



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 28TH DAY OF NOVEMBER 2024 / 7TH AGRAHAYANA, 1946

WP(C) NO. 18685 OF 2023

PETITIONER

M/S INKEL LTD., HAVING ITS REGISTERED OFFICE AT
DOOR NO.14/812 & 813, 1ST FLOOR, AJIYAL COMPLEX,
KAKKANAD, COCHIN, ERNAKULAM, KERALA, REPRESENTED
BY ITS DEPUTY MANAGER (LEGAL), PIN - 682030.

BY ADVS.
M.S.AMAL DHARSAN
THUSHARA JAMES
NOEL JACOB

RESPONDENTS:

- 1 THE FEDERAL BANK LIMITED,
REPRESENTED BY ITS ASSISTANT VICE PRESIDENT,
ERNAKULAM NORTH BRANCH, P.B. NO. 1927,
PNVM ARCADE, ERNAKULAM, PIN - 682018
- 2 THE ASSISTANT GENERAL MANAGER,
THE FEDERAL BANK LIMITED, ERNAKULAM NORTH BRANCH,
P.B. NO. 1927, PNVM ARCADE, ERNAKULAM, PIN -
682018.
3. THE DEPUTY VICE PRESIDENT AND BRANCH HEAD
THE FEDERAL BANK LIMITED, ERNAKULAM NORTH BRANCH,
P.B. NO.1927, PNVM ARCADE, ERNAKULAM, PIN - 682018

BY ADV.MOHAN JACOB GEORGE



W.P(C) No.18685 of 2023

2024:KER:89300

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26.11.2024, THE COURT ON 28.11.2024 DELIVERED THE FOLLOWING:**



JUDGMENT

The petitioner, a public limited company has filed the captioned writ petition, seeking for a direction to respondents to return the original sale deed No.701/2014 of Koothattukulam Sub Registrar's Office (SRO).

2. The short facts necessary for the disposal of this writ petition are as under:

The petitioner herein entered into a Limited Liability Partnership Agreement (LLP) with M/s.Seguro Foundation and Structures Pvt. Limited and was functioning under the name and style "Seguro - INKEL Consortium LLP". The said LLP had obtained some credit facility from the 1st respondent herein for Rs.24 Crores, and the petitioner herein stood as guarantor, executing a corporate guarantee with the 1st respondent herein, mortgaging the properties covered by the sale deed No.701/2014 of Koothattukulam SRO. The guarantee executed



by the petitioner is also produced along with this writ petition as Ext.P1, which would show that the petitioner stood as guarantor only as against the LLP referred to above. The 1st respondent herein filed O.A.No.158 of 2021 before the Debt Recovery Tribunal-I, Ernakulam (for short, 'DRT') against the LLP and the petitioner herein, since the LLP committed default in repayment, for realisation of Rs.2,70,65,555.78. It is stated that the petitioner remitted the entire amount demanded and obtained a clearance dated 11.08.2022 from the 1st respondent herein produced as Ext.P3. A perusal of Ext.P3 would show that the entire amount due to the 1st respondent was paid by the LLP and the account also stood closed.

3. In such circumstances, the petitioner submitted Ext.P4 before the 2nd respondent herein, pointing out the clearance at Ext.P3 and requesting the return of the corporate guarantee as well as the collateral security furnished by the petitioner as above. It also prayed for the issue of No Objection Certificate



for production before the Registrar of Companies for releasing the charge created as above.

4. In the meantime, M/s.Seguro Foundations and Structures Pvt. Limited had availed credit facilities independently from the 1st respondent herein and insofar as the repayments were not regular, the 1st respondent bank instituted O.A.No.149 of 2021 before the DRT, arraying the petitioner as the 5th respondent herein. A perusal of Ext.P5 application filed as above by the 1st respondent herein would show that the petitioner is impleaded as the 5th defendant for the following reasons:

"The 5th defendant is the holding company of the 1st defendant or in other words the 1st defendant is a subsidiary of the 5th Defendant. The 5th defendant is also impleaded in the capacity of a guarantor eventhough the 5th defendant has not formally executed the agreement of guarantee but is impleaded in the OA as the 5th Defendant has by its conduct and representations caused the Applicant to extend the financial facilities to the 1st Defendant that it is guaranteeing the liability of the 1st Defendant for the financial facilities



availed by the 1st Defendant and also have exercised control over maintaining and operating the account with the applicant and operated the account through the employees of 5th defendant acting on behalf of the Defendant No.1.”

