega Cables Limited, in which, some of the directors of M/s.East Coast Construction and Industries Limited, are also having stakes.

32. On perusal of the documents, it could be seen that the main contention of the bank in W.P.No.3419 of 2018 is only that the promoters, directors of M/s.Omega Cables Limited have not denied the relationship with M/s.East Coast Construction and Industries Limited and thus, the securities offered by M/s.Omega Cables Limited could also be taken as sufficient security for the loan availed by M/s.East Coast Construction and Industries Limited.

33. In furtherance to their submissions, the respondent bank has taken shelter under Section 171 of Indian Contract Act, 1872.

34. On a careful perusal of the provision, we find that Section 171 of Indian Contract Act 1872, cannot be read isolated as it has certain lien over Section 148 of Indian Contract Act 1872, which defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

<http://www.judis.nic.in>

35. In the present case, M/s.Omega Cables Limited for the purpose of securing loan, has in fact mortgaged certain properties as collateral security. However, pursuant to the Memorandum of Understanding with M/s.ETA Star Infopark, who has indeed remitted a sum or due payable by

M/s.Omega Cables Limited to the bank and the bank, having acknowledged the same, withholding the title deeds which are said to have been surrendered to the bank by M/s.Omega Cables Limited for the loan secured by them is contrary to Section 148 of Indian Contract Act 1872. Once the purpose is accomplished, the bank is mandatorily necessitated to return the documents or otherwise dispose of according to the directions of M/s.Omega Cables Limited.

36. In the present case, there is no written contract by M/s.Omega Cables Limited, undertaking to stand as security or guarantor for the loan availed by M/s.East Coast Construction and Industries Limited. Once the dues of M/s.Omega Cables Limited is fulfilled, the bank becomes Bailey and must return the security, without any demand on termination of the loan agreement. In other words, on fulfillment of the legitimate dues, M/s.Omega Cables Limited in written words by way of undertaking, has never acted as a <http://www.judis.nic.in> garnishee to the loan secured by M/s.East Coast Construction and Industries Limited.

37. Now coming back to Section 171 of Indian Contract Act 1872. When the conditions enumerated under Section 171 of Indian Contract Act, falling in line with Section 148 of Indian Contract Act, general lien under Section 171 of Indian Contract Act can be exercised by the bank over the securities which belong to the customer, but, which are held by the bank as security. If a thing is in possession of the bank, but, ownership is not in the customer, then, no right of lien can be exercised by the bank.

38. To attract provision of Section 171 of Indian Contract Act 1872, to retain a security for general balance of account, any goods failed to a bailee, then the bank should establish that it is a bailee within Section 148 of Indian Contract Act 1872. But, there be no bailment of securities, which has to be specifically returned or accounted for. As the securities placed in custody of the bank, the owners of the security continues to be with the customer. Unless there is an express contract by M/s.Omega Cables Limited, the bank has no lien over the securities offered by M/s.Omega Cables Limited for the loan secured by M/s.East Coast Construction and Industries Limited, merely because, some of the directors of both the companies are one <http://www.judis.nic.in> and the same or related to each of them. Every company is independent of the other. Even when the directors of the companies are one and the same, the companies legal entity can only proceeded against such company who commits default, but not on another company, merely because, the directors of both the companies are related or even one and the same, unless there is a written contract expressing the same by other company to stand as a guarantor or security for the loan availed by another company.

39. To substantiate the claim, the Judgment was relied on by the learned counsel for the petitioner reported in (2002) 9 SCC 463 in the case of [Alembic Glass Industries Limited Vs. Collector of Central Excise & Customs], the relevant portion of which, is extracted hereunder:-

"7. In our view, this is the heart of the matter. The shareholders of a public limited company do not, by reason only of their shareholding, have an interest in the business of the company. Equally, the fact that two public limited companies have common Directors does not mean that one company has an interest in the business of the other. It is, therefore, not possible to uphold the conclusion of the Tribunal that

the assessee and the chemical company were <http://www.judis.nic.in> related persons. This being so, it is unnecessary to go into the alternate arguments advanced on behalf of the assessee.

