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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.32 OF 2022

Mr. Sunil

...PETITIONER

VERSUS

Union Bank of India,
through its Branch Manager,
Office at Near Education Board Bhawan,
Civil Lines, Nagpur - 440001

...RESPONDENT

Shri D.V. Chauhan, Advocate for the petitioner.
Shri M.V. Acharya, Advocate for the respondent.

**CORAM : A.S. CHANDURKAR AND
SMT. URMILA S. JOSHI-PHALKE, JJ.**
DATED : JUNE 13, 2022.

JUDGMENT (Per Smt. Urmila S. Joshi-Phalke, J.)

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. **RULE.** Rule is made returnable forthwith.

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3. By invoking the jurisdiction of writ, the question raised by the petitioner in the present writ petition is whether the respondent-Bank has right to withhold the documents of security in view of Section 171 of the Indian Contract Act, 1872 (hereinafter referred to as 'the said Act' for short) under the right of general lien especially when petitioner has fully repaid the amount of loan.

4. Brief facts are as under :

A] The petitioner was in need of financial assistance. Accordingly, he approached to the respondent-Bank. He applied for loan of Rs.21,00,000/- (Rs. Twenty one lacs) before the respondent-Bank by way of loan application dated 13/08/2011.

B] The respondent-Bank sanctioned loan vide its sanction letter dated 06/09/2011 on condition that loan is repayable in 300 monthly installments. The petitioner is also a Director and Personal Guarantor in the Company under the name and style as 'Sunil Hitech Limited'. As the Company was in debt went in the liquidation. By an order of National Company Law Tribunal (hereinafter referred to as 'NCLT' for short), Liquidator was

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appointed. As per the contention of the petitioner due to financial crisis he could not pay monthly installments, therefore, he approached the respondent-Bank for seeking permission to sale the flat which was purchased by him after obtaining the loan. The Title Deeds of said flat was handed over to the Bank as security. Despite repeated requests no response received from the Bank. The petitioner issued a legal notice to the respondent with request to issue No Objection Certificate to sale the flat. But instead of giving No Objection Certificate, respondent-Bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act' for short). By the said notice, loan account of the petitioner was declared as NPA and the petitioner was called upon to pay the loan amount. The respondent-Bank vide reply dated 24/03/2021 gave no objection to the petitioner to sale out the flat. The respondent-Bank further intimated the petitioner that he shall adjust the sale amount towards home loan and remaining amount is to be adjusted towards loan account of the Company. Accordingly, the petitioner closed the loan account i.e. Home Loan. After the amount was satisfied, the petitioner requested to remit the property papers to the purchaser Shri Ishwar

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Narsing Phunde but respondent-Bank has not paid any heed towards it.

C] Therefore, the petitioner by invoking jurisdiction under writ, made a grievance that despite repeated request the respondent-Bank has not remitted the papers. It was informed to him that due to orders by Superior Officers they are unable to remit the papers, therefore, the petitioner approached Assistant General Manager with request to remit the paper but his efforts were futile. Hence, this petition.

5. In response to the notice, respondent-Bank has filed its reply. As per the respondent-Bank the petitioner has alternate efficacious remedy before the Debt Recovery Tribunal, New Delhi and other Forum to deal, therefore, writ petition needs to be dismissed. It is further contention of the respondent-Bank that respondent-Bank has filed an application before the Debt Recovery Tribunal, New Delhi bearing Original Application No.491/2019 against the petitioner and others for recovery of loan amount. The petitioner is a guarantor/Director/Borrower of Company namely Sunil Hitech. The respondent-Bank has also moved an application

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for attachment of property owned and possessed by the petitioner and the said matter is pending for final hearing on 14/01/2022, therefore, till the out come of order of Debt Recovery Tribunal, the respondent-Bank is unable to release the documents as prayed in this petition.

6. Learned counsel for the petitioner has submitted that the documents of title had been furnished as security towards loan account. He has already satisfied the amount towards the said loan account. After satisfaction of the loan amount Bank has no right to retain the documents of title. In support of this contention he relied upon the decision of the Hon'ble Apex Court in the case of **Zonal Manager, Central Bank of India vs. Devi Ispat Limited and others (2010) 11 SCC 186,** it is submitted that the respondent-Bank had no legal right to retain the said documents of title.

