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# **CRITICAL ANALYSIS OF BANKERS RIGHT OF GENERAL LIEN**

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## **Abstract-**

The Indian Contract Act is a classical model of contract law that covers various codes that govern general contracts as well as specific contracts. Contract of Bailment, one such type of contract under Indian laws of contract, talks about the delivery of goods from one person to another for a purpose. Under this contract, the bailee is given a right to lien. Right to lien is defined under Section 171 of the Indian Contract Act, 1872 which, talks about the general right to the lien of bankers, wharfingers, factors, attorneys of high courts and policy brokers. The general right to the lien of a Banker is provided in Section 171. It is a possessory right which allows the bank to have temporary possession of the goods until the customer's outstanding debt is so paid. The landmark judgement of Syndicate Bank v/s Vijay Kumar and Others dealt with the issue of whether or not a banker's right to lien and set off was a general and customary right guaranteed to them. In furtherance of Halsbury's laws of England, this judgement recognized the banker's right to the general lien was a right guaranteed by the law and not the contract. This paper aims to understand the extent and applicability of a banker's lien in India in accordance with the Indian Contract Act, 1872. Further, it delves deeper to comprehend instances wherein a banker's right to the lien is not permissible and goes on to draw a critical analysis of the current stance of law.

**Keywords:** Bailment, Lien, Banker's Lien, Indian Contract Act, General Lien.

## **Introduction-**

The Indian Contract Act has multiple provisions that encapsulate the legal framework for varied contracts. One such is the contract of bailment. It is defined under section 148 as the "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". It further goes on to enumerate that the person who is handing over the goods is called the bailor and the person accepting them is the bailee. Sections 149 – 171 further defines the various rights, duties, and responsibilities of bailor and bailee.

The Indian laws cover two kinds of lien – particular and general. Particular lien is exercised by a bailee over a particular good bailed to them for a specific purpose. They do not have the right to lien over any other goods of the bailor. General Lien, however, grants the right to lien to the bailee over any general goods bailed to them by the bailor. This right however is limited to bankers, factors, wharfingers, attorneys and policy brokers unless there is a contract to the contrary.

Bankers have general lien over all securities and properties with them in their capacity as a custodian banker. Speculations on the exact nature of banker's lien have been made but much of it was put to rest after the landmark judgement of *Syndicate Bank v. Vijay Kumar*<sup>1</sup>. There have been instances where the nature of the goods bailed is questioned along with the purpose for their pledge or bailment. But Indian courts through their judgements have laid the questions arisen before them to rest.

### **Meaning Nature and Scope-**

Right to lien is the right to possession of property until the dues with respect to that property are not paid off. It is a legal claim and not one that needs to be specified under the contract. General lien of banker as defined in the Indian Contract Act gives the right to lien over all goods bailed to the bank as securities unless there is a contract to the contrary. However, there was speculation on the exact meaning of scope of the banker's right. In *Firm Jaikishen Dass Junda Ram Vs. Central Bank of India*<sup>2</sup>, the court held that bank could retain the security given for one account for the unpaid dues of the second account of the same person.

The uncertainty revolving the nature and scope of a banker's right to lien was uncovered in *Syndicate Bank v. Vijay Kumar & Ors.* In this case, At the judgement debtor's request, the bank in this case consented to provide a bank guarantee in favour of the High Court of Delhi on the

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<sup>1</sup> Avtar Singh, *Law of Contract (a study of Indian Contract Act, 1872) and Specific Relief (10th ed.)*, ISBN 9839388206044, Lucknow, Eastern Book Co, 2008  
Cheshire, *Fitfoot, Furmston, Cheshire, Fitfoot, Furmston's book on contracts, 17th ed.*, ISBN 9780198747383, Oxford University Press, 2017

<sup>2</sup> *Firm Jaikishen Dass Junda Ram Vs. Central Bank of India*, AIR 1960 Punjab

premise that the judgement debtor would deposit the whole amount of Rs. 90,000 in favour of the High Court of Delhi Registrar. The partner of the judgement debtor firm duly discharged them by signing on the reverse of each FDR before depositing two FDRS for Rs. 65,000 and Rs. 25,000, respectively. This was sent along with a cover letter on the bank's usual form which had the clause, "The Bank is at liberty to adjust from the proceeds covered the aforesaid Deposit Receipt /Certificate or from proceeds of other receipts /certificates issued in renewal thereof at any time without any reference to us, to the said loan/OD account. We agree that the above deposit and renewals shall remain with the said bank so long as any account is due to the bank from us for the said M/s Jullundur Body Builders singly or jointly with others". So, the issue that arose was to determine the meaning of banker's lien.

