

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO. 679 OF 2023 (GM-RES)



BETWEEN:

- 1 . UNION BANK OF INDIA
HAVING ITS HEAD OFFICE AT
PANDESHWAR, MANGALORE
BRANCH OFFICE AT PANDESHWAR
MANGALORE-575 001
REPRESENTED BY ITS CHIEF MANAGER
T.M. GOPAL

- 2 . THE CHIEF MANAGER
UNION BANK OF INDIA
ASSET RECOVERY MANAGEMENT BRANCH
NO.30, RALLARAM BUILDING
CSI COMPOUND
MISSION ROAD
BANGALORE-560 027
REP. BY IT'S CHIEF MANAGER
LAKSHMEESH K. BHARGAV

...APPELLANTS

(BY SRI. V.B. RAVISHANKAR, ADVOCATE)

AND:

- 1 . SRI. V. HARISH D. KAMATH
AGED ABOUT 66 YEARS

2 . SRI. V. DIVAKAR D. KAMATH
AGED ABOUT 56 YEARS

BOTH ARE SONS OF
LATE V. DEVADAS S.KAMATH
RESIDENT OF NO.16/1
SRILEELA, CHARANTHIPET
MULKI-574 154
DAKSHINA KANNADA DISTRICT

...RESPONDENTS

(BY SRI. JAGADISH BALIGA N, ADVOCATE FOR C/R1 & R2)

THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE
APPEAL BY SETTING ASIDE THE ORDER DATED 02/05/2023
PASSED BY THE LEARNED SINGLE JUDGE IN WP NO.8646/2017
AND CONSEQUENTLY DISMISS THE WRIT PETITION.

THIS WRIT APPEAL HAVING BEEN RESERVED FOR
JUDGMENT COMING ON FOR PRONOUNCEMENT OF THIS DAY,
RAMACHANDRA D. HUDDAR J., DELIVERED/PRONOUNCED
THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

Appellants who are respondents in W.P.No.8646/2017 assail the order dated 02.05.2023 passed by the learned Single Judge of this Court in the said writ petition by filing this appeal under Section 4 of the Karnataka High Court Act.

2. For convenience, parties to this appeal are referred as per their rank in the writ petition.

3. The brief facts as set out in the writ petition are as under:

By filing the said writ petition, the petitioners challenged the Endorsement dated 02.07.2016 issued by the Corporation Bank, (now Union Bank of India) Asset Recovery Management Branch, Bengaluru, wherein, it is stated that:

"M/s.Shreshashayana Enterprises had availed a loan from Corporation Bank, Pandeshwara Branch, Mangalore for a sum of Rs.4,75,000/- for purchase of a fishing boat and loan documents were executed in

favour of the Bank and the said boat was hypothecated to the Bank.

In this connection you are aware that our Bank is holding Fixed Deposits in your name as collateral security for the loan sanctioned to M/s.Shreshashayana Enterprises and same were assigned to the Bank as Collateral Security towards the limit sanctioned to M/s.Shreshashayana Enterprises and M/s.Shreshashayana Enterprises have not discharged its liability to the Bank. Therefore, Bank has exercised its general lien over the deposits under Section 171 of Contract Act, as the Bankers have a general lien, over the deposits and the proceeds of deposits received from our Pandeshwar, Mangalore Branch was credited Rs.35,16,163/- to LICU/1/140001 M/s.Shreshashayana Enterprises on 31.03.2016.

Yours faithfully

Sd/-

For Corporation Bank

Chief Manager

7/16 Chief Manager

Mission Road, Bangalore-27

Ph:080-22131600, 22110109

Email ID: cb478@corpbank.co.in

4. It is stated that the petitioners are the sons of late Devadas.S.Kamath. As per the contents of the writ

petition, M/s.Sheshashayana Enterprises availed a loan of Rs.4,75,000/- for purchase of fishing boat and the said boat was hypothecated with the respondent-Bank. To that effect, loan documents were executed in favour of the Bank.

