IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble The Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya

M.A.T. 483 of 2024
With
I.A. No. CAN 1 of 2023

Axis Bank Limited
Versus
Indian Cable Net Company Limited & Ors

For the Appellant : Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Rishad Medora
Ms. Bhavika Deora
Mr. Abhirup Chakraborty ….advocates

For Respondents : Mr. Sabyasachi Chowdhury
Ms. Rajashree Dutta
Mr. Shounak Mukherjee
Mr. S. Ganguli
Mr. Shubradip Roy .....advocates

Reserved on : 13.05.2024

Judgment on : 10.07.2024

Hiranmay Bhattacharyya, J.:-

1. This intra Court appeal is at the instance of Axis Bank Limited and is directed against a judgment and order dated 6th February, 2024 passed by learned Single Judge in WPA 23561 of 2023.

2. By the impugned judgment and order, the writ petition was allowed and the appellant bank was directed to issue requisite no dues certificate to the writ petitioner no. 1/respondent no. 1 herein and return all securities given by the 1st respondent for the loans and credit facilities taken by the 1st respondent within a specified time limit.

3. Facts giving rise to the writ petition and this appeal, in a nut shell, are as follows.

The 1st respondent herein is a multi system operator of cable television and is a subsidiary of SITI Networks Limited (for short "SITI"). The 1st respondent entered into a Term Loan Agreement dated March 30, 2019 with the appellant bank. The credit facilities availed by the 1st respondent was secured by the deposit of title deeds in respect of an immovable property situated at Sector V, Electronic Complex, Bidhannagar, Saltlake. SITI, being the owner of 2,59,11,689 shares of the respondent no. 1 company agreed to pledge such shares to secure the facilities to be granted to the 1st respondent. The 1st respondent claims to have complied with the terms of sanction of credit facilities and the final repayment of term loan facilities was made on November 7, 2022. The respondent no. 1 claims to have issued several emails requesting the appellant bank to issue no dues certificate and release all securities in respect of the credit facilities. Despite the receipt of the said emails the appellant bank failed and neglected to issue no dues certificate and release the securities. Finding no other alternative the respondent no. 1 lodged a complaint dated November 30, 2023 before the Ombudsman, Reserve Bank of India being the 4th respondent herein. The 4th respondent herein, by an email dated July 14, 2023, rejected the complaint filed by the 1st respondent herein.

4. The 1st respondent approached the Writ Court praying for setting aside the email dated July 14, 2023 and for issuance of a writ in the nature of mandamus commanding the appellant bank to return all the original security documents including the original title deeds and original pledge agreement and the original share certificates as specifically mentioned in the Schedule thereto.

5. By the impugned judgment and order, the learned Single Judge allowed the writ petition thereby setting aside the order of the Ombudsman and quashing the refusal of the appellant bank and directed the appellant bank to issue the requisite No Dues Certificate to the 1st respondent and return all securities given by the 1st respondent for the loans and credit facilities taken by the 1st respondent within the specified time.

6. Being aggrieved, the Bank, who was the 3rd respondent in the writ petition has approached this Court with this intra Court appeal.

7. Mr. Banerjee, learned Senior Advocate for the appellant contended that the appellant bank had sanctioned credit facilities amounting to Rs. 243.04 crores to the 1st respondent herein pursuant to a term loan agreement which was executed between the appellant bank and the 1st respondent herein on March 30, 2019 for two term loan facilities, one for Rs. 48.04 crores and the other for Rs. 175 crores. As security for term loan of Rs. 175 crores, SITI pledged shares representing 29.99% of total shares of the 1st respondent herein in favour of the appellant bank. The sanctioned credit facilities were further secured by the 1st respondent by creating a mortgage on a lease hold land and building situated at Sector V, Bidhannagar, Saltlake. Mr. Banerjee further contended that the appellant bank had also granted various facilities to SITI from time to time and on account of default in repayment by SITI to appellant bank, the account of SITI was declared to be a “Non Performing Asset” (for short “NPA”) by the appellant bank on August 28, 2019. Mr. Banerjee contended that the appellant bank has contractual rights as well as right of lien in terms of provision of section 171 of the Indian Contract Act and, therefore, the appellant bank was entitled to retain the shares pledged by SITI as security for the credit facilities granted by the appellant bank to SITI. Mr. Banerjee further contended

that SITI falls within the definition of an "affiliate" as defined under the Term Loan Agreement and, therefore, the appellant bank was entitled to retain the title deeds of the mortgage property in view of Clause 13.3(b) of the Term Loan Agreement.

