

Akinna Srinivasa Chowdary vs The Reserve Bank Of India on 11 March, 2024

1

APHC010406972023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3332]

MONDAY ,THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO: 20897/2023

Between:

Akinna Srinivasa Chowdary

...PETITIONER

AND

The Reserve Bank Of India and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. GANGISETTI UMA SANKAR

Counsel for the Respondent(S):

1.

2. P BADRINATH

3. SRIDEVI GANTA

The Court made the following:

ORDER:

This writ petition has been filed under Article 226 of the Constitution of India for the following relief:

".....to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents as illegal, irregular, irrational,

arbitrary, without any authority of law and violation of articles 14, 19,21 and 300A of the Constitution of India to release original title deeds of the agriculture land to the petitioner which was deposited at the time of registered mortgage which is in the wrongful custody of the 3rd respondent even after discharging the liability of the registered mortgage deed and consequently direct the 2nd and 3rd respondents to pay the damages to the petitioners....."

2. The case of the petitioner, in brief, is that, the petitioner obtained a loan from 3rd respondent bank under Kisan Credit Card facility, called as 'KCC' to a tune of Rs.1,99,00,000/- by way of registered mortgage by depositing his title deeds regarding pledged properties as well as of that of his relatives as collateral security. The 2nd respondent banker had credited Rs.1,90,00,000/- only instead of Rs.1,99,00,000/- to the petitioner's overdraft account. The petitioner had cleared the loan to the 3rd respondent bank in regular instalments and the loan tenure was completed on 17.04.2020 and loan closure proceedings were initiated by the banker as was evident from the loan statement. The respondent Nos. 2 and 3 did not issue the loan closure letter to the petitioner, even though the loan was cleared. In the CIBIL website, it is showing as if the loan was still pending and the respondent Nos. 2 and 3 did not choose to discharge the mortgage charge and they have kept the petitioner's agricultural lands to an extent of Ac.4-41 cents in their mortgage, despite of several requests made by the petitioner through email communication and registered post. Aggrieved by their inaction, the petitioner filed W.P.No.35439 of 2022 wherein this Court granted interim direction to the respondent Nos. 2 and 3 to discharge the mortgage charge over the property, as the petitioner had cleared the loan long back. Pursuant to the said orders dated 04.01.2023, the respondent Nos. 2 and 3 released the mortgage charge on the mortgaged property by executing discharge receipt vide document No.P525 of 2023 on the file of the Joint Sub Registrar, Rajahmundry, on 02.02.2023. Thereafter, to the email communication sent by the petitioner to release his property documents covered under discharge deed; the authorized person of the bank had replied that they had filed detailed counter in W.P.No.35439 of 2022. Further stating that the petitioner being a partner in M/s Cherukuri Veerraju & others, stood as a guarantor to KCC loan sanctioned to Cherukuri Veerraju. The said Cherukuri Veerraju had defaulted the payment and the petitioner and other guarantors of the firm are jointly and severally liable to the said debts. Thus, the bank, by exercising its contractual and statutory right to lien on title deeds deposited by the petitioner for due discharge of the loan amount. The Writ Petition vide W.P.No.35439 of 2022 was disposed of on 05.07.2023 as the same is confined only with regard to discharge of registered mortgage.

It is the further case of the petitioner that, the respondent Nos. 2 and 3 approached the Debt Recovery Tribunal at Visakhapatnam and filed proceedings bearing O.A.No.824 of 2018 and the same was decreed in favour of the bank, directing Cherukuri Veerraju and all other partners of the firm to pay the amount along with future interest. The petitioner is not a party to the said proceedings. The action of the respondent bank in keeping the property documents of the petitioner in their unlawful custody even after discharging the mortgage charge over his property, is unlawful. The Debt Recovery Tribunal has no jurisdiction to entertain any application or appeal with regard to any security, interest created in agricultural land and agricultural loan. The petitioner never pledged his property to the loan covered under Debt Recovery Tribunal at Visakhapatnam vide proceedings

bearing O.A.No.824 of 2018. The petitioner never stood as guarantor of the loan, which is subject matter of above O.A. However, the respondent bank is harassing the petitioner without releasing his property documents, despite discharge of the mortgage debt. Hence, this writ petition has been filed.

3. The respondent Nos. 2 and 3 filed their counter-affidavit denying the averments of the petition, inter alia contending that, the reliefs sought stem from a private and/ or contractual dispute and hence the writ petition is not maintainable. The respondent Bank is a non-statutory body, incorporated under the Companies Act, 1956 and the Banking Regulation Act, 1949, neither is there a statutory nor a public duty imposed on it by a statute, nor any involvement of public law and further the respondent Bank does not receive any funds from the Government. There are umpteen judgments of the Hon'ble Supreme Court that private bodies not performing any public duties are not amenable to writ jurisdiction. Further, the writ jurisdiction of High Courts has been regulated by judicial pronouncements so as to avoid interference in matters where alternative remedies are available and also where the dispute is purely of a private nature having no public law element. The petitioner has not exhausted the effective and efficacious alternate remedy available. Therefore, the writ petition is not maintainable. The petitioner had obtained Kisan Credit Card Loan for an amount of Rs.1,99,00,000/- by providing three properties as collateral security by way of registered mortgage in favour of the respondent bank. The petitioner had repaid the said KCC loan by making final payment on 07.11.2020. Thereby, the charge of mortgage over three mortgaged properties has got extinguished and the respondent bank had closed the petitioner's KCC loan account and arranged to release charge of mortgage from Sub Registrar Office in respect of Second and third mortgaged properties by executing release deed and accordingly charge over the second and third mortgage property has been released on 21.01.2022. When the respondent bank offered to the petitioner to execute release the charge of mortgage over the first mortgaged property belonging to the petitioner, the petitioner refused to cooperate, as the bank had exercised general lien and specific lien over the title deeds of the said property. The lien was exercised as the petitioner was liable to pay the outstanding dues payable to the bank in KCC loan sanctioned to one Cherukuri Veerraju. The petitioner is one among the 10 others who had stood as guarantors to the facility sanctioned to the said Cherukuri Veerraju. All the partners including the petitioner had executed an authority letter authorizing its Managing partner Cherukuri Veerraju to execute necessary documents, mortgaged its properties and executing guarantee deed on behalf of the firm. The KCC loan of Cherukuri Veerraju turned into Non Performing Account (NPA) on 03.05.2018 due to default in payment. The respondent bank has initiated recovery proceedings under Securitization and Asset Reconstruction of Financial Asset and Enforcement of Security Interest Act (SARFAESI Act) and filed application 14 of the Act vide Crl.M.P.no.83 of 2019 praying for appointment of Advocate Commissioner to take possession of the properties mortgaged by Cherukuri Veerraju and others. Due to oversight, instead of petitioner, one Muni Koteswara Rao' was arrayed as party therein. Aggrieved by initiation of proceedings under SARFAESI Act, the petitioner had filed SA No.288 of 2019 before DRT, Visakhapatnam under Section 17 of the Act, wherein he clearly admitted that he is a partner in Cherukuri Veerraju & others and that his father's name has been included wrongly by the respondent bank. In the proceedings in O.A.No.824 of 2018 also, the petitioner's father name was included instead of the petitioner. Later, as per interim orders, the respondent bank got the order of the Chief Judicial Magistrate, Rajahmundry amended by getting