The court held that, In the absence of a contrary agreement, a banker has a general lien over such securities or payments obtained from a customer in the ordinary course of banking business and is entitled to use the proceeds in respect of the general lien and all forms of securities or negotiable instruments deposited by or on behalf of the customer in the regular course of business of banking business. Since this judgement, the nature of banker's lien has been clarified and well founded. Subsequent judgements have followed the stance and accordingly varied from this point of law when the right to lien of the banker is not present<sup>3</sup>.

### **Circumstances Where a Bankers Lien Not Applicable-**

Although it is understood that bankers have the right of general lien, there are some instances where they forfeit their right to lien over the securities or goods bailed to them. These instances have been developed through legal precedents and since then, accorded as standard principles to be abided by.

1. When there is an express contract providing a way of repayment of dues. This was seen in the case of State Bank of India v. Jayanthi, where, the court held that the securities were provided for a specific purpose, i.e., for a specific loan and cannot be retained by the bank under their claim of general lien.
2. When the goods bailed to them are for safety deposit  
A distinction has been drawn between money or goods deposited as a deposit and given to the banker as bailment. So, in case of a safety deposit, the bank is a bailee and must exercise reasonable duty of care towards the deposits. They cannot claim to retain such

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<sup>3</sup> Firm Jaikishen Dass Junda Ram Vs. Central Bank of India, AIR 1960 Punjab

deposits under their right of general lien for other unfulfilled payments.

3. When the title deed is provided as security but only for a specific purpose. Although, bankers are entitled to the right of 'general' lien, there are limitations to the extent that they can exercise this right. This is seen in instances where the customer has provided a mortgage or security for a particular debt, but the bank exercises their right of lien by retaining the mortgage for a subsequent debt. In a similar case of Firm Jaikishen Dass Junda Ram Vs. Central Bank of India<sup>4</sup>, Karnataka High Court held that in such cases the banker could not exercise their right to lien as the deed was provided for a particular debt only.
4. When there is a joint party term deposit but only one party's dues are left unpaid  
A joint party term deposit is a deposit under the name of two people. In such cases, if one of the parties in the joint account has some unpaid dues left then the securities of the other party cannot be retained by the bank under Section

171 as seen in Lonankutty Antony v. Joint Registrar of Co-Operative Societies<sup>5</sup>.

1. The principle of general lien does not extend to a loan taken by the customer from another branch of the bank.  
The right to lien of a banker only extends to the property of the customer mortgaged against their loan and the bank cannot hold the property documents for another loan taken by a company in which he was the director.
2. When the person is a guarantor for another person's loan.  
For if an individual pledges gold ornaments against their personal loan and the same person is a guarantor for another person's loan default then, they can claim their goods back on repayment of their personal loan<sup>6</sup>

### **Effect Of Lien-**

Generally, two parties are involved. The banker who lends the money to the borrower or the customer, who then provides a security in exchange for the loan. Both of the parties are entitled to some of the rights that are associated with the securities that were provided. The client who issues the security is the legal owner of the items; nevertheless, when the commodities are offered as security for a loan, the customer transfers possession of the assets to the banker. Therefore,

<sup>4</sup> Lonankutty Antony v. Joint Registrar of Co-Operative Societies, 2016 SCC OnLine Ker 481

<sup>5</sup> State Bank of India v. Jayanthi, 2011 SCC OnLine Mad 269

<sup>6</sup> Alekha Sahoo v. Puri Urban Co-operative Bank Ltd. And Anr, AIR 2004 ORISSA 142

they are not physically in possession of it at the moment, but they are still the true proprietors of it. Therefore, individuals have the authority to have the obligation discharged and to retrieve their property. Also included in this category is the banker<sup>7</sup> who currently has custody of the securities. The banker has the right to act as the trustee of the property as long as they are acting within their powers as the custodian and do not sell the property without giving notice to the customer. This only applies if the banker is acting within their rights as the custodian. When the property belongs to a third party, the bank may use its right to lien to the extent of the customer's title. This demonstrates that bankers do not enjoy a comprehensive right to liens, contrary to what was previously believed. They will be permitted to keep the property so long as the debt is not paid in full as a result of this. If the debt is not paid in full, the bank has the authority to sell the customer's property, either with the customer's permission or with a court order.

## **Legislative Framework With Respect Of Bankers Right To Lien-**

Indian Contract Act-

Section 148 defines bailment and the parties involved, i.e., the bailor and the bailee. This was applied to understand the relationship between the banker and the customer

Section 170 particular lien. It defines the bailee's right to particular lien.