The 1st respondent bank also filed IA No.2305 of 2022 before the DRT in O.A.149 of 2021, seeking attachment of the property of the petitioner herein. The DRT, by an order dated 13.04.2023, directed the petitioner to furnish security for Rs.49,78,38,866.21, failing which the petition schedule property would be attached. Since the afore order was issued *ex parte*, the petitioner filed an application to *set aside* the *ex parte* along with a separate application to recall the attachment order. Both the afore applications were allowed by Exts.P6 and P7, by *setting aside* the *ex parte* and also recalling the earlier direction to furnish security.

5. It is in the afore circumstances, that the petitioner has filed the captioned writ petition pointing out that the 1st respondent has illegally retained the original title deed of the property in question ignoring the fact that the title deed was



deposited as the corporate guarantee as against the dues sought to be recovered through O.A.No.158 of 2021 and since the entire dues were cleared as seen from Ext.P3, the document is to be returned back to the petitioner.

6. A counter affidavit is filed on behalf of the respondents herein, seeking to sustain the impugned action.

7. I have heard Dr.Thushara James, the learned counsel for the petitioner and Sri.Mohan Jacob George, the learned Standing Counsel for the respondents herein.

8. The contention raised by the learned Standing Counsel for the respondent bank that a writ petition itself is not maintainable in the circumstances pointed out is to be considered at first. He would rely on the judgment of this Court in **Sleebachan Y. v. State of Kerala and Another [2020 KHC 631]**. He would also rely on the judgments of the Apex Court in **Federal Bank Ltd. v. Sagar Thomas and Others [(2003) 10 SCC 733]** and **K.K.Saksena v. International**



Commission on Irrigation and Drainage and Others [(2015) 4 SCC 670], in support of the afore submission. As regards the judgment of the Apex Court in **Federal Bank Ltd. v. Sagar Thomas and Others [(2003) 10 SCC 733]**, it is to be noticed that a writ was filed against an order dismissing the services of the employee of the bank. It is in the afore circumstances that the Apex Court held that a writ may not be maintainable. In **K.K.Saksena v. International Commission on Irrigation and Drainage [(2015) 4 SCC 670]**, the question considered was again with reference to a service dispute. With respect to the judgment in **Sleebachan Y. v. State of Kerala and Another [2020 KHC 631]**, I notice that the issue considered was with reference to the issue of a solvency certificate demanded by the petitioner in that case and it is in that circumstances, this Court held that the Bank is not performing any public duty. However, in **Zonal Manager, Central Bank of India v. Devi Ispat Limited and Others [(2010) 11 SCC 186]**, an almost similar issue came up for



consideration before the Apex Court. The Apex Court considering the afore, held as under:

"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 14-5-2009 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."

In the light of the afore, I am of the opinion that the learned counsel for the respondent bank may not be justified in



contending that a writ is not maintainable in the facts and circumstances of the case at hand.

9. The short issue arising for consideration in this writ petition is as to whether the petitioner is entitled to seek return of the title deed in question. A reading of Ext.P3 along with Ext.P2 would show that the property of the petitioner was sought to be proceeded against pursuant to the corporate guarantee executed. However, insofar as the entire amounts sought to be realized through O.A.No.158 of 2021 is cleared as seen from Ext.P3, the petitioner is justified in seeking return of the title deed as regards document No.701/2014 dated 31.03.2014 of Koothattukulam SRO.

10. Sri.Mohan Jacob George, the learned Standing Counsel for the respondents, on the face of the afore conclusion, contends that the documents in question are liable to be proceeded against pursuant to the credit facility availed by the Private Limited Company referred to above. As already noticed,



in Ext.P5 application, the 1st respondent points out that the petitioner is impleaded in the original application as the 5th respondent, though the petitioner has not formally executed the guarantee and only on account of the petitioner's conduct/representation alone, the bank extended the financial facilities to the Private limited company. He also points out that the petitioner is having effective control and was operating the account of the Private Limited Company through its employees, and therefore, the bank is justified in proceeding against the property in question.

11. It is with reference to the provisions of the Transfer of Property Act, 1882 that the mortgage as against a property is created. Admittedly, the petitioner has created a mortgage as against the property covered by sale deed No.701/2014 of Koothattukulam SRO with respect to the credit facility availed by LLP alone. The fact that the petitioner has not created any similar mortgage with respect to the credit facility extended to



the Private Limited Company is also admitted by the 1st respondent herein. In such a situation, I am of the opinion that the petitioner is entitled to get back the document in question and the 1st respondent is not justified in seeking to proceed against the afore property even when there is no mortgage created.