5. According to the petitioners, in the said Bank, certain Fixed Deposits were standing in the name of their Father and after his demise, they were standing in their name. But according to the Bank, the said Fixed Deposits were given as collateral security by their father towards the loan sanctioned to M/s.Sheshashayana Enterprises. It is alleged that as the said M/s.Sheshashayana Enterprises did not discharge the liability to pay the loan so availed, the Bank has exercised general lien over such deposits and transferred the proceeds of the deposits towards the loan account of the said M/s.Sheshashayana Enterprises on 31.03.2016. According to the petitioners, such an exercise or a lien is not proper as there was a suit filed by the Bank for recovery of money in O.S.No.9/1993 before the Civil Judge at Mangaluru against the borrower and subsequently it was transferred to the Debt Recovery

Tribunal, Bengaluru (for short 'Tribunal'). Even the said boat so purchased was insured, the Bank ought to have proceeded against the Insurance Company as well as borrower. The suit in O.S.No.9/1993 so filed by the Bank before the Civil Judge, Mangaluru was decreed and the Insurance Company preferred an appeal before this Court in RFA.No.2471/2006 which came to be dismissed by this Court by confirming the Judgment and decree passed in O.S.No.9/1993. The respondent-Bank has recovered the decretal amount from the Insurance Company as per ledger extract produced before the Civil Court as on 15.03.1993. The dues were Rs.6,58,209.34 as against the claim of the respondents-Bank was settled at Rs.6,03,000/- along with upto date interest.

6. It is stated that, the appellants-Bank filed a memo on 24.05.2012 before the Tribunal in O.A.No.936/1995 seeking further orders and the Tribunal issued notice to the defendants therein. It is stated that the respondents herein filed an application on 08.04.2013 to implead them as parties, which came to be allowed. It is stated that on hearing both sides, the Tribunal

remanded the matter to the Civil Court. It is the grievance of the petitioners that though the Bank has got alternative remedies to recover the loan amount, it ought not to have exercised its lien but the appellants-Bank contends that the exercise of the lien by the Bank is in accordance with law as father of the petitioners has given an undertaking that in case the main borrower fails to discharge the loan, the Fixed Deposits belonging to him may be appropriated or adjusted towards the loan. It is alleged by the appellants in this appeal that without considering the said fact, the learned Single Judge has committed an error in allowing the writ petition and wrongly quashed the impugned Endorsement and directed the Bank to release the Term Deposits along with accrued up-to-date interest in favour of the petitioners.

7. Being aggrieved by the orders passed by the learned Single Judge, now the appellants-Bank are before this Court contending that the learned Single Judge ought not to have entertained writ petition as the Bank in accordance with the provision of Section 171 of the Indian Contract Act, exercised its general lien by virtue of the

letter given by the petitioners and so also their father. The learned Single Judge has committed factual and legal error in coming to the conclusion that debt owned by the Bank stands crystallized by issuing recovery certificate by the Debt Recovery Tribunal against specified persons and Bank cannot proceed against any persons other than those mentioned in the recovery certificate. It is contended that the respondent herein Harish.D.Kamath, legal representative of Devadas.S.Kamath executed Exs.R1 to R3 and came forward to discharge the liability of the Bank. The Bank has advanced a loan to the Firm comprising of 18 partners. The said Fixed Deposit was the collateral security towards the loan and therefore, the Bank can very well exercise its general lien. Among other grounds, in addition to facts narrated in the appeal memo, it is prayed by the appellants to allow the appeal and set aside the impugned Judgment.

8. The respondents being the petitioners in the writ petition specifically stated that, by issuance of an Endorsement, the respondents-Bank has deprived the petitioners of their Fixed Deposit by exercising such a lien

which is not at all warranted. It is contended that the Bank has not issued any notice to the petitioners before forfeiting the Term Deposit and transferring the same towards the loan account of M/s.Sheshashayana Enterprises. The contention that the said Term Deposit was a collateral security furnished by the petitioners as alleged by the respondents-Bank, cannot be accepted. As per the records made available, there are in all four such Fixed Deposits so narrated in Para-7 at Page-6 in the impugned Judgment.

9. We have heard the arguments of the learned counsel for the appellants Sri. V.B.Ravishankar and Sri. Jagadish Baliga.N., learned counsel for the respondents, perused the records.