Section 171 defines general lien. This allowed us to comprehend the banker's right to general lien. Along with a banker, factors, wharfingers, policy brokers and attorneys of high court are vested with the right to general lien over the goods<sup>8</sup>

## **Judicial Precedents In 18<sup>th</sup> And 19<sup>th</sup> Century-**

1. Firm Jaikishen Dass Junda Ram Vs. Central Bank of India, AIR 1960 Punjab

Facts – there were two partnership firms with same people, who had two different cash credit accounts in the same bank. The dues were paid off for the 1st firm's account. But there was some amount due to the bank in the 2nd firm's account. The 1st firm had given the bank Rs.15,000/- to the bank to be remitted to a mill. The mill refused the money and returned it to the bank. The bank adjusted the money towards the amount due in the 2nd firm's account

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<sup>7</sup> Indian Contract Act, 1872, Section 170, No.9, Act of Parliament, 1872 (India)

<sup>8</sup> Devendrakumar Lalchandji v. Gulabsingh Nekhesingh, AIR 1964 Nag 114

M/s. Shivam Construction Co., Ahmedabad Vs. Vijaya Bank, Ahmedabad, AIR 1997 Gujrat 24

Held – the court held that the bank had the right to appropriate the amount to clear the indebtedness from the customers securities. Also, though there were two different firms, they cannot be considered as separate legal entities as they were constituted of the same people.

2. Devendrakumar Lalchandji v. Gulabsingh Nekhesingh, AIR 1964 Nag114<sup>9</sup>

Facts – defendant customer, opened two accounts one deposit and another loan account and had instructed the plaintiff bank to transfer money from deposit account to loan account. But later defendant denied any such claim and moved the court.

Held – on appeal, it was held that the defendant had instructed the bank to transaction and the plaintiff was well within their rights under general lien to do so.

3. M/s. Shivam Construction Co., Ahmedabad Vs. Vijaya Bank, Ahmedabad, AIR 1997 Gujrat 24

Facts – bank had sanctioned overdraft account to plaintiff on security of FDR. The bank requested the plaintiff to pay the dues from the Fixed deposit. Their request was not replied to, so they appropriated the fixed deposit sum towards the unpaid dues. The defendant then filed a suit for recovery of remaining amount.

Held – In appeal of the plaintiff's plea was dismissed on the basis that the defendant bank had the right lien over the goods or securities deposited with them.

4. Alekha Sahoo v. Puri Urban Co-operative Bank Ltd. And Anr, AIR 2004 ORISSA 142

Facts – petitioner took loan of Rs. 12,000/- from respondent, bank against a pledge of gold ornaments. The petitioner was also a guarantor for a cash loan to a third party by the respondent. The bank said that they were exercising their right of general lien and retained the petitioner's gold ornaments.

Held – General lien by banker can be exercised on the deposits and general account balance and securities of the principal debtor and not the guarantor.

5. The Central Bank of India v. Kesharao Narayanrao Patil, 2004(3) ALLMR 633<sup>10</sup>

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<sup>9</sup> Devendrakumar Lalchandji v. Gulabsingh Nekhesingh, AIR 1964 Nag 114

M/s. Shivam Construction Co., Ahmedabad Vs. Vijaya Bank, Ahmedabad, AIR 1997 Gujrat 24

<sup>10</sup> The Central Bank of India v. Kesharao Narayanrao Patil, 2004(3) ALL MR 633 Supra 30

Sree Vadivambigai Ginning Industries Pvt. Ltd v. Tamil Nadu Mercantile Bank Limited, 2015 SCC OnLine Mad

Facts – Plaintiff took loan from bank. But he had rented his premises to another branch of the bank. In spite of multiple notices from bank, he didnot repay the loan so, the bank deduced the loan amount from his arrears of monthly rent.

Held – trial court and District court held that the defendant bank may pay full arrears to the plaintiff. High Court of Bombay held that bank waswell within its rights of general lien as under section 171 of the Indian Contract Act to adjust plaintiff's arrears. Appeal was allowed.

### **Judicial Veiw Of 21<sup>st</sup> Century-**

1. State Bank of India v. Jayanthi, 2011 SCC OnLine Mad 269

Facts – Respondent's deceased husband had given property deed to secure loan which had since been paid off and account was closed. But the bank continued to retain the property deed for a loan account for which the respondents' husband had not given a guarantee.

Held – Since the property deed was given only for a specific loan, the agreement between bank and borrower can be seen as a contract to contrary. So, it was held that the bank could not retain the documents under general lien. Also, bank cannot exercise lien over a different account created by the same borrower with different purpose.

2. Sree Vadivambigai Ginning Industries Pvt. Ltd v. Tamil Nadu Mercantile BankLimited, 2015 SCC OnLine Mad 441)<sup>11</sup>

Facts – title deeds were deposited by the petitioner for a specific purpose, i.e., the loan but, the bank retained the security for unpaid dues

Held – Bank does not have right to general lien over title deeds as they were deposited for specific purpose and an express contract was made where the titled deeds were given as collateral for loan

3. Lonankutty Antony v. Joint Registrar of Co-Operative Societies, 2016 SCC OnLine Ker 481

Facts – Petitioner took a loan after mortgaging a property deed, after which he repaid the loan. But the bank retained the deed as a security for his wife's debt under general lien.