8. At this stage of the judgment, learned counsel for the Revenue draws our attention to the judgment of a Bench of two learned Judges of this Court in *Calcutta Chromotype Ltd. v. CCE2*. It does not appear to us that the judgment carries the case of the Revenue any further, nor does learned counsel so suggest. He says that he has referred to it because of this sentence therein:

"12. The principle that a company under the Companies Act, 1956 is a separate entity and, therefore, where the manufacturer and the buyer are two separate companies, they cannot, than anything more, be 'related persons' within the meaning of clause (c) of sub-section (4) of Section 4 of the Act is not of universal application." We have difficulty, for the reasons already stated, in accepting this sentence as correct. It appears to have been so stated in relation to and in the context of facts of that case. Therefore, the learned Judges, it should be added, remanded the matter for further inquiry into the facts."

40. The another Judgment relied on by the learned counsel for the petitioner, reported in (2010) 5 SCC 306 in the case of <http://www.judis.nic.in> [*Indowind Energy Limited Vs. Wescare (India) Limited and Another*], the relevant portion of which, is extracted hereunder:-

"17. It is not in dispute that Subuthi and Indowind are two independent companies incorporated under the Companies Act, 1956. Each company is a separate and distinct legal entity and the mere fact that the two companies have common shareholders or common Board of Directors, will not make the two Companies a single entity. Nor will the existence of common shareholders or directors lead to an interference that one company will be bound by the acts of the other. If the Director who signed on behalf of Subuthi was also a Director of Indowind and if the intention of the parties was that Indowind should be bound by the agreement, nothing prevented Wescare insisting that Indowind should be made a party to the agreement and requesting the Director who signed for Subuthi also to sign on behalf of Indowind."

41. The above two Judgments categorically establish that even two companies i.e. M/s.Omega Cables Limited and M/s.East Coast Construction and Industries Limited, have common shareholders or common board of directors, it does not make that both are one company and bound by the acts of the others. Each companies are separate and distinct legal entity, and merely because, the two companies have common directors will not make M/s.Omega Cables <http://www.judis.nic.in> Limited and M/s.East Coast Construction and Industries Limited as a single entity. In the same line, to the Judgments referred above, this Court is of the view that bank cannot invoke and hold the securities of M/s.Omega Cables Limited for the loan secured by M/s.East Coast Construction and Industries Limited, under Section 171 of Indian Contract Act 1872. Hence, Issue Nos.1 & 2 are held

against the bank and in favour of M/s.Omega Cables Limited, the petitioner in W.P.Nos.5275 and 5276 of 2018.

42. As far as issue No.3 the claim made by the petitioner M/s.Omega Cables Limited as to whether the Debt Recovery Appellate Tribunal has granted an injunction beyond the scope of the original application, it would be appropriate to refer the Judgment cited by the petitioner M/s.Omega Cables Limited which reported in (1992) 2 SCC 377 in the case of [Sree Jain Swetambar Terapanthi Vid(S) Vs. Phundah Singh and others]. The relevant portion of the said Judgment is extracted hereunder:-

"19. We may observe that in an adversarial litigation the relief has to be granted to the parties based on their pleadings. No relief should be granted in interlocutory proceedings beyond the scope of the suit."

<http://www.judis.nic.in>

43. It could be seen from the records available that the original application in O.A.No.607 of 2016 filed before the DRT-II, Chennai, was against M/s.East Coast Construction and Industries Limited, claiming from the said company the alleged due of Rs. 77,91,96,968.90. However, the present Writ Petitioner M/s.Omega Cables Limited was not part of the Original Application filed by the bank under Section 19(1) of Recovery of Debts Due to Banks and Financial Institutions Act 1993. I.A.No.637 of 2016 in O.A.No.607 of 2016 came to be filed by the respondent bank, by impleading M/s.Omega Cables Limited as 15th respondent, seeking an interim injunction against the petitioner M/s.Omega Cables Limited, from alienating or encumbering certain properties, which stands in their name, as found in the schedule attached to the petition. Thereafter, I.A.No.143 of 2017 in I.A.No.637 of 2016 in O.A.No.607 of 2016 came to be filed by M/s.Omega Cables Limited, the petitioner herein, seeking a direction to the bank to return the title deeds of the property mortgaged, in a time bound manner.