7. On the other hand, learned Counsel for the respondent submitted that in view of Section 171 of the said Act the action of the Bank of retaining the documents of title is justified. It is submitted that though the petitioner has satisfied the loan amount obtained to purchase the flat but he is also the borrower and the

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guarantor in respect of another loan account regarding the loan which was obtained for the Company. The said Company went in the liquidation. The liquidator has appointed and, therefore, the said Title Deed is required by the Bank for obtaining necessary orders from the Debt Recovery Tribunal regarding the attachment of the property. The Bank was justified in exercising its right of general lien over the said documents and sought dismissal of the said writ petition.

8. Admittedly, the petitioner has approached to the Bank and obtained the loan of Rs.21,00,000/-(Rs. Twenty one lacs) to purchase the flat. The bank has sanctioned the loan vide its sanction letter on condition that loan is repayable in 300 monthly installments. It is also an admitted position that the petitioner is also a Director in the Company under the name and style as Sunil Hitech Limited. It is further not disputed that as the Company was in debt, Liquidator was appointed by the order of NCLT. It is also an admitted position that as the petitioner could not pay monthly installments, he approached to the respondent-Bank for seeking permission to sell the flat. Accordingly, the respondent-Bank has given no objection by reply to sell out the said flat. Accordingly,

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the petitioner has sold out the said flat to one Shri Ishwar Narsing Phunde and the amount was deposited in the Bank thus, the loan account of the petitioner against the purchase of the flat appears to be satisfied. Admittedly, it is not in dispute that the respondent-Bank has initiated action against the petitioner and other Directors of the Company by filing an application bearing No.491/2019 before the Debt Recovery Tribunal against the petitioner and others for recovery of loan amount.

9. Now, the question is whether the respondent-Bank has general lien over the documents of security under Section 171 of the Indian Contract Act, 1872? The provision of Section 171 of the said Act reads as under :

> ***"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 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."*

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10. Learned Counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of Zonal Manager, Central Bank of India Vs. Devi Ispat Limited and others (supra) wherein it is held that when the Company had cleared the dues which were pending at the relevant point of time, they are entitled to get the Title Deeds to enable them to deposit the same with the State Bank of India as their security for the amount advanced.

11. Section 171 of the said Act expresses the "common law principle that if a man has an article delivered to him, on the improvement of which he has to bestow trouble and express, he has right to retain each until his demand is paid". In its primary or legal sense, "lien" means "a right of common law in a person to retain that which is rightfully and continuously in their possession belonging to another until the present and accrued claims (of the person in possession) are satisfied". Thus, from the expression "bankers lien" it is cleared that Bank overall forms of security that are deposited by the borrower in the ordinary course of business, there has to be a relationship of banker and customer between them. In Brandao vs. Barnett, it was stated as under (All ER page 722-H) "Bankers, most undoubtedly, have a general lien on all

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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". It was held 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 the reduction of customer's debit balance. Lien contemplated under Section 171 of the said Act relates to goods bailed to bank. Strictly, it is confined to securities and properties in the custody of a banker. Section 171 of the said Act expresses 'goods bailed to them'. The provision, therefore, indicates that the right to retain goods bailed is based on contract and retaining the same in absence of contract is not permissible. A Division Bench of this Court in the case of **Surendra s/o Laxman Nikose vs. Chief Manager and Authorised Officer, State Bank of India, Nagpur 2013(5) Mh.L.J. 283** held that Bank cannot exercise its right of

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general lien over the Title Deeds deposited by the petitioner after the entire loan amount was fully repaid by the petitioner. It is further held in para 10 of the judgment by the Division Bench of this Court which reads thus :