10. The learned counsel for the appellants Sri. V.B.Ravishankar took us to various contents of the writ petition, objections so filed by the respondents to the writ petition as well as the Endorsement issued by the Bank. He also highlighted the letter dated 04.09.1990 produced at Annexure-R1 addressed by Harish.D.Kamath

to the Chief Manager, Corporation Bank, Pandeshwar Branch, Mangalore. He submits that the said letter is given to the Bank without prejudice to the rights of the Bank under memorandum of charge/lien over deposits of third party. The deposit in question as delivered to the Bank duly discharged by him as well as their joint depositor late Sri. Devadas.V.Kamath and said deposit given to the Bank held as security meant for enforcement in case of need and non-alienation of dues even by resorting to execution of decree.

11. This letter dated 04.09.1990 is not denied by the petitioners. Learned counsel would further submit that, but even then, the learned Single Judge without considering the said fact, has set aside the Endorsement, which is illegal. He took us through the reasons being assigned by the learned Single Judge in the course of the judgment. In support of his submission, he placed reliance on Judgment of the Hon'ble Apex Court reported in **AIR 1992 SC 1066** between **SYNDICATE BANK** vs. **VIJAY KUMAR AND OTHERS**.

12. As against this submission, the learned counsel for the respondents, justified the reasons assigned by the learned Single Judge in quashing the impugned Endorsement. His submission is that before exercising the lien, no notice has been issued to the respondents and there was no fair action done by the Bank. He submits that as there is no fairness on the part of the Bank, therefore, the doctrine of fairness in action is attracted. He would submit that, to enforce the said general lien, the depositors must be notified by issuing notice and without their knowledge, no such exercise of general lien is warranted. He submits that when a decree has been obtained from the DRT and certificate of recovery is also issued by the DRT, the Bank ought to have recovered the amount due from the Judgment Debtors named in the certificate of recovery. The Bank could not have exercised its general lien, which is illegal. He further submits that when petitioners are the Term Deposit holders, they cannot be deprived of their deposits with accrued interest. Considering the factual situation, according to him the learned Single Judge has quashed the impugned

Endorsement which according to him is correct and legal. In support of his submission, he too relies upon a Co-ordinate Bench judgment of this Court reported in **AIR 2003 KAR 337** between **SYNDICATE BANK** vs. **WILFRED D'SOUZA** and a Judgment of Kerala High Court reported in **LAWS(KER)-2018-10-194** between **SYNDICATE BANK REGIONAL OFFICE** vs. **SHEELA JULIAN**. The judgment of the Kerala High Court is rendered under the provisions of Section 60 of Code of Civil Procedure, 1908, as well as under Section 171 of the Indian Contract Act, 1872.

13. We have given our thoughtful consideration to the arguments of both sides.

14. In view of the rival submissions of both sides, the only point that would arise for our consideration is:

"1. Whether exercising of a general lien by the appellants-Bank is just and proper?

2. If so, whether the impugned judgment of a learned single judgment requires interference by this Court?"

15. Before adverting to the other aspects of the case, let us narrate the admitted facts between both sides.

1. M/s.Sheshashayana Enterprises availed a loan of Rs.4,75,000/- from the erstwhile Corporation Bank for purchase of fishing boat. To the said loan amount, the father of the petitioners by name Devadas.S.Kamath executed a memorandum of charge-cum-lien over deposits.
2. On 19.9.1987, Devadas.S.Kamath expired. During his lifetime, he had made a Term Deposit of Rs.2,25,000/- with erstwhile Corporation Bank. After his demise, the petitioners became joint owners of the same. On 04.09.1990, they executed a memorandum of charge-cum-lien over deposit along with a letter dated 04.9.1990.
3. M/s.Sheshashayana Enterprises failed to repay the loan. Therefore, the Bank has filed a civil suit before the Civil Judge at Mangaluru in O.S.No.9/1993. After constitution of the DRT, the said civil suit came to be transferred to the DRT and renumbered as

O.A.No.936/1995. In the said application, the Insurance Company in which the boat was insured was arrayed as a party. The DRT dismissed the claim against the Insurance Company. Being aggrieved by the same, the Bank i.e., present appellants preferred an appeal in MOA.No.20/2000 before Debts Recovery Appellate Tribunal, which came to be allowed and the matter was remanded to the Civil Court, Mangaluru to decide with regard to the liability of the Insurance Company.