44. The DRT-II, Chennai, after an elaborate discussion held that M/s.Omega Cables Limited has in fact cleared all its dues towards the bank and the respondent bank has general lien only over the property of the principal borrower i.e. M/s.East Coast Construction and Industries Limited and not on the property of M/s.Omega Cables Limited, and allowed I.A.No.143 of 2017 and dismissed I.A.No.637 of 2016 filed by the bank. However, in the appeal filed by the bank in M.A.Nos.151 and 152 of 2017, the DRAT, Chennai, by partly allowing both the I.A.No.637 of 2016 and I.A.No.143 of 2017, modified the order passed in I.A.No.637 of 2016 and affirmed the order passed in I.A.No.143 of 2017 by DRT-II, Chennai, relating to return of the title deeds of M/s.Omega Cables Limited, however, restricted M/S.Omega Cables Limited, not to alienate the property or to create third party interest in the mortgaged security, the immovable property.

45. On a careful consideration of the above said materials, we find that the DRAT has extended its order beyond the scope of the Original Application in O.A.No.607 of 2016 filed by the bank against M/s.East Coast Construction and Industries Limited, for recovery of due by the company. The bank merely by impleading M/s.Omega Cables Limited in I.A.No.637 of 2016, has sought for an injunction against the securities offered by M/s.Omega Cables Limited, which was rightly found and

rejected by DRT-II, Chennai. However, the DRAT, Chennai, concurring with the views taken by DRT-II, Chennai, ought not to have granted any restrictive order against M/s.Omega Cables Limited, which is beyond the scope of the Original Application. <http://www.judis.nic.in>

46. In line with the Judgment cited by the learned counsel for the petitioner which reported in (1992) 2 SCC 377 in the case of [Sree Jain Swetambar Terapanthi Vid(S) Vs. Phundah Singh and others], we are of the view that no interlocutory order can go beyond the scope of the main suit or the prayer in the main suit. Any interlocutory order should have direct relation to the scope of the main suit and any order deviating from the prayers of the main suit by way of interlocutory order is perse illegal and beyond the scope of the main relief sought in the original suit.

47. Under these circumstances, we are of the view that the third issue should also go in favour of the petitioner M/s.Omega Cables Limited and against the bank.

48. Accordingly, the common order dated 14.12.2017 passed by DRAT, Chennai, in M.A.Nos.151 and 152 of 2017 is set aside, as far as restricting M/s.Omega Cables Limited from alienating or creating any third party interest in the mortgaged security, and a positive direction is issued to the bank to return the original title deeds of the property, offered as security by M/s.Omega Cables Limited, as set out in I.A.No.143 of 2017 in I.A.No.637 of 2016 in O.A.No.607 of 2016, <http://www.judis.nic.in> within a period of two weeks from the date of receipt of a copy of this order.

49. In view of the above, the common order dated 25.07.2017 passed by DRT-II, Chennai, in I.A.No.143 of 2017 and I.A.No.637 of 2016 in O.A.No.607 of 2016 is restored and the order dated 14.12.2017 passed by DRAT, Chennai, is set aside, thereby, W.P.Nos.5275 and 5276 of 2018 are allowed and W.P.No.3419 of 2018 is dismissed. No costs.

(S.M.K.J.,) (V

10.06.2019

raja
Index : yes/no
Internet : yes/no
Speaking Order/Non-Speaking Order

To

1. The Assistant General Manager,
State Bank of India,
Industrial Finance Branch,
No.155, Anna Salai,
Chennai - 600 002.
2. The Registrar,
Debt Recovery Appellate Tribunal,
fourth Floor, Indian Bank Circle Office,
55 Ethiraj Salai,
Chennai - 600 008.

<http://www.judis.nic.in>

<http://www.judis.nic.in>

S.MANI KUMAR.J.,
and
V.BHAVANI SUBBAROYAN.J.,
raja

Pre-Delivery Common Order in
W.P.Nos.5275 and 5276 of 2018
and

10.06.2019

<http://www.judis.nic.in>