12. I also note the contention raised by the learned Standing Counsel for the respondent bank with reference to the alleged "conduct/representation" of the petitioner herein, which caused the respondent bank to extend the financial facilities to the Private Limited company. The learned Standing Counsel for the Bank also relied on the judgment of this Court in W.P(C) No.15152 of 2022 dated 22.08.2024 in support of the afore contention. The afore writ petition was filed by the directors of the private limited company challenging certain orders issued by the DRT. The afore judgment makes reference to a letter of undertaking submitted by the petitioner herein to the



respondent bank as per which, the request made by the Private Limited Company for a corporate guarantee from the petitioner is being put up before the Board of the petitioner company and the agreement would be executed, once the proposals are approved by the Board. However, it is not in dispute that on the afore basis, no agreement is executed by the petitioner herein. Therefore, the afore judgment relied on by the 1st respondent herein may not be any help to it.

13. I also take note of the judgment rendered by a Division Bench of the Madras High Court (Madurai Bench) in **M.Shanti v. Bank of Baroda (W.P.(MD) No.12613 of 2016 dated 09.08.2017)**, wherein considering an almost similar dispute with the Bank, it is held as under:

"31. Hence this Court is of the firm view that the respondent bank cannot exercise right of lien to secure any other liabilities of the mortgagor by retaining the documents of the mortgagor or guarantor, which are deposited with an intention to secure a particular loan transaction. Lien is primarily considered as a right to retain security. It is



doubtful, whether in exercise of such right to retain the title deeds the mortgagee can bring the property for sale for recovery of some debt which is due from the mortgagor, in connection with a different transaction, which is not covered by the mortgage.”

The principles laid down in the afore judgment apply to the facts and circumstances of the case at hand also. I also draw support from the judgment of the Apex Court in **Zonal Manager, Central Bank of India's** case (*supra*) to arrive at the afore conclusion.

14. In the result, I am of the opinion that the petitioner is justified in seeking for return of the document in question. I also record the submission made by Dr.Thushara James, the learned counsel for the petitioner that the petitioner will not encumber/alienate the property covered by the document in question till final disposal of O.A.No.149 of 2021 by the DRT.

15. However, Sri.Mohan Jacob George, the learned Standing Counsel for the respondent bank, with reference to Ext.P5 filed before the Tribunal points out that the document in



question is at present filed before the DRT and hence if at all the petitioner is entitled for return of the same, the petitioner has to move before the DRT and no direction can be issued to the 1st respondent herein in that regard. The afore submission made by Sri.Mohan Jacob George, is accepted on its face value, and I am of the opinion that the petitioner herein can file an application seeking the return of the documents before the DRT, in which event the DRT is to consider the same and order return of the document taking into account the principles laid down by this Court in the preceding paragraphs.

In such circumstances, this writ petition would stand disposed of as under:

- i. The petitioner to file an appropriate application seeking the return of document No.701/2014 dated 31.03.2014 of Koothattukulam SRO before the DRT, Ernakulam.



- ii. If the petitioner files such an application, the DRT, Ernakulam, to consider it and pass appropriate orders, taking into account the principles laid down in this judgment.

Sd/-

HARISANKAR V MENON, JUDGE

In



APPENDIX OF WP(C) 18685/2023

PETITIONER'S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE GUARANTEE AGREEMENT DATED 06/05/2015.
- EXHIBIT P2** TRUE COPY OF THE ORIGINAL APPLICATION IN O.A NO. 158/2021 FILED BEFORE THE DEBTS RECOVERY TRIBUNAL - I, ERNAKULAM.
- EXHIBIT P3** TRUE COPY OF THE NO DUE CERTIFICATE DATED 11/08/2022 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P4** TRUE COPY OF THE LETTER DATED 28/09/2022 ISSUED BY THE PETITIONER TO 2ND ESPONDENT.
- EXHIBIT P5** TRUE COPY OF THE O.A. 149/2021 BEFORE THE HON'BLE DEBTS RECOVERY TRIBUNAL - I, ERNAKULAM.
- EXHIBIT P6** TRUE COPY OF THE ORDER DATED 11/05/2023 IN I.A NO. 1601/2023.
- EXHIBIT P7** TRUE COPY OF THE ORDER DATED 11/05/2023 IN I.A NO. 1602/2023.

RESPONDENTS' EXHIBITS:

- EXHIBIT R1(A)** COPY OF THE JUDGEMENT DATED 22.08.2024 IN W.P. (C) NO.15152 OF 2002.
- EXHIBIT R1(B)** COPY OF THE ORDER DATED 24.07.2024 PASSED BY NCLAT, CHENNAI IN TA(AT)NO.258/2021 IN COMPANY APP (AT) (INS) NO.83/2021.