

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 18997 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

M/S MAHALAXMI TEXTILES A PROPRIETORSHIP FIRM THOROUGH ITS
 PRORPRIETOR BHARTIBEN MAHESHBHAI CHEVLI
 Versus
 SYNDICATE BANK SURAT MAIN BRANCH

Appearance:

MR. S S IYER(6553) for the Petitioner(s) No. 1
 MR PRADIP J PATEL(5896) for the Respondent(s) No. 2
 MR VISHWAS K SHAH(5364) for the Respondent(s) No. 1

CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 06/07/2022

ORAL JUDGMENT

1. Rule returnable forthwith. Mr. Vishwas K. Shah, the learned advocate waives service of rule on behalf of the respondent No.1 – Bank.

2. By way of present writ-application under Article 226 of the Constitution of India the writ-applicant has prayed for he following reliefs :-

“(a) Be pleased to direct the respondent no. 1 bank release the charge over the property in question and subsequently be pleased to direct to handover the original title documents of the property in question immediately and forthwith.

(b) Pending hearing, admission and final disposal, the respondent no. 1 bank is required to be RESTRAINED from taking any coercive actions against the property in question.

(c) To grant any other appropriate and just relief/s;”

3. Brief facts for the adjudication of the present writ-application are stated thus :-

3.1 It is the case of the writ-applicant that the respondent No.2 had availed the financial assistance from the respondent No.1 – Bank and while availing the financial assistance, the respondent No.2 had mortgaged the property in question in favour of the respondent No.1 Bank.

3.2 It appears that the respondent No.2 failed to repay the financial assistance and hence the respondent No.1 Bank classified the account of the respondent No.2 as Non-Performing Asset.

3.3 In view of above, the respondent No.1 Bank was in the process to sell the mortgaged property i.e. property in question and, therefore, the writ-applicant approached the respondent No.1 bank to purchase the property in question for an amount of Rs.2.50 crores with consent of the respondent No.2.

3.4 The respondent No.1 Bank gave no objection in purchasing the property for an amount of Rs.2.50 crores. The respondent No.2 on 21.11.2017 executed an agreement to sale in favour of the writ-applicant for the property in question. The writ-applicant deposited the entire amount of Rs.2.50 crores with the respondent No.1 Bank which was accepted by the respondent No.1 bank and also encashed by the respondent No.1 Bank in the account of the respondent No.2.

3.5 It appears that though the respondent No.1 bank had received the entire amount of Rs.2.50 crores from the purchaser through the respondent No.2, the respondent No.1 Bank declined to issue certificate for releasing the charge over the property and also did not hand over the original title documents of the property.

3.6 The writ-applicant addressed several reminders to the respondent No.1 Bank to release the property in question. However, the writ-applicant also issued legal notice on

12.9.2019, but the respondent No.1 Bank did not release the original documents or release the charge over the property and, therefore, the writ-applicant herein is constrained to approach this Court by filing the present writ-application.

Submissions on behalf of the writ-applicant :-

4. Mr. S. S. Iyer, the learned advocate appearing for the writ-applicant submitted that the writ-applicant is neither borrower nor the guarantor of the loan transaction which has taken place between the respondents No.1 and 2 and the writ-applicant is not concerned with the proceedings initiated by the respondent No.1 Bank against the respondent No.2 for recovery of any amount due and payable by the respondent No.2.

4.1 Mr. Iyer, the learned advocate submitted that the respondent No.1 Bank had given no objection for sale of the property in question to the writ-applicant for an amount of Rs.2.50 crores by communication dated 20.11.2017 and assured the release of property upon receipt of the aforesaid amount and, therefore, it is now not open for the respondent No.1 Bank in refraining from releasing the property from the charge.

4.2 Mr. Iyer, the learned advocate placed reliance on the decision dated 26.11.2018 in the Special Civil Application

No.13890 of 2017 reported in (2020) 1 GLH 8.

Relying on the aforesaid decision Mr. Iyer, the learned advocate submitted that said issue is no longer res integra and that the prayers as prayed for by the writ-applicant in the present writ-application be allowed.

Submissions on behalf of the respondent No.1 – Bank :-

5. Mr. Vishwas K. Shah, the learned advocate appearing for the respondent No.1 Bank submitted that the Bank is not in a position to release the charge on the aforesaid property as per the banking norms for releasing the mortgaged property. All direct/indirect liability should be closed and the in the case on hand the proprietor of the respondent No.2 i.e. Shankar Ramkumar Mundra had given guarantee in another account known as M/s. Jay Ganesh Roadlines which is also NPA and the said liability is outstanding. Mr. Shah, the learned advocate submitted that in view of above there is indirect liability of the respondent No.2 Vinayak Fabrics to the tune of Rs.85.34 lacs. The writ-applicant therefore cannot be absolved from the aforesaid charge.

Position of Law :-

6. It is apposite to refer to the law as laid down by this Court in the decision dated 26.11.2018 rendered in the

Special Civil Application No.13890 of 2017, paragraphs 48 to 52 reads thus :-

“48. The case of the respondent Bank as it emerges from the materials on record, more particularly, the reply of the Bank to the notice issued by the writ-applicants 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 the general lien under Section 171 of the Act and, therefore, they are bound to retain the same till the liability in the other account, i.e. M/s.Radheshyam Fibres Private Limited, where the writ-applicant nos.2 and 3 are guarantors, is discharged.