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441

<sup>11</sup> The Central Bank of India v. Keshaoarao Narayanrao Patil, 2004(3) ALL MR 633 Supra 30  
Sree Vadivambigai Ginning Industries Pvt. Ltd v. Tamil Nadu Mercantile Bank Limited, 2015 SCC OnLine

Held – unless there is a contract to contrary, banker cannot exercise general lien over husband's property for wife's unpaid dues.

4. *M. Shanthi v. Bank of Baroda*, 2017 SCC OnLine Mad 37703

Facts – petitioner had submitted property deeds to the bank as security against the loan account. There were some irregularities in payment for a while. Later the petitioner approached the bank to repay the dues and redeem the mortgage. The bank refused to redeem the mortgage even on repayment as the petitioner is also a guarantor for another loan and said they had right of general lien.

Held – the writ petition was allowed, and the bank was directed to give the documents back as the petitioner was a guarantor and not the principal debtor.

5. *Sunil v. Union Bank of India*, 2022 SCC OnLine Bom 1224<sup>12</sup>

Facts – the petitioner applied for a loan to the bank and provided title deeds as security. He was also the guarantor for a loan taken by the company where he is the director. On complete repayment of his personal loan, the bank continued to retain the title deeds under the claim that it was a security for the loan by the company.

Held – the writ petition was partly allowed, and the bank was directed to release the title deeds of the petitioner but, it was also held the bank was free to take appropriate steps for the debt recovery<sup>13</sup>.

### **Critical Analysis-**

Substantive findings under the banker's right to general lien is that the law is an effective tool to safeguard the bank's interests. The Indian banking industry is expanding rapidly, an increasing number of individuals are seeking banks to expand the scope of their particular businesses. The right to lien is a prerogative for the bank since it protects its interests. The section 171 of the Indian Contract Act, 1872 only enables the bank to safeguard its interests but the client receives no substantive protection under the same provision. Thus, the contract act should be amended to provide equal protection to both parties. When a customer feels empowered and their rights are

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<sup>12</sup> *M. Shanthi v. Bank of Baroda*, 2017 SCC OnLine Mad 37703

<sup>13</sup> *M. Shanthi v. Bank of Baroda*, 2017 SCC OnLine Mad 37703

protected, they, it will not only facilitate a harmonious agreement between the parties, but it will also reduce chances of dispute caused due to lack of clarity of rights against a banker's right to lien.

The judgement of *Syndicate Bank v. Vijay Kumar & Ors*, the court ruled that, in the absence of a contract to the contrary, the banker has a general lien over securities or payments acquired from a customer in the conduct of its business and is permitted to use the proceeds from the general lien and all types of securities deposited by or on the customer's behalf in the normal course of banking business.

This has not only put to rest all the ambiguity surrounding the nature and scope of a banker's right to lien but also paved the way for a future series of judgements that have utilized the court's sound opinion to pass their respective judgements as a notable precedent. Because these judgements have dealt with scenarios in which the negotiable instruments or the purpose of the loan or deposit in the case has been the question at hand, they have also provided a deeper understanding on the extent of the banker's right to lien. Therefore, it is plausible to deduce that a banker possesses a "general" right to lien.

However, even this is subject to legal constraints, which the courts, with the help of these precedents, have laid down.

### **Suggestions And Conclusions-**

So, it is well understood that the right to lien while being effective does have some drawbacks as analysed. The effect of this must be considered by all stakeholders involved i.e., the government, regulatory authorities, the banker, and the customers. The government should advance the legal instruments in order to close the few loopholes in the present rules that benefit the banker but restrict the growth of the client or ordinary person who desires to do business with the bank. They should ensure that the enforcement mechanism is well regulated and the laws governing these institutions throughout the entire process of granting loans and acquiring securities, restraining of securities, and sale of these securities are consistent, and that any violations are appropriately punished.

Moreover, they should recommend an alternate method for obtaining a bank loan. It is no secret

that the majority of people need a loan to launch or expand their company, but as understood, there are numerous limits, such as the necessity for collateral, high rates of interest and loan classes, among others. Therefore, the government should offer alternatives, such as low-interest or no-interest loans, so that even people who do not meet the bank's requirements may get a loan.

Also, they should ensure that the statute requiring notification before a bank proceeds with the sale of secured or encumbered property is properly applied, and the sale should be fair based on the property's worth. Further, efforts can be made to approach alternate methods of dispute resolution such as negotiations and mediations so as to mitigate any probable loss of resources the parties may bear. Right to lien, a well established legal right must be effectively shaped further so as to act not only as a privilege to the banker but also ensure that it does not mean a definite loss to the customer.

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