4. It is a matter of record that for the first time, the petitioners sought information regarding their Term Deposit. The appellants issued Annexure-A stating that the proceeds of the Term Deposits were credited to the loan account of M/s.Sheshashayana Enterprises. Being not satisfied with the said Endorsement, the petitioners issued legal notice and called upon the Bank to pay the amount covered under the Term Deposit with interest as per legal notice dated 20.12.2016. To that, the Bank replied as per letter dated 15.01.2017.

5. On 27.02.2017, the petitioners filed writ petition in W.P.No.8646/2017.

16. The aforesaid facts are admitted by both the parties, which need not be proved.

17. As the Bank exercised its general lien, with regard to the said general lien, one must read the provisions of Section 171 of the Contract Act, which speaks of general lien of Bankers, Factors, Wharfingers, Attorneys and Policy-Brokers, it reads thus:

"171. 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."

18. In the law of Contract authored by **Dr.Vepa P.Sarathi and G.Krishna Moorthy in New Edition 2012** at Page-1107, learned Author states with regard to Banker and customer. Banker's lien:

"It is stated that the right of the Bank to appropriate the monies, funds and securities of the customer coming into his possession in the course of their dealings for repayment of customer's indebtedness, is known as banker's lien. Bank can enforce its lien if mutual demands exist between itself and the customer".

19. As noticed above, Section 171 of the Contract Act states that the Bankers like the appellants-Bank, in the absence of a contract to the contrary, retain as a security for a general balance of 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. Here in this case, there were Term Deposits deposited by the father of the petitioners which were now used by the Bank by exercising its general lien.

20. It is held by the Punjab and Haryana High Court in a case between the ***Punjab National Bank, Ltd. vs Shri Satyapal Virmani*** reported in **1955 SCC OnLine Punj 122** and the ***Punjab National Bank, Ltd. v. Arura***

Mal Durga Das and Others reported in **1960 SCC OnLine Punj 126**, that, in order to exercise the Banker's lien or right to set off, the demands must be mutual and between the same parties. In the said judgment, it has also taken out the consideration that the rule of English law with regard to general lien and observed that a right to set off against all moneys of his customers in his hands has been accepted as the rule in India. According to this rule, when moneys/deposits are held by the Bank in one account and the depositor owes the Bank on another account, the Banker by virtue of his lien has a charge on all moneys of the depositor in his hands and is at liberty to transfer the moneys to whatever account, the Banker may like with a view to set-off or liquidate the debts. In order to create Banker's lien on several accounts, it is necessary that they must belong to the payer in one and in the same capacity. Where the person has two accounts, one a trustee account and another private account at a Bank, deposits in the two accounts cannot be set off, the one against the other. The Bankers have a right to combine one or more accounts of the same customer. But it cannot

combine the account belonging to another or to himself alone with another account which is the joint account with another and third person.

21. Thus, the aforesaid Section 171 of the Contract Act states that, bankers 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. This Section does not extensively deal with the cases in which a banker can retain as security for a general balance of account any goods bailed to it. However, this Section has got recognition of right of general lien of Bankers under English Mercantile Law and therefore the decision of the Court in England as to in which cases such lien can be exercised by the Bankers and in which cases such lien cannot be exercised by bankers will, equally apply to exercise of lien under Section 171 of the Contract Act.

22. In Halsbury's Laws of England, Vol.20, 2nd Edn.p.552, para 695, lien is defined 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".

23. 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."

24. Thus, on applying the provisions of general lien, in the instant case, the father of the petitioners offered his Term Deposit as security raised by M/s.Sheshashayana Enterprises and after his demise, it is one of the petitioners in the year 1990 undertook to satisfy the loan

by appropriating the Term Deposits. Even in Mulla's Contract Act at page 511, a lien is stated in the following words:-

"A banker's lien, when it is not excluded by special contract, express or implied, extends to all bills, cheques, and money entrusted or paid to him, and all securities deposited with him, in his character as a banker."