49. In the course of hearing of this matter, the decision of the Supreme Court in the case of Syndicate Bank v. Vijaya Kumar and others, reported in 1992(2) SCC 331 was also looked into.

50. As noticed above, Section 171 of the Act states that the bankers like the respondent 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 title deeds in question were not bailed to the Bank by the writ-applicants at any point of time. Further, indisputably, the property in question of which the title deeds are in possession of the Bank was

offered by the writ-applicants to cover their liability in respect of the loans which they had borrowed in the account of M/s.Radheshyam Spinning Mill Private Limited. There is nothing on record to indicate that the writ-applicants herein had given any authorization to the Bank to hold the title deeds of the mortgaged property given to secure the loan transaction for M/s. Radheshyam Spinning Mill Private Limited for the purpose of any other loan availed in any other branch by M/s. Radheshyam Fibres Private Limited, in which the writ-applicant nos.2 and 3 stood as guarantors. Thus, the issue boils down to the question as to whether there is any contract to the contrary, which prevents the Bank from exercising its general lien under Section 171 of the Act.

51. In Chitty on Contracts, 29th Edition (2004) - Volume-II, Page 496 on Banker's 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."

52. In the case on hand, the writ-applicants have admittedly deposited the title deeds of the property to secure a loan

transaction availed in respect of M/s.Radheshyam Spinning Mill Private Limited. This fact is apparent from the reply of the Bank itself which has been referred to in the earlier part of the judgment. In such circumstances, I have no hesitation to hold that this contract/mortgage had been created by the writapplicants 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 borrowers as well as the Bank. To put it in other words, the deposit of title deeds, by which the mortgage was created by the writ-applicants, was for a specific purpose to cover an advance for a specific loan. When such is the situation, the borrower, having deposited the title deeds in order to secure a specific transaction, the Bank cannot take a stance that they could hold the title deeds for a balance due in a different loan amount, i.e. with respect of M/ s. Radheshyam Fibres Private Limited, where the writ-applicant nos.2 and 3 may be guarantors. 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'. Indisputably, it is not the case of the respondent Bank that the amount which is now said to be due on account of the borrowings of M/s.Radheshyam Fibres Private Limited is a general balance account of the writ-applicants.”

6.1 The aforesaid judgment was carried in Appeal which came to be confirmed by the Hon'ble Division Bench and the same is reported in (2020) 1 GLH 8, para-39 reads thus :-

“39. Thus, for all the reasons recorded above, we do not find any infirmity in the order of the learned Single Judge directing the appellant Bank to return the title-deeds forthwith and also to discharge the charge recorded in the records of the Registrar of Companies. The appeal lacks merit and is accordingly dismissed. Consequently, Civil Application No.1 of 2019 stands disposed of.”

6.2 In the case of **Pravin Cotton Pvt. Ltd., vs. Branch Manager, Dena Bank, 2019 SCC OnLine Guj. 4201**, Paragraphs 12 to 15 reads thus :-

“12. Having considered the submissions made by the learned counsel for the respective parties, what is evident is that the letter of sanction dated 1.10.2015 was in the context of the petitioner Company to the Cash Credit Hypothecation whereby certain properties were agreed to be mortgaged by the Company i.e. Parvin Cotton Pvt. Ltd. and the details of the securities have been mentioned in the sanctioned letter at page No.33. List shows the properties of Parvin Cotton Pvt. Ltd. and, therefore, the stand of the Bank that they are not willing to release the properties of Parvin Cotton Pvt. Ltd. itself is not proper. What is evident from the record is that the property is mortgaged by two separate corporates i.e. Parvin Cotton Pvt. Ltd. And Parvin Exim Pvt. Ltd.

13. I am inclined to accept the submission of Mr.Puj as far as the contention of objecting to the release of such dues on the ground of having sanctioned Letter of Guarantee of

General lien and General Undertaking at page No.118. Such undertaking was given by the Directors of Parvin Exim Pvt. Ltd. at page No.118 and though they may be the Directors of the Company, one cannot lose sight of the fact that what binds Parvin Exim Pvt. Ltd., would not bind Parvin Cotton Pvt. Ltd. I am supported by the view taken by this Court in the case of Radheshyam Spinning Mill Pvt. Ltd. (Supra) which has extensively considered Section 171 of the Contract Act and relied on a Division Bench Judgment and categorically considered the case on similar facts and the prayers made in the context of facts therein and directed the Bank to release the title deeds of the mortgaged property pertaining to a legal entity namely; one M/s.Radheshyam Spinning Mill Pvt. Ltd. Facts on hand would also indicate similar case because there were common Directors / Promoters, and that the properties by virtue of the Equitable Mortgage was made of the petitioner company, the Bank cannot refuse to release mortgage deeds of the properties belonging to Parvin Cotton Pvt. Ltd. merely because some of the Directors / Promoters are also part of Parvin Exim Pvt. Ltd.