8. Mr. Banerjee challenged the maintainability of the writ petition on several grounds. He contended that the appellant bank is a private bank and, thus, does not fall within the definition of "State" under Article 12 of the Constitution of India. He further contended that the function of the appellant bank carrying on the banking business cannot be said to be in discharge of a public function. In support of his contention that the appellant bank is neither State nor an authority within the meaning of the expression "other authorities" under Article 12, he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Ors.*** reported at ***(2002) 5 SCC 111***. He also placed reliance upon the decisions in the case of ***Federal Bank Ltd. vs. Sagar Thomas and Ors.*** reported at ***(2003) 10 SCC 733***; ***K. Kalaiarasan vs. Reserve Bank of India, Fort Glacis, 16, Rajaji Salai, Chennai*** reported at ***(2014) SCC OnLine Mad 5685***; ***Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and Ors.*** reported at ***(2022) 5 SCC 345*** and a decision of this bench delivered on 13.04.2023 in MAT 6 of 2023 in the case of ***Firdosh Ali Mallick vs. The Reserve Bank of India and Ors***. in support of a contention that a writ petition against the private bank is not maintainable.

9. Mr. Banerjee further submitted that since contractual disputes have been raised in the writ petition, the 1st respondent ought to have approached the Civil Court as the appropriate remedy is by way of a Civil Suit and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of the ***State of Gujarat and Ors. vs. Meghji Pethraj Shah Charitable Trust and Ors.*** reported at ***(1994) 3 SCC 552***.

10. Mr. Banerjee next placed reliance upon a decision in the case of ***Syndicate Bank vs. Vijay Kumar and Ors.*** reported at ***AIR 1992 SC 1066*** in support of his contention that Bank has a general lien over all forms of security deposited

by or on behalf of the customer in the ordinary course of banking business. He also referred to a decision of the Allahabad High court in the case of ***State Bank of India, Kanpur vs. Deepak Malviya and Ors.*** reported at ***AIR 1996 ALL 165*** wherein it was held that the banker's lien is also extended to the pledged goods. Mr. Banerjee placed reliance upon the right of set off and lien as provided under Clause 12(a) and (b) of the pledge agreement and contended that SITI agreed with the bank for a right of set off and lien over the securities pledged by SITI. Mr. Banerjee concluded by submitting that the Ombudsman, Reserve Bank of India being specialized and expert authority set up primarily to deal with complaint against companies and have dismissed the complaint of the first respondent by holding that there was no deficiency of service on the part of the appellant bank while retaining the security documents, the learned Single Judge ought not to have interfered with such decision.

11. Mr. Choudhury, learned Senior Counsel representing the first respondent seriously disputed the submission of Mr. Banerjee. He contended that since the first respondent has repaid the entire term loan facilities, it was incumbent duty of the bank in terms of the sanction letter and the agreement to issue no due certificate and return of the securities to the first respondent. He further contended that since the first respondent Bank has repaid all their loans, the general lien under Section 171 of the Contract Act cannot be applied to the case on hand. In support of such contention he placed reliance upon a judgment of the Madras High Court in the case of ***M. Shanthi vs. Bank of Baroda*** reported at ***2017 SCC OnLine Mad 37703***. He submitted that existence of an alternative remedy is not an absolute bar in entertaining an application under Article 226 of the Constitution of India. He further submitted that the appellant bank is discharging duties which falls within the domain of the State to discharge and thus performs public duties. He contended that the 1st respondent challenged the action of the bank before the Ombudsman who rejected the complaint of the 1st respondent on flimsy grounds. He placed reliance upon a decision of the Delhi High Court in the case of ***MB Power (Madhya Pradesh) Ltd. through its Authorised Signatory, Rajinder Singh***

vs. Ombudsman, Reserve Bank of India and Anr. reported at ***2023 SCC OnLine Del 6790*** in support of his contention that the Ombudsman is a quasi-judicial authority which has the duty to act judiciously and assign reasons in support of its conclusions. He further submitted that since the shares of the 1st respondent held by the SITI were pledged to secure the loan of the 1st respondent, the same should have been returned upon the loan being repaid by the 1st respondent and could not have been withheld on the allegation that the account of SITI with the appellant bank was declared as NPA. Mr. Chowdhury contended that the learned Single Judge after considering materials on record allowed the writ petition by assigning cogent reasons in support of its ultimate conclusions and, therefore, such finding may not be interfered with in an intra Court mandamus appeal.