> *"10. Section 171 of the said Act employs the expression "goods bailed to them". The word "bailment" has been defined in section 148 of the said Act to mean delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. Section 160 of the said Act stipulates that it is the duty of the bailee to return the goods bailed, without demand, or the purpose for which they were bailed having been accomplished. Similarly, under section 172 of the said Act, pledge has been defined as bailment of goods as security for payment of a debt or performance of a promise. Under section 174 of the said Act, the pawnee cannot in absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise over which they are pledged.*
>
> *These provisions, therefore, indicate that the right to retain goods bailed is based on a contract and retaining the same in absence of any contract is not permissible. The only right that has been recognized with regard to goods bailed is the right of general lien of a banker to retain as security for a general balance of account any goods bailed to them. It is, therefore, clear that such right of general lien cannot be extended by a Banker for any other purpose after the general balance of account has been cleared by the person bailing the goods. Permitting a Banker to extend its right of general lien even after clearance of the debt would result in negating the effects of the words "as a security for a general balance of account". In any event, exercise of such general lien after determination of the relationship of Banker and customer does not arise at all."*

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12. In the present case also the petitioner has repaid the entire amount of loan regarding the loan obtained to purchase the flat. The petitioner has produced on record Annexure-K the account extract which shows that no balance amount remains to be paid in respect of loan account of the petitioner. It is also admitted by the respondent-Bank that the petitioner has paid the entire amount against the loan which was obtained to purchase the flat. Only contention of the respondent-Bank is that the petitioner is also borrower of Sunil Hitech Company. The petitioner as well as other Directors have obtained the loan but the said Company went in liquidation and Liquidator is appointed. The amount is due from the Company. The petitioner being the Director of the said Company is liable to pay the loan amount and, therefore, the documents regarding the title of the property is not remitted by the Company. It is further submitted by the Bank that Bank has already moved an application before the Debt Recovery Tribunal, New Delhi bearing Original Application No.491/2019 against the petitioner and others for recovery of loan amount which is due against the Company and said application is pending for the hearing. It is further submitted by the respondent-Bank that till the out come of the order of the Debt Recovery Tribunal the respondent

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is unable to release the said documents. Thus, the material on record shows that the petitioner has cleared the entire dues in respect of loan which was obtained by him in his individual capacity to purchase the flat. The said loan transaction came to an end, therefore, the relationship of the banker and customer between the petitioner and the respondent in respect of the concerned loan account came to an end as he has repaid the amount. The relationship of banker and customer could not have been continued when the petitioner has repaid the amount on 31/05/2021 as the entire loan account is satisfied. The said transaction has been completed and there is no further relationship between the petitioner and the Bank as a banker and customer.

13. In such circumstances, the contention of the respondent-Bank that it was exercising the right of general lien under Section 171 of the said Act is not sustainable. Bank has also raised the issue that other alternate efficacious remedy is available to the petitioner before Debt Recovery Tribunal and, therefore, the writ petition needs to be dismissed. In other words, it is the contention of the respondent-Bank that writ jurisdiction is not available to the petitioner as other remedy is available.

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14. Learned counsel for the petitioner submitted that the writ jurisdiction is rightly available to the petitioner. In support of this contention, he invited our attention towards the observation made by the Hon'ble Apex Court in the case of Zonal Manager, Central Bank of India Vs. Devi Ispat Limited and others (supra) wherein it is observed that where public sector bank, discharging public functions and having status of "State", despite clearance of its outstanding dues in entirely by a borrower, failed to return latter's title deeds held, High Court, rightly issued writ of mandamus for returning said deeds. Hon'ble Apex Court further held that it is not in dispute that the appellant-Bank being a public Sector Bank discharging public functions is a State under Article 12.

15. In view of the settlement of the dues on the date of filing of the writ petition by arrangement made through another nationalized bank, namely, State Bank of India and the statement of accounts furnished by the appellant Bank subsequent to the same was 0.00 (nil) outstanding. The High Court was fully justified in issuing a writ of mandamus for return of the Title Deeds.

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16. The Hon'ble Bombay High Court in the case of **DB (BKC) Realtors Pvt. Ltd. and anr. vs. Punjab National Bank 2017 SCC Online Bom 957** held that the writ petition filed under Section 226 of the Constitution of India is maintainable against the respondent-Bank which is a nationalised bank.