14. Pending the petition, the petitioner Company has filed an undertaking dated 21.1.2019 stating that they are willing to clear the outstanding dues if the Court gives a direction to the Bank to return the documents in respect of the properties belonging to the petitioner which are enlisted in the sanctioned letter dated 1.10.2015. In fact, Mr.Puj has pointed out that in order to show bonafide of their will to stand by

the proposal on 20.9.2019, the petitioner company has already deposited an amount of Rs.50,00,000/- (Rupees fifty lacs only) with the Bank.

15. *Considering the request made by the petitioner for release of the title deeds of the documents in respect to the properties belonging to the petitioner, it is directed that in the event, the petitioner presents before the Bank buyers of the properties which they have offered for sale to which the Bank responded on 19.3.2018 and once the buyer deposits the entire outstanding dues of the petitioner by way of the sale consideration of such properties, the Bank shall release the documents in respect of such properties within a period of two weeks thereafter and shall also give 'No Objection Certificate' to that effect. Thereby, the petition is allowed in terms of paragraph Nos.8(A) and 8(B). Rule is made absolute to the aforesaid extent.”*

Analysis :-

7. The communication by the respondent No.1 Bank dated 20.11.2017 to the writ-applicant herein is germane for adjudication of the present writ-application which reads thus :-

“Ref No: 175/7170/VINAYAK/2017

Date : 20.11-2017

*MIS. Mahataxmi Textiles,
Prop. Bharti M Chevli,
Plot.No.16,Axarnagar Row House, Kharvarnagar,
Khatodara,*

surat 395002

Dear Sir,

*Sub : Sale of property at C-303/304, Sree Kuberji Textile Park,
Ring Road, Surat*

*Property above is under mortgage to our Bank created by
M/S. Vinayak Fabrics for the facilities extended to them.
However, account has become process of selling the properties
mortgaged to us.*

*We have no objection to your buying the above property at
Rse 2.50 Crore and you may remit tv proceeds directly to the
borrower's account (Vinayak Fabrics) and on receipt of Rs,
2,50 Crore (Rs. Two Crore and Fifty Lakhs), we wilt release
the above property from our charge.*

Yours faithfully

Sd/-

Asst General Manager”

Pursuant to the aforesaid communication the writ-applicant deposited the entire amount of Rs.2.50 crores to the respondent No.1 Bank through the respondent No.2 which has been accepted by the respondent No.1 Bank and also encashed by the bank in the account of the respondent No.2.

8. In view of this Court, it is not open for the respondent

No.1 Bank to deny the writ-applicant herein, the title deed, no objection certificate/no due certificate and the sale deed executed in respect of the subject property in terms of the aforesaid letter dated 20.11.2017 issued by the respondent No.1 Bank to sell the property to the writ-applicant on receipt of the consideration of Rs.2.50 crores. It is not open for the Bank to fasten indirect liability of the respondent No.2 – Vinayak Fabrics to the the respondent No.1 Bank in respect of loan advanced to M/s. Jay Ganesh Roadlines wherein respondent No.2 – Vinayak Fabrics is a guarantor. The respondent Bank is bound by the contractual agreement between the writ-applicant and the respondent Bank. It is not open for the Bank to assert that unless and until the total dues of the Bank which are due and payable by the alleged liability of M/s. Jay Ganesh Roadlines in favour of the respondent No.1 Bank are realized. The writ-applicant be denied the release of the title deed, no objection certificate/no due certificate with respect to the subject property.

9. The title deed of the immovable property purchased by the writ-applicant was not mortgaged as collateral/primary security for the purpose of loan granted by the respondent No.1 Bank to M/s. Jay Ganesh Roadlines wherein respondent No.2 Vinayak Fabrics is a guarantor. Further the language of Section 171 of the Contract Act is explicit to the fact that the bankers are entitled to retain security only for general balance account. Undisputably there is no charge over the immovable

property in question. Undisputably there is no charge on the immovable property in question in respect of alleged liability of M/s. Jay Ganesh Roadlines in favour of the respondent No.1 Bank, therefore in view of above it is not open for the respondent No.1 Bank to deny the contractual commitment of issuing no objection certificate/no due certificate and release of title deeds of the property and the writ-applicant having made full and final payment and the Bank having accepted the same as per the letter dated 20.11.2017, the secured assets has already been sold by the secured creditor i.e. respondent Bank with concurrence of the borrowers to the writ-applicant.

10. In view of above an equitable mortgage created by Vinayak Fabrics in respect of alleged loan advanced to M/s. Jay Ganesh Roadlines, the writ-applicant cannot be denied the prayers as prayed for having fulfilled the entire obligation in accordance with the communication dated 20.11.2017 as referred above. No subsisted liability can be said to be continued against the writ-applicant herein.

11. The respondent No.1 bank is directed to release the charge over the property in question and is further directed to hand over the original title documents of the property in question forthwith latest within a period of two weeks from the receipt of this order.

12. For the foregoing reasons the present writ-application succeeds and the same is allowed. Rule is made absolute to the aforesaid extent.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)