25. Thus, on reading the aforesaid definitions of lien as well as the judgments of the Supreme Court relied upon by the counsel for the appellants supra, it can be stated that Bankers most undoubtedly have a general lien on all securities deposited with them, by the customers, unless there be an express contracts or circumstances that show an implied contract inconsistent with the lien.

26. As narrated in the foregoing Paras, it is not in dispute that the Bank has obtained the recovery certificate from the DRT. But however, Annexure-R1 produced by the appellants-Bank shows that it was Harish.D.Kamath one of the petitioner on 04.09.1990 addressed a letter to the Chief Manager, Corporation Bank, Pandeshwar Branch, Mangalore with regard BHPL Account 6/85 -

M/s.Sheshashayana Enterprises KCC Deposit No.612/90 dated 04.9.1990 for Rs.2,06,460/- by specifically stating that, *"I hereby request you to enforce the security if your attempt to realise the due from M/s.Sheshashayana Enterprises by filing suit, obtaining decree and executing the decree against the borrower were not successful."*

No doubt it is stated that the Bank has to exhaust the remedy against the borrower. It is stated that the bank shall be at liberty to appropriate the deposits towards part/full discharge of a debt as the case may be. This letter is given to the bank without prejudice to the banks right under memorandum of charge / lien over deposit of third party. Signature on the Annexure-R1 as that belongs to Harish.D.Kamath is not denied by the petitioners.

27. Annexure-R2 is the memorandum of charge / lien over deposits of third party, wherein the said Harish.D.Kamath himself is signatory to this document. The clauses under these documents show that the petitioners undertook not to call back the deposit/s until Borrower's liability to the Bank on account invoked bank guarantee etc., is fully adjusted with interest accrued. It is

further stated in these documents that notwithstanding anything to the contrary contained herein before or in any agreement or otherwise, it is specifically agreed that *"you shall always be entitled to have your general lien over/right of set off against the above deposit/s credit balances against any of my/our liability, whether as borrower/s or guarantor/s. The lien hereby created shall not affect or prejudice your lien i.e., Bankers lien and you shall always be entitled to exercise your lien."*

28. Annexure-R3 is also another memorandum of charge/lien over deposits of third party addressed by the same Harish.D.Kamath, it is dated 04.09.1992. Annexure-R4 is the letter dated 04.09.1990 which is similar to Annexure-R1, addressed by Harish.D.Kamath. So also he executed the memorandum of charge/lien over deposits of third party on 04.09.1992. Annexure-R5 is the same document addressed by V.Diwakara D. Kamath, so also Annexure-R6. These series of documents produced along with the appeal memo by the appellants-Bank do establish that, the petitioners' father as well as the petitioners have expressed their willingness to adjust the

Term Deposits by executing such documents stated above. The petitioners challenged the said endorsement only in the year 2017 after adjusting the Term Deposits though had a knowledge about they executing the aforesaid memorandums regarding lien. The only grievance of the petitioners is that, no notice was given to them, though the Bank has obtained the certificate of recovery from the DRT, issued under Sub-Section 7 and 22 of Section 19 of the Recovery Debts Due to the Banks and Financial Institution Act, 1993. The recovery certificate was issued on 22.12.2017 after adjustment of term deposit towards the loan raised by M/s.Sheshashayana Enterprises. Therefore, now the petitioners cannot contend that the Bank ought to have executed recovery certificate against M/s.Sheshashayana Enterprises and other guarantors.

29. It is observed in the impugned order in writ petition that, because of issuance of recovery certificate by the DRT the term deposits belongs to the petitioners are crystallized. But when the bank has got general lien over such deposits which is dealing in public money and has exercised its general lien as per the undertaking given by

the father of the petitioners as well as now the petitioners the question of releasing the said deposit to the petitioners does not arise. Therefore, the appellants have made out grounds to interfere with the impugned judgment passed in W.P.No.8646/2017 dated 02.05.2023.

30. In view of the reasons stated supra, the appeal succeeds and deserves to be allowed. Consequently, the impugned judgment dated 02.05.2023 passed in W.P.No.8646/2017 is liable to be set aside. Resultantly, we pass the following:

ORDER

(i) Appeal is ***allowed***.

(ii) The impugned order dated 02.05.2023 passed in W.P.No.8646/2017 is hereby set aside.

(iii) Costs made easy.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**