12. Heard the learned Counsels for the respective parties and perused the materials placed.

13. The appellant bank raised the issue of maintainability of the writ petition before the learned Single Judge. The learned Single Judge observed that since the primary relief in the writ petition is against the order of the Ombudsman which is a statutory authority and its function has a statutory flavour, a writ petition challenging an order of such quasi judicial authority is maintainable. The learned Single Judge further observed that even if the secondary relief sought against the action of the appellant bank is considered, the writ petition is maintainable as the appellant bank discharges duties of a bank and is governed by the guidelines issued by the Reserve Bank of India which is the Central Regulatory Authority and the impugned action was taken by the bank while discharging such banking affairs. The learned Single Judge further held that the appellant bank has all powers vested under the SARFAESI Act and other similar statutes and, therefore, the appellant bank stands on equal footing with the nationalised banks and in the present age of rapid privatization of banks the line of distinction between nationalised and private banks stand considerably blurred.

14. Mr. Banerjee would contend that a writ petition against the appellant, which is a private bank, is not maintainable.

15. In ***Phoenix ARC Private Limited*** (supra) writ petitions were filed challenging the communication purporting to be a notice under Section 13(4) of SARFAESI Act against a private asset reconstructing company (ARC). It was held that the bank/ARC lending money to borrower in course of commercial transaction cannot be said to be performing public functions which are normally expected to be performed by State authorities.

16. The Hon'ble Supreme Court in ***Federal Bank*** (supra) after considering the six factors which have been enumerated by the Hon'ble Supreme Court in the case of ***Ajay Hasia*** and approved in the later decision in the case of ***Ramanna*** and the 7-Judge Bench in the case of ***Pradeep Kumar Biswas*** (supra) and further applying the same to the facts of the said reported case held that merely because Reserve Bank of India lays down the banking policy in the interests of the banking system or in the interests to monetary stability or sound economic growth having due record to the interests of the depositors as provided under Section 5(c)(a) of the Banking Regulation Act, does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. It was further held that these are regulatory measures applicable to those carrying on commercial activity in banking and those companies are to act according to these provisions failing which, certain consequences follow as indicated in the Act itself.

17. The Hon'ble Supreme Court concluded by holding that a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. It was further observed that a private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature.

18. The Hon'ble Supreme Court in ***Federal Bank*** (supra) noted that there are certain legislations and statutes which fasten certain duties and

responsibilities statutorily upon private bodies which they are bound to comply with and if they violate such a statutory provision a writ would certainly be issued for compliance with those provisions.

19. In the case on hand there is no allegation of violation of any statutory provision. Merely because of the fact that the appellant bank has been vested with the powers under the SARFAESI Act as well as other similar statutes, it cannot be said that the appellant bank is discharging public functions.

20. This Court is, therefore, of the considered view that Mr. Banerjee, learned Senior Counsel was right in arguing that the appellant bank carrying on the business or commercial activity of banking does not discharge any public function or public duty.

21. The 1st respondent submitted several representations before the appellant bank requesting it to return the securities as the loan has been repaid. Bank did not honour such request which prompted the 1st respondent to lodge a complaint before the Ombudsman under the 2021 Scheme alleging deficiency in service on the part of the Bank. The Ombudsman by its order dated 14th July, 2023 rejected the complaint holding that there is no deficiency in service. Challenging such order of the Ombudsman, the 1st respondent approached the Writ Court. The relief prayed for against the appellant bank for return of the securities is consequential and can be considered only if it is held that there is deficiency in service of the appellant bank, which is a Regulated Entity under 2021 Scheme.