17. Admittedly, there was a relationship between the petitioner and the respondent as banker and customer. It is further clear from the pleadings that the Title Deed of the property in question was handed over to the respondent-Bank as a security. Admittedly, said loan amount is repaid by the petitioner. Though the respondent-Bank has submitted that there is another loan account against the petitioner and Bank has already moved an application to the Debt Recovery Tribunal for obtaining necessary orders, Bank is at liberty to move against the petitioner and other Directors to recover the said loan amount. Admittedly, said security was given against the loan amount which was already satisfied by the petitioner. In such a situation, it is not open for the respondent-Bank to continue to exercise its general lien for the security deposited with it especially when the entire amount was repaid. Such a general lien is not being exercised for a general balance of

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account as required under Section 171 of the said Act. Moreover, it would not be open for the Bank to exercise its right of general lien for the securities on the pretext of the banker and customer relationship. It cannot exercise such general lien under Section 171 of the said Act thus, there is no justification on the part of the respondent-Bank to retain the said documents by relying upon the provisions of Section 171 of the said Act.

18. In view of observation of the Hon'ble Apex Court in the case of Zonal Manager, Central Bank of India Vs. Devi Ispat Limited and others (supra) relied upon by the petitioner it was held that Central Bank of India being a nationalised bank was amenable to writ jurisdiction. In the present case also respondent-Union Bank of India is a nationalised bank and, therefore, is amenable to writ jurisdiction. According to the Bank another loan account is yet to be cleared by the petitioner and, therefore, it's security documents were not returned. On the basis of the same the bank sought to exercise its right under Section 171 of the said Act and not remitted the said documents to the respondent. Admittedly, said documents were kept with the bank as a security towards the loan amount which is obtained by the petitioner in his individual capacity for

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purchase of the flat. The said amount is duly paid and, therefore, bank was not justified in retaining the said documents by exercising right of lien on the said documents. Admittedly, bank has right to recover the loan amount regarding the loan advanced to the Company wherein the petitioner and other Directors are borrowers and guarantors. Bank is at liberty to recover the said loan amount and also at liberty to take the legal recourse but merely because another loan account is there, wherein the petitioner and other Directors are borrowers, bank has no right to retain the said documents by exercising the right of lien.

19. Respondent-Bank has already filed an application before the Debt Recovery Tribunal for attachment of the property. Said application is already pending before the Debt Recovery Tribunal and the respondent-Bank is exercising its right to recover the loan amount by attaching the property. Bank is at liberty to exercise its right by taking legal recourse to recover the said amount.

20. It is open for the respondent-Bank to take such steps to secure its interest regarding the said loan account however, by invoking the provision of Section 171 of the said Act respondent-

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Bank has no right to withhold the Title Deeds especially when there is no relationship between the petitioner and the respondent as banker and customer. Said act of the bank is not justifiable. Hence, for the reasons recorded we have no hesitation to hold that the respondent-Bank has no right of general lien over the Title Deeds deposited by the petitioner after the entire loan amount was fully satisfied by the petitioner. Therefore, we are satisfied that the petitioner has made out a case for grant of relief.

21. We, therefore, pass the following order :

(a) The writ petition is partly allowed.

(b) The respondent-Bank is directed to release the documents of title and other documents within a period of four weeks from today kept as a security in relation to Flat No.202, 2nd Floor, Adisun Terraces, Shilpa Co-operative Housing Society Limited, Manish Nagar, Somalwada, Nagpur.

(c) The Bank shall consider the petitioner's request for issuance of no-dues certificate in respect of his loan account and take necessary steps within a period of four weeks from today.

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(d) Respondent-Bank is at liberty to take appropriate steps for recovery of loan amount before the Debt Recovery Tribunal in respect of loan account maintained in the name of Sunil Hitech Limited in accordance with law.

22. Rule is accordingly made absolute. There will be no order as to costs.

(SMT. URMILA S. JOSHI-PHALKE, J.) (A.S. CHANDURKAR, J.)

*Divya

Signed By:DIVYA SONU BALDWA

Signing Date:14.06.2022 18:06