the petitioner's name included. However, as O.A.No.824 of 2014 before Debt Recovery Tribunal, Visakhapatnam was allowed by then, the bank had taken up steps to substitute the petitioner's name with that of his father and the same is pending adjudication. To the letter addressed by the petitioner requesting the bank to release the title deeds of the first mortgaged property, the bank had sent reply calling upon the petitioner to repay the due payable by Mr.Chelukuri Veerraju towards his KCC loan in the capacity of guarantor. To another letter addressed by the petitioner, the bank had replied calling upon the petitioner to pay dues to enable the respondent to lift general lien exercised on title deeds of his first mortgaged property. The petitioner is only claiming that he is not a party to the Original Application filed by the respondent Bank vide O.A.No.824 of 2018 before DRT, but he never denied that he was not a guarantor. The respondent bank has exercised specific lien by Loan agreement executed by the petitioner & Right to general lien as available to Banker under Section 171 of Indian Contract Act, 1872. The petitioner, in the capacity of being a partner in M/s. Chelukuri Veerraju & Others, which stood as guarantor to KCC loan sanctioned to Chelukuri Veerraju, is jointly and severally liable for the said debts along with the principal borrower and other partners of the guarantor firm. The liability of the petitioner, being partner of guarantor firm, is coextensive with that of a borrower. The respondent has exercised its contractual and statutory right of lien on title deeds deposited by the petitioner. The contention of the petitioner that the original title deeds of the petitioner's land is in wrongful custody of the respondent is incorrect and baseless. There are no merits in the writ petition. Accordingly, the writ petition is liable to be dismissed.

4. Heard Sri Gangiseti Uma Sankar, learned counsel for the petitioner and Sri P. Badrinath, learned standing counsel for respondent Nos. 2 and 3.

5. Sri Gangiseti Uma Sankar, learned counsel for the petitioner, while reiterating the contents of the writ affidavit further submitted that, though the petitioner had discharged the Kisan Credit Card facility (KCC) availed by him, the respondent bank, did not return the title deeds and retained them unlawfully. Pursuant to the interim directions of this Court dated 04.01.2023 passed in I.A.No.1 of 2023 in W.P.No.25439 of 2022, the respondent bank released the mortgage charge, however did not return the title deeds stating that the petitioner who is partner of M/s. Chelukuri Veerraju & others, along with other partners of the said firm, stood as guarantor of the KCC facility availed by the said Chelukuri Veerraju, which turned into Non Performing Account and thus, the bank had exercised its contractual and statutory right of lien on the title deeds, for due discharge of the KCC facility availed by Mr.Chelukuri Veerraju. The petitioner is not at all a party to the proceedings initiated by the bank before the Debt Recovery Tribunal, Visakhapatnam vide O.A.No.824 of 2018. The petitioner had discharged the loan availed by him from the bank and thus the bank had no right to retain the documents by exercising the general lien as per Section 171 of the Contract Act, in view of the settled position of law that mortgage created by the guarantor for a different loan can be treated as a contract to contrary to disable the Bank to exercise the general lien as per Section 171 of the Contract Act. For the said submission, the learned counsel for the petitioner has relied on the decision in M.Shanthi vs. Bank of Baroda, represented by its Chief Manager¹.

The learned counsel for the petitioner further submitted that though the 3rd respondent is a private bank, since all the banks in the country are under the administrative control of the 1st respondent-Reserve Bank of India Act and . 2017 LawSuit(Mad)4049 is governed by the provisions

of Banking Regulation Act, 1949, the actions of the bank are amenable to writ jurisdiction. Further, the DRT has no jurisdiction to deal with agriculture loans. Thus, the petitioner has no other alternate remedy except to approach this Court by way of this writ petition. In support of his contention regarding maintainability of the writ petition against private bank, the learned counsel relied on the decision in St.Mary's Education Society & another vs. Rajendra Prasad Bhargava & others² and the orders dated 21.10.2022 of Division Bench of this Court passed in Writ Petition No.10056 of 2022.

6. On the other hand, the learned counsel for the respondent nos. 2 & 3 while reiterating the contents of the counters affidavit contended that the respondent Bank is a private company incorporated and constituted under the Companies, 1956 and a Banking Company as defined in Section 5 of the Banking Regulation Act and it is merely a private limited company carrying out the business of banking as a scheduled bank and therefore, it is neither a state nor its agency or instrumentality. The respondent bank is not carrying out any statutory or public duty as envisaged under Article 12 of the Constitution and thus this writ petition is not maintainable. In support of the said contention, reliance is placed on Chanda Deepak Kochhar vs. ICICI .2022 LiveLaw(SC) 1091 Bank Limited and another ³ and Chanda Deepak Kochhar vs. ICICI Bank Ltd., Mumbai and another⁴.

The learned counsel for respondent nos. 2 & 3 would further submit that availability of alternate efficacious remedy of preferring appeal to the DRT challenging SARFAESI proceedings also would debar the petitioner from invoking writ jurisdiction of this Court.

The learned counsel for respondent nos.2 & 3 would further submit that this respondent bank by exercising right to general lien as available to the Banker under Section 171 of the Indian Contract Act has withheld the title documents of the petitioner, since he, in the capacity of partner of M/s. Cherukuri Veerraju & others, stood as guarantor to KCC loan sanctioned to Cherukuri Veerraju, who defaulted to pay the loan amount. There is no illegality in withholding the documents and the provisions of the Indian Contract Act authorizes the bank to do so. There are no valid and justifiable grounds in this writ petition. The same deserves dismissal. Accordingly, prayed to dismiss the writ petition.

7. Perused the material available on record and considered the submissions made by the learned counsel for both the parties. . 2020 SCC OnLine SC 969 . 2020 SCC OnLine Bom 374

8. In view of the stiff resistance offered by the respondent bank regarding maintainability of this writ petition, it would be appropriate to decide the said issue before dealing with other issues regarding entitlement of the bank to withhold the documents.

9. Regarding maintainability, the learned counsel for the petitioner placed reliance on the orders passed by a Division Bench of this Court dated 21.10.2022 passed in Writ Petition No.10056 of 2022. In the said decision, the Division Bench of this Court has relied on decisions of various High Courts and the Hon'ble Supreme Court. Paras-9 & 10 of the said decision are relevant and they are extracted hereunder:

"9. This issue as to whether a 'Writ' would lie against a Private Bank came up for consideration before a Division Bench of the Punjab and Haryana High Court in *Amrik Singh V. DCB Bank Limited and Another* (2022 LawSuit (P&H) 568, wherein it was held that, a Writ Petition is maintainable. The Court categorically held that, the decision in *Phoenix ARC Private Limited* [2022 SCC OnLine SC 44] is inapplicable to the case on hand, as the said case was dealing with Asset Reconstruction Company. Apart from that, the Division Bench held that a writ would lie as measures under the provisions of Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ['the SARFAESI Act'], are not yet been initiated and remedy under Section 17(1) of the SARFAESI Act, cannot be availed and the issue as to whether time can be extended for compliance of terms of One Time Settlement is not within the purview of the Debts Recovery Tribunal, having regard to the language in Section 17 of the SARFAESI Act.

10) In *A-One Mega Mart P. Limited and Ors. V. HDFC Bank and Ors.* (MANU/PH/3108/2012, another Division Bench of the Punjab and Haryana High Court, after referring to the Judgments of the Hon'ble Supreme Court in *Praga Tools Corporation V. Shri C.V. Imanuel and Others* (air 1969 sc 1306), *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Survarna Jayanti Mahotsav Smarak Trust and Others V. V.R. Rudani and Others* (AIR 1989 SC 1607), *VST Industries Limited V. VST Industries Workers' Union* ((2001)1 SCC 298, *Binny Limited and another V. V. Sadasivan and others* ((2005) 6 SCC

657); judgment of the Bombay High Court in *Firozali Abdulkarim Jivani and another v. The Union of India and others* (AIR 1992 Bom 179) , judgment of the Delhi High Court in *Rahul Mehra v. Union of India* ((2004) (114) DLT 323) and the Judgment of Punjab and Haryana High Court in *Miss Ravneet Kaur v.*

The Christian Medical College, Ludhiana, held in paragraph Nos. 25, 26 and 27 as under:

"25. Another factor which cannot be ignored is that under Section 18 of the SARFAESI Act, an appeal lies to the Debt Recovery Tribunal against the action of the Bank and against any order passed thereunder, an appeal is maintainable under Section 18 of the said Act to Debt Recovery Appellate Tribunal (DRAT). An order passed by DRAT is amenable to writ jurisdiction of the High Court. Section 34 of SARFAESI Act also has significance in deciding the issue relating to writ jurisdiction of this Court. This facet lends different dimension to the controversy raised herein. Section 34 bars the jurisdiction of civil courts in matters relating to actions where provisions of SARFAESI Act have been invoked. Constitution guarantees equality and strikes against any arbitrary action of an authority. It cannot be said that wherever any authority acts in a discriminatory or unreasonable manner, the aggrieved party would be without any remedy either by way of civil suit or by invoking writ jurisdiction of the High Court. In such circumstances, it cannot be held that an action by the Scheduled Bank to which the provisions of SARFAESI Act are applicable and

have been invoked by it, it shall be immune from the extraordinary writ jurisdiction of this Court.

26. Now advertent to the cases on which reliance had been placed by learned counsel for the respondent-Bank, the question in the Federal Bank's case (supra) was relating to employer-employee dispute for which the employee had sought to approach writ Court for exercise of extraordinary jurisdiction under Article 226/227 of the Constitution of India. It was in those circumstances, it was held that writ petition under Article 226 was not maintainable. However, Satyawati Tandon and Tamil Nadu Industrial Investment Corporation Limited's cases (supra) being different on facts do not advance the case of the respondents.

27. From the above, it is concluded that ordinarily no writ would lie against a private Bank. However, where the Bank is a Scheduled Bank under Reserve Bank of India Act, 1934 and is governed by the provisions of Banking Regulation Act, 1949, it shall be amenable to writ jurisdiction of this Court where the Scheduled Bank takes recourse to the provisions of SARFAESI Act....."

10. As far as maintainability of Writ Petition is concerned, it is not in dispute that Respondent-M/s.ICICI Bank Private Limited, is a Scheduled Bank mentioned in the Schedule of the Reserve Bank of India Act, 1934, and is governed by the Banking Regulation Act, 1949. In view of the observations made above, where the bank is a Scheduled Bank under Reserve Bank of India Act, 1934 and is governed by the provisions of the Banking Regulation Act, 1949, it shall be amenable to writ jurisdiction of this Court. No doubt, under Section 18 of the SARFAESI Act, an appeal lies to the Debt Recovery Tribunal and the orders passed by the Debt Recovery Tribunal are amenable to writ jurisdiction of this Court. The petitioner is entitled to bypass the appeal remedy provided under the Act provided there is violation of principles of natural justice and the orders being ultra vires or if the orders impugned have been passed in contravention of the provisions of the Act and in such contingencies this writ petition is maintainable. However, this writ petition is filed not questioning any of the proceedings initiated under SARFAESI Act, but questioning the action of the Bank in withholding the documents under the guise of exercising general lien. Here it can be taken due note of the fact that all the Scheduled Banks must function according to the Guidelines of the Reserve Bank of India and the provisions of the Banking Regulation Act and they cannot frame their own guidelines and they cannot act contrary to the provisions of the Banking Regulation Act.

11. The decisions relied on by the learned counsel for the respondents in Chanda Deepak Kochhar (supra 3) and Chanda Deepak Kochhar (supra

4), having been passed in a different fact scenario are not at all applicable to the facts of the case on hand.

12. The undisputed facts in this case are that the petitioner obtained a loan from the 3rd respondent bank under Kisan Credit Card Facility to the tune of Rs.1,99,00,000/- by way of registered mortgage by depositing his title deeds by providing collateral security over agricultural land of Ac.16-00

belonging to the petitioner besides vacant site admeasuring 6400 Sq.ft. belonging to Akkina Subba Rao and 4800 Sq.ft. belonging to AkKina Anjaneya VVS Murthy. The petitioner had cleared the said loan to the 3 rd respondent bank and the loan tenure was completed on 17.04.2020. As the respondent nos. 2 and 3 did not issue the loan closure letter to the petitioner and as they did not choose to discharge the mortgage charge and kept the agricultural land of the petitioner in an extent of Ac.4.41 cents, the petitioner filed writ petition vide W.P.No.35439 of 2022 and this Court vide orders dated 04.01.2023 passed in I.A.No.1 of 2023 had directed the respondent nos. 2 and 3 to discharge the petitioner's mortgage as he had cleared the loan long back and pursuantly the respondent nos.2 and 3 had released the mortgage charge on the mortgaged property of the petitioner by executing discharge receipt in compliance of the orders of this Court dated 04.01.2023. Thereafer, the petitioner made a request to respondent nos. 2 and 3 for release of his property documents. The authorized person of the respondent nos. 2 and 3 issued a reply stating that the petitioner in the capacity of partner in M/s. Cherukuri Veerraju & others, which stood as guarantor to KCC loan sanctioned to one Mr. Cherukuri Veerraju. The said Mr.Chelukuri Veerraju defaulted and therefore the petitioner became jointly and severally liable for discharge of the said loan amount. Therefore, the bank had exercised its contractual and statutory right of lien on title deeds of the petitioner.

13. The respondent bank justified withholding the documents contending that as the KCC loan of Mr.Chelukuri Veerraju was turned into Non Performing Account (NPA), all the partners of M/s. Cherukuri Veerraju, which stood as guarantor for due repayment of the loan availed by the said Mr.Chelukuri Veerraju are jointly and severally liable for discharge of the said KCC loan availed by Mr.Chelukuri Veerraju. Therefore, the petitioner being one of the partners of the said M/s.Chelukuri Veerraju became jointly and severally liable for discharge of the loan. The respondent bank had initiated recovery proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and filed application under Section 14 of the Act for appointment of Advocate Commissioner to take possession of properties mortgaged by Cherukuri Veerraju and others, however by mistakenly mentioning the name of the petitioner as Muni Koteswhwara Rao. Thereafter, the petitioner filed S.A.No.288/2019 against the SARFAESI proceedings.

14. The crux of the contention of the respondents is that since the principle borrower of KCC loan failed to discharge the loan, the property documents of the petitioner, who is one of the guarantors, were retained by invoking the right to exercise general lien available to Banker under Section 171 of the Indian Contract Act.

15. The petitioner had mortgaged the property, the documents of which were now retained by respondent bank, for availing KCC loan. The said KCC loan has nothing to do with the KCC loan availed by Cherukuri Veerraju, which ultimately turned out to be an NPA. In view of the specific stand taken by the respondent bank that they are entitled to withhold the property document of the petitioner by invoking general lien as per Section 171 of the Indian Contract Act, it is appropriate to extract Section 171 of the Act, which reads as follows:

"171. General lien of bankers, factors, wharfingers, attorneys and policy brokers, bankers, factor, wharfingers attorneys of a High Court and policy broker 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; that no other persons have a right to retain, as a security for which balance goods, bailed to them, unless there is an express contract to that effect."

16. On a careful perusal of Section 171 of the Indian Contract Act, to exercise general lien to retain the document as a security for a general balance of account one of the ingredients is that property must be bailed in favour of the bank.

17. Admittedly, in this case the property in question is not bailed to the bank towards the loan borrowed by Sri Cherukuri Veerraju, which turned out to be an NPA. Further, the petitioner had mortgaged the property in an extent of Ac.16-00 including Ac.4-41 cents. Creation of the mortgage by the petitioner in respect of an extent of Ac.4-41 cents for the loan availed by him can be treated as a contract to the contrary to disable the Bank to exercise the general lien as per Section 171 of the Contract Act to retain the security for the loan for which the mortgagor was a guarantor.

18. In State Bank of India vs. Jayanthi and others⁵, it was held at paras 9 to 16 thus:

" After having decided the above question in favour of the appellant Bank, we now move on to consider the more important question in this appeal, viz., as to whether the appellant Bank shall be entitled to retain the documents of title in respect of the property which has been inherited by the respondent claiming a right of general lien under section 171 of the Indian Contract Act. Before we delve into the factual and legal aspect, it . 2011(2) CTC 465 would be necessary to look into section 171 of the Indian Contract Act, 1872 and for easy reference the same is extracted as herein below.

" xxxxxxxxxx"

10. The case of the appellant bank is that they have a right to retain the title deeds of the property delivered to them in the normal course of business transaction by exercising general lien under Section 171 of the Act and therefore, they are not bound to return the same till the liability of the other account where the mortgagor (husband of the 1st respondent herein, since deceased), was a guarantor, is discharged.

11. The learned Senior Counsel appearing for the appellant Bank mainly placed reliance on a decision of the Hon'ble Supreme Court in Syndicate Bank v. Vijaya Kumar and others, reported in 1992(2) SCC 331.

12. As noticed above, Section 171 of the Act states that the bankers like the appellant Bank, in the absence of a contract to the contrary, retain as security for a general balance account, any goods bailed to them. Therefore, what is required to be seen in the instant case is whether there is any

contract to the contrary, which prevents the bank from exercising their general lien and as to whether any goods have been bailed to them. It cannot be disputed that the property in question was not bailed to the appellant bank by the deceased borrower at any point of time. Further, it is an undisputed fact that the property in question as offered by (late) N.P.S.Mahendran to cover his liability in respect of the loans, which he had borrowed in the accounts of M/s.Sanjay Bala Tea Plantation and M/s.Aarthi Bala Tea Plantation and his self acquired properties were mortgaged to secure this specific loan transactions. No document has been placed before us to show that the borrower had given any authorization to the Bank to hold the documents of the mortgaged property, given to secure the loan transaction for M/s.Sanjay Bala Tea Plantation and M/s.Aarthi Bala Tea Plantation, for the purpose of any other loan availed in any other branch by M/s.Somerset Tea Plantation in which (late) N.P.S.Mahendran, stood as a guarantor. Thus, the issue boils down to the question as to whether any contract to the contrary, which prevents the appellant Bank from exercising its general lien under Section 171 of the Act.

13. In Chitty on Contracts, 29th Edition (2004) - Volume-II, Page 496 on Bankers' Lien, it is stated as follows:

"....The most frequent example of circumstances inconsistent with the general lien is in the case of a deposit expressed to cover an advance for a specified purpose. However, once the original purpose has been fulfilled by repayment of the specified advance, if a customer knowingly permits the banker to retain the security, a general lien may ultimately be implied and its protection then claimed in respect of other advances"

14. In the instant case, the borrower (late) N.P.S.Mahendra, had admittedly has admittedly deposited the title deeds of the property to secure a loan transaction availed in respect of two plantation Companies. This fact was not disputed by the appellant Bank. Therefore, we have no hesitation to hold that the this contract/mortgage, had been created by the deceased borrower for a specific purpose and for a specific loan and the contract was self contained and the terms and conditions were binding upon both the borrower as well as the bank. In other words, the deposit of title deeds by which the mortgage was created by the deceased borrower was for a specific purpose to cover an advance for a specific loan. When such is the situation, the borrower having deposited the documents in order to secure a specific transaction, the bank cannot contend that they could hold the documents for a balance due in a different loan account where the said N.P.S.Mahendran is not a borrower. Further, the language of Section 171 of the Act, is explicit to the fact that the bankers are entitled to retain as a security for a 'general balance account'. Admittedly, it is not the case of the appellant Bank that the amount, which is now said to be due on account of borrowers of M/s.Somerset Tea Plantation, is a general balance account of the deceased borrower N.P.S.Mahendran.

15. In the case of Syndicate Bank v. Vijaya Kumar, referred supra and relied on by the learned senior counsel for the appellant Bank, it is to be noted that the borrower therein issued a letter in favour of the bank stating that the bank is at liberty to adjust from the Fixed Deposit receipts without any reference to the loan and he agreed that the Fixed Deposit receipts shall remain in the bank so loan

as any amount on any account is due to the bank from them either singly or jointly or with others. Thus, the Hon'ble Supreme Court, while interpreting such a letter covering the transaction executed by the borrower therein, rendered a finding that the bank is entitled to general lien over the Fixed Deposit receipts given by the borrower therein.

16. As noticed above, the facts of the present case are couched differently. There was a specific contract/agreement between the deceased borrower and the bank, by which the borrower offered the property in question to secure only a particular transaction. Therefore, this agreement/mortgage has to be construed as a 'Contract to the Contrary' and therefore, we have no hesitation to hold that the bank cannot claim these documents by invoking the power of general lien under Section 171 of the Indian Contract Act, 1872."

and held that the borrower having deposited the documents in order to secure a specific transaction, the bank cannot contend that they could hold the documents for a balance due in a different loan account, wherein the person is not a borrower."

19. In *M. Shanthi vs. Bank of Baroda*, reported in 2017-2 Writ.L.R.584, it has been held that the bank cannot exercise general lien. Para-30 of the judgment reads as follows:

"30. Section 60 of Transfer of Property Act, speaks about specific rights of mortgagor. It is clear that every mortgagor is entitled to collect the mortgage deeds and all other documents relating to the mortgaged properties, which are in the possession or power of mortgagee. This right of mortgagor is certainly a legally enforceable right. The mortgagee is under an obligation to return the title deeds upon payment of the entire money due. This legal obligation gives an enforceable right in favour of the mortgagor in connection with the mortgage. This legal obligation of the mortgagee to return the title deed to the mortgagor upon discharge of mortgage loan for which the title deeds were secured, can be certainly treated as an implied contract contrary to Section 171 of the Indian Contract Act."

20. The observations referred to supra in clear terms specifies that when the borrower deposited the documents in order to secure a specific transaction, in the absence of any document to show that the borrower had given any authorization to hold the documents of the mortgaged property to secure another loan transaction to which the mortgagor stood as a guarantor, the bank cannot contend that they could hold the documents for a balance due in a different loan account, wherein the mortgagor is not a borrower.

21. In the instant case, the writ petitioner is not the borrower and he is a partner of the firm which stood as guarantor to the debt borrowed which ultimately turned out to be an NPA and further the petitioner did not execute any document in favour of the bank authorizing it to hold the documents of the mortgaged property to secure loan transaction of Sri Cherukuri Veerraju, in relation to which transaction the bank sought to withhold the documents by exercising right of general lien under Section 171 of the Contracts Act.

22. The decision relied on above squarely applicable to the facts of the case. Therefore, the respondent bank cannot retain the documents deposited by the petitioner at the time of registered mortgage, which was later discharged.

23. In the above view of the matter, this writ petition is allowed, directing the respondent bank to release the documents deposited by the petitioner at the time of creating registered mortgage over the properties in relation to his loan transaction, forthwith, under proper acknowledgment. There shall be no order as to costs.

As sequel thereto, miscellaneous petition, if any, pending shall stand closed. Interim orders, if any, shall stand vacated.

____ JUSTICE RAVI CHEEMALAPATI 11.03.2024 RR