22. Reserve Bank-Integrated Ombudsman Scheme, 2021 (for short “the 2021 Scheme”) was framed for resolving customer grievances in relation to service provided by entities regulated by Reserve Bank of India (for short “RBI”) in an expeditious and cost effective manner. The Scheme vests the Ombudsman with the power to consider the complaints of customers of Regulated Entities relating to deficiency of service. Bank falls within the definition of “Regulated Entity”. Clause 16 of the 2021 Scheme deals with rejection of a complaint and sub-clause (2)(a) states that the Ombudsman may reject a complaint at any stage if in his opinion there is no deficiency in service.

23. Clause 15 deals with Award by the Ombudsman. After reading the said Clause as a whole, this Court finds that the Ombudsman is under an obligation to consider the records placed and afford a reasonable opportunity of hearing to both the parties. The Ombudsman shall also have to take into account the principles of banking law and practice, directions, instructions and guidelines issued by RBI from time to time and such other factors as may be relevant before passing a reasoned award. The Ombudsman in his award can also direct specific performance of the obligations of a Regulated Entity.

24. Section 35A of the Banking Regulation Act 1949 vests power upon RBI to give directions. Section 45L of the Reserve Bank of India Act, 1934 gives power to RBI to call for information from financial institutions and to give directions.

25. The 2021 Scheme was framed under Section 35A of the Banking Regulation Act, 1949, Section 45L of the RBI Act, 1934, as well as other statutory provisions. To the mind of this Court, the said Scheme has a statutory force.

26. The Ombudsman has been vested with the power to consider the complaint presented before it in terms of the 2021 Scheme and take a decision. Therefore, the Ombudsman is a quasi judicial authority and has to act as per the 2021 Scheme. The principles of natural justice have also been incorporated in the said scheme.

27. It is well settled that a quasi judicial authority has to act judicially and assign reasons in support of its conclusion. When a complaint is lodged before the Ombudsman, such authority has to consider the grievance of the customer and the defence of the regulated entity and after giving a reasonable opportunity of hearing to both the parties has to pass an order supported with reasons. Even while rejecting a complaint, the Ombudsman has to assign reasons in support of such conclusion so as to enable the aggrieved party to be aware of the factors that weighed in the minds of such authority.

28. The Ombudsman is a quasi judicial authority performing the duties and functions under the 2021 Scheme which has a statutory force. “Deficiency in service” has been defined in Clause 3(1)(g) of the 2021 Scheme to mean a short coming or an adequacy in any financial service or such other services related

thereto which the regulated entity is required to provide statutorily or otherwise which may or may not result in financial loss or damage to the customer.

29. The 1st respondent alleged that the appellant bank is obliged to return all securities to the 1st respondent since the loan has already been repaid. Alleging that withholding all securities even after repayment of the loan amounts to a short coming or inadequacy in a financial service of the appellant bank which is a regulated entity under the 2021 Scheme, the instant writ petition has been filed challenging the order of the Ombudsman passed on a complaint made by the customer/1st respondent herein against the appellant bank/regulated entity. The 2021 Scheme is applicable to the appellant bank falling within the definition of "Regulated Entity". A complaint against such entity alleging deficiency in service has to be entertained by the Ombudsman and to be disposed of in accordance with the provisions of the 2021 Scheme. This Court, therefore, holds that the writ petition challenging the order of the Ombudsman is maintainable.

30. In ***M.B.Power (Madhya Pradesh) Ltd.*** (supra) the order of the Ombudsman was challenged in a writ petition on the ground that the decision of the Ombudsman was without any reason and, therefore, the same is violative of the principles of natural justice. The Reserve Bank – Integrated Ombudsman's Scheme, 2021 fell for consideration before the Delhi High Court. It was observed that the Ombudsman is entrusted to carry out quasi judicial functions with utmost diligence in accordance with the extant regulations. After noting the decision of the Hon'ble Supreme Court in the case of ***Siemens Engineering & Manufacturing Co. of India Limited vs. Union of India*** reported at ***(1976) 2 SCC 981***, the decision of the Madras High Court in ***Fidelity Finance Ltd. vs. Banking Ombudsman*** reported at ***2002 SCC OnLine Mad 864*** and the High Court of Kerala in the case of ***M. M. Kunjumon vs. Reserve Bank of India*** reported at ***2023 SCC OnLine Ker 7608***, the Hon'ble Single Judge of the Delhi High Court held that a quasi judicial body, such as Ombudsman is reasonably expected to pass a well reasoned order and an empty formality thereto, deserves to be weeded out. It was further observed

