

(2012) 09 NCDRC CK 0055

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** None

BANK OF BARODA

APPELLANT

Vs

RANJEET SINGH

RESPONDENT

Date of Decision: Sept. 13, 2012**Citation:** 2012 0 NCDRC 553**Hon'ble Judges:** R.C.Jain , S.K.Naik J.**Advocate:** R.K.Salecha

Judgement

1. CHALLENGE in these proceedings is to the order dated 17.05.2012 passed by the Rajasthan State Consumer Disputes Redressal Commission Jaipur (in short, "the State Commission ") in Appeal No. 937/2011. The appeal before the State Commission was also filed by the petitioner Bank of Baroda against the order dated 07.04.2011 passed by the District Consumer Forum Jaipur on an application for interim relief made on behalf of the respondent complainant under section 13(B) of the Consumer Protection Act, 1986 (in short, "the Act ") in complaint case no. 860/2010. By that order, the District Forum had allowed the said application and directed the opposite party bank to return all the documents pertaining to plot No.85, Sonabari, Gopalpura, Bypass, Jaipur, to the complainant within 10 days from the date of presentation of indemnity bond by the complainant in favour of the opposite party by undertaking that in case the outstanding amount of Deoli Branch of the opposite party Bank cannot be repaid by the sale of the mortgaged property, in that event, the other properties of the complainant shall be liable and the bank shall be entitled to recover the loan amount from the complainant and his other properties. Aggrieved by the said order, the petitioner bank filed appeal before the State Commission but without success as the State Commission affirmed the order passed by the District Forum and dismissed the appeal. The petitioner Bank aggrieved by the said order has approached this Commission under section 21 (b) of the Act with the prayer to set aside the said order.

2. SHORN off the unnecessary details, the material facts of the present case are that on 27.03.2006, the complainant had availed loan facility in the sum of Rs.28.00 Lakh from the petitioner bank and to secure the repayment of the said loan, he had mortgaged his immovable property viz., plot No. 85, Sona Bari, Gopalpura, Bypass, Jaipur by depositing the title deeds, like original allotment letter, original certificate of allotment, original lease deed, all dated 23.05.2000 issued by the Jaipur Development Authority in the name of the complainant duly registered with Sub Registrar Jaipur I. The complainant became irregular in repaying the loan amount and the authorities of the Bank started exerting pressure on the complainant and threatened to auction the mortgaged plot taking resort to the provisions of the SARFAESI Act, 2002. The complainant contacted the bank officials and informed them that he can repay the loan by selling the mortgaged property to which the bank officials had no objection and, therefore, the complainant in order to save his business and reputation agreed to sell the mortgaged property (plot in question) to a certain Bhanu Pratap Singh r/o Beawar District Ajmer for a throw away price of Rs.25.00 lakh although the market value of the plot was claimed to be Rs.35.00 lakh. Complainant received various sums of money amounting to Rs.23,95,000/- from the above named vendee between 25.10.2008 to 16.11.2009 and on receipt of the said amount, the complainant deposited the same with the petitioner Bank in due discharge of his liability. Since the vendee was insisting for execution of the sale deed, complainant called upon the bank officials to release the title documents of the plot deposited by him with the bank. This triggered the controversy between the parties inasmuch as the bank declined to release the title deeds on the plea that the complainant was in arrears of another loan which the complainant had taken from Deoli Branch of the bank. The said branch of the the bank having furnished an irrevocable bank guarantee in favour of the Rajasthan Industrial Corporation which the bank had to honour on the complainant committing certain default. Not only that the bank declined to release the title deed to the complainant, bank filed an original petition under the Debt Recovery Act before the Debt Recovery Tribunal Jaipur in respect of the Deoli Branch loan and alongwith said petition also filed the original title deeds of the plot before the Debt Recovery Tribunal of the Jaipur Branch which were the subject matter of the loan. Complainant alleging deficiency in service filed the complaint seeking the following relief against the respondent bank:

1. The opposite party be directed that the original documents relating to mortgaged property and NOC be given to the complainant. 2. That on account of non return of the original documents relating to the property, the complainant could not have the registry done in favour of the purchaser on account of which amount of Rs.1.05 Lac was not paid by the purchaser, therefore, the directions be given to the opposite

bank to make payment of Rs.1.05 Lac alongwith interest @ 24% p.a. from 10.12.2009. 3. That on account of illegal threats given by officials of the opposite bank, the complainant was compelled to sell his property with value of Rs.35 Lac in Rs.25 lac and therefore, directions be given to the Bank for compensating the loss of Rs.10 Lac. 4. That on account of the said Act of the opposite party the complainant could not concentrate on his work he has to make several rounds of visit to the office of opposite party and has to waste his precious time and money and amount of Rs.1Lac be directed to be given as compensation for the same. 5. That the complainant on account of Act of the opposite party has suffered serious mental agony and the compensation of the same being Rs. 5 Lac be directed to be given by the opposite party. 6. That the cost of Rs.11000/- for complaint cost be directed to be paid by the opposite party to the complainant. 7. That the complainant had deposited Rs.23.95 Lac after taking the same from purchaser of the property on this amount the interest from 10.12.2009 @ 24% p.a. be directed to be paid.

The said complaint is being contested by the opposite party Bank. It is not disputed that the complainant had created an equitable mortgage of the above referred plot in favour of the bank by depositing the title deeds. It is, however, explained that on the request of the complainant, bank guarantee was issued by the Deoli Branch of the Bank in the sum of Rs.36.84 lakh which was got encashed on a requisition made by the Assistant Mining Engineer Tonk, and balance sum of Rs.24,83,395/- alongwith interest has become due to the bank on that count which the complainant failed to clear and, therefore, original petition no. 103 of 2009 was filed against the complainant and six others before the Debt Recovery Tribunal, Jaipur seeking recovery of the said amount and alongwith the said petition, the original title deeds of the plot in question were also filed before the Debt Recovery Tribunal. It is not disputed that though the amount of Rs.23,95,000/- has been paid by the complainant in respect of the loan obtained from Jaipur Branch but since the petitioner and others have not clear the dues of the bank relating to Deoli Branch, the bank has a lien over the said plot and the title deeds pertaining thereto and is entitled to recover the payable amount from the said plot as well, besides the properties which were mortgaged by the petitioner and six other persons in respect of the bank guarantee facility given by the Deoli Branch of the opposite party bank. The said original petition is being contested by the complainant and others. The interim application seeking return of the documents was also opposed on the same pleas.

In view of the above noted background, the crucial question which arises for consideration is as to whether District Forum was justified in allowing the interim application of the complainant seeking return of the documents and the State Commission in confirming the said order. Mr. Salecha, counsel for the petitioner would assail the impugned order on the following grounds:

(i) While passing the impugned order, the fora below have committed a serious error of law in disregarding the legal position that under section 171 of the Indian Contract Act, 1872 the bank had lien over the title deeds deposited by the complainant for realisation of the huge outstanding amount of Rs.25 lakh approximately with interest and therefore had the right to retain the documents; (ii) The fora below have failed to appreciate that they had no jurisdiction to pass such an order, once it was brought to their notice that Debt Recovery Tribunal, Jaipur has already seized of the entire controversy on the filing of the original application, which application is being contested by the complainant respondent; (iii) The Debt Recovery Tribunal creates a Bar on any other Court or Tribunal to entertain any matter which is the subject matter of the original application before the Debt Recovery Tribunal; (iv) The fora below have failed to consider that the interim relief granted by them i.e. direction to return the title deeds to the complainant was infact the main relief claimed by the respondent in his complaint and by granting the same in the garb of interim relief, the fora below have granted the main relief sought in the complaint.

In support of his above grounds / contentions, learned counsel for the petitioner bank has relied upon the provisions of section 171 of the Indian Contract Act, 1872 as also a decision of the Supreme Court in the case of Syndicate Bank, Appellant V. Vijay Kumar and Ors. AIR 1992 SC 1066, we would like to extract the same herein below:

"Section 171: 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 a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect ".

In para 6 and 7 of the said decision, the Supreme Court held as under:

"Lien is in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract. In Chalmers on Bills of Exchange, Thirteenth Edition Page 91 the meaning of "Banker's lien" is given as follows: A banker's lien on negotiable securities has been judicially defined as "an implied pledge."A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer."

In Chitty on Contract, Twenty-sixth Edition, Page 389, Paragraph 3032 the Banker's lien is explained as under: By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business. The custom does not extend to valuables

lodged for the purpose of safe custody and may in any event be displaced by either an express contract or circumstances which show an implied agreement inconsistent with the lien.... The lien is applicable to negotiable instruments which are remitted to the banker from the customer for the purpose of collection. When collection has been made the 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 look to his general lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognised as such. In Brandao v. Barnett, (1846) 12 Cl. and Fin. 787 it was stated as under: Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien. The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially 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 are deposited by the customer. 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 on 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 Banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business. The recital in the two letters clearly creates a general lien without giving any room whatsoever for any controversy".

Per contra, Mr. Rajesh Gupta, learned counsel for the respondent contented that the provisions of section 171 cannot be applied to the facts and circumstances of the case because in the present case the complainant had mortgaged a separate property in relation to the lien of the Deoli Branch and the bank, could therefore have lien only on those properties and not on the plot in question which was given as a collateral security for the loan taken from Jaipur Branch. In support of his contention he placed reliance on a decision of this Commission in the case of State Bank of India and Ors. Vs. Ananda Mohan Saha 1999 (2) CPR 18 (NC) where on the facts and circumstances of the said case this Commission took a view that if a

separate and independent security was given in respect of the separate loan which was taken for different purpose and a different time and there was no mention of the security given as a security for the other loan, the bank was not entitled to exercise its lien on the security furnished for the other / separate loan by observing as under:

"On behalf of respondent it is urged that the finding recorded by the State Commission are correct and in accordance with law. On this point the State Commission recorded the following findings: The main argument of the respondents seeking the propriety of their retaining the gold as security for another loan subsisting against the appellant is, however, the provisions of Section 171 of the Indian Contract Act. It is strongly argued on behalf of the appellant that the security of the gold was strictly for the loan taken for the amount of Rs.17000/- only termed as gold loan. It is argued that the banker "s lien is to be available only in respect of a security for a general balance of account and that in the instant case the subsequent advance taken by the Forum of the appellant cannot be tagged to the earlier security as the later loan was taken by a different person against a different account. As a matter of fact, the appellant had at one time proposed to tag the security of gold with loan against the Cash Credit Account but the same was not acceded to by the bank. So it is presumed that the gold loan was for a specific purpose and there was no agreement that it should be utilised for other loan also. Under section 174 of the Indian Contract Act, the pawnee shall not, in the absence of a contract to the effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged. It is, however, provided also in the said section that such contract in the absence of anything to the contrary shall be presumed in regard to subsequent advances made by the pawnee. But for the reasons discussed above it cannot be held that the subsequent advances made to the Firm of the appellant would be brought to a general balance of account. The two accounts in our opinion are for two different purposes taken at two different times and the appellant "s request to make a resultant balance by treating the former gold loan as repaid was not successful. Hence we are of the opinion that retaining the gold on the basis of Sections 171 and 174 is not lawful in this case. Moreover a separate and independent security was given by the appellant for the loan relating to his Cash Credit Account in this case. It is not stated that the said security has been rendered insufficient in any way. There is also no mention of the gold loan as collateral security to be available for the subsequent loan. We have carefully examined the finding recorded by the State Commission. In our opinion, the State Commission correctly analysed the provisions of Section 171 and 174 of the Contract Act. The finding recorded by the State Commission is further fortified by the observations made by the Civil Court while disposing of the applications filed by the Bank under Order 39 Rules 1 and 2 of the CPC and under Order 38 Rule 5 of the CPC. The observations made by the Civil Court are reproduced below: Thus it appears that the gold ornaments as it has been contended before me in connection

with the gold account and already liquidated has no concern or connection with the cash credit account. The machineries and the products of the concern "M/s Mausomi Silk Scrin Printers " are hypothecated against that loan and more so, the debt. No. 2 is the guarantor. There is no stipulation between the parties that in any manner the gold ornaments can be treated as lien of the amount of cash credit loan although the gold account loan has already repaid and consequently liquidated. The gold ornaments was pledged with the plaintiff by the defendant no.1 has or have no reference with the term loan sanctioned to the defendants for the recovery of which the suit has been filed. The gold ornaments are not being subject matter of the suit ".

3. HAVING considered the matter, we are of the view that going by the provisions of section 171 as well as the law as laid down by the Supreme Court, there is no escape from the conclusion that bank can claim lien even on the title documents pertaining to the plot in question even for the loan of their different branch i.e.Deoli Branch.

Learned counsel for the petitioner then submitted that consumer fora had no jurisdiction to entertain the complaint in view of the pendency of the original application before the Debt Recovery Tribunal. counsel for the petitioner bank has invited our attention to the provisions of Section 18 and 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which is to the following effect:

18. Bar of Jurisdiction : On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17. 34. Act to have over-riding effect - (1) Save as provided under sub- section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989) "

On the strength of the above provisions and the fact that original application seeking recovery of the debt in respect of the Deoli Branch outstanding dues was filed prior to the filing of the present complaint, learned counsel submits that the

consumer fora had no jurisdiction to entertain the complaint raising the same controversy. He submits that original application is being defended by the respondent on the same plea on which the complaint was filed before the District Consumer Forum and if the complainant respondent thought that the withholding of the title deeds by the petitioner bank was illegal / unauthorised on the premise that bank had no lien over the same, the respondent complainant could have sought release of the said documents from the said Tribunal. We find force in this contention because the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 leave no manner of doubt that the Legislature has clearly forbidden any other Court or Authority to exercise any jurisdictional power or authority except the Supreme Court and High Court exercising their jurisdiction under Article 226 and 227 of the Constitution in relation to matters specified in Section 17. The provision is enacted with the clear object that such matters should not be considered and decided by any other Court or authority except the Tribunal constituted under the above Act.

4. THE third contention raised by the respondent petitioner is that by granting the interim relief, the fora below have infact allowed the main relief sought by the complainant in his complaint. We see merits in this contention as well. THE main relief claimed by the complainant alleging deficiency in service on the part of the petitioner bank is for return of the title deeds of the plot in question. Once the documents have been ordered to be returned, it amounts to granting the relief prayed in the complaint.

Having considered the matter from different angles, there is no escape from the conclusion that order passed by the District Forum and affirmed by the State Commission are legally unsustainable and are liable to be set aside. For the above stated reasons, we allow the revision petition and set aside the impugned order passed by the fora below. However, it would be open for the complainant / respondent to make an application before the concerned Debt Recovery Tribunal for return of title deeds of the plot in question.