that the Ombudsman is duty bound to pass reasoned order which would eventually foster a greater transparency in the decision making process and also inspire the confidence of the common man in efficient dispute resolution through such bodies. The Delhi High Court after considering the facts of that case held that though the Ombudsman was required to pass a detailed order after dealing with the submissions made by the complainant in its detailed complaint and also after providing sufficient opportunity of hearing to the respective parties, the same was not done. Under such circumstances the impugned orders passed by the Ombudsman were set aside and the matter was remitted back to the Ombudsman for fresh consideration in accordance with law.

31. In the case on hand, the Ombudsman, in its order which was communicated by e-mail dated 14.07.2023, stated that the complaint is rejected under Clause 16(2)(a) of the Ombudsman Scheme, 2021 and that in the opinion of the Ombudsman there is no deficiency in service.

32. Record reveals that first respondent submitted a detailed complaint. The Ombudsman did not deal with the submissions made by the first respondent in the said complaint. It does not appear from the records that sufficient opportunity of hearing was provided to the respective parties. The order of the Ombudsman is a cryptic and nonspeaking one.

33. It is well settled that the Ombudsman being a quasi judicial body has a duty to pass a well reasoned order. To the mind of this Court, the principles of natural justice has been violated in the instant case. Therefore, this Court holds that the learned Single Judge was right in setting aside the decision/ order of the Ombudsman.

34. Under normal circumstances, this Court after recording the aforesaid findings would have remitted the matter to the Ombudsman for deciding the matter afresh by following the principles of natural justice. However, such course is not adopted in the instant case for the reasons stated hereinafter.

35. The appellant bank by a letter dated March 29, 2019 sanctioned credit facilities amounting to Rs. 243.04 crores to the 1st respondent. Pursuant to such

sanction of credit facilities, a term loan agreement was executed between the 1st respondent as Borrower and the appellant Bank on March 30, 2019 for two term loan facilities namely Rupee Term Loan I (RTL-I) of Rs. 48.04 crores and Rupee Term Loan II (RTL-II) of Rs. 175.00 crores. The term loans were secured by Primary Security in the form of exclusive security interest by way of mortgage of the lease hold land and building at Sector V, Bidhannagar, Saltlake. RTL-II was also secured by a collateral security by way of pledge over 29.99% shares of the 1st respondent held by SITI. SITI being the beneficial owner of the aforesaid shares agreed to pledge the said shares and a pledge agreement between SITI as Pledgor and the appellant bank was executed on March 30, 2019.

36. Alleging that refusal on the part of the bank to issue no dues certificate and return all the securities to the 1st respondent amounts to deficiency in service, the 1st respondent approached the Ombudsman. On the other hand, the bank took shelter under Section 171 of the Contract Act, 1872 to claim a general lien of bankers on the security pertaining to the shareholders of SITI in the 1st respondent company on the plea that SITI accounts with the appellant bank has been classified as NPA. By referring to the decision in the case of ***Meghji Pethraj Shah Charitable Trust*** (supra), Mr. Banerjee would contend that the dispute between the parties arises out of a contract and, therefore, the writ petition is not maintainable since it is a public law remedy and is not available in private law field.

37. After going through the materials on records and particularly the stand taken by the parties, this Court finds that there is no disputed question of facts involved requiring detailed evidence but interpretation of the provisions of the Contract Act and the relevant terms of the agreement are involved. That apart the learned Single Judge after interpreting the relevant provisions of the Contract Act and the terms of the agreement has allowed the writ petition. Therefore, this Court has to test the correctness of the decision arrived at by the learned Single Judge in this appeal. This Court is conscious of the fact that the contract is purely a commercial one and entered into between two private

bodies and, therefore, shall proceed to interpret the terms of the agreement only for the limited purpose of ascertaining whether there was deficiency in service of the appellant bank.

38. From the reliefs claimed in the writ petition this Court finds that the 1st respondent has prayed for a direction upon the appellant bank to return all original securities including original title deeds and the original pledge agreement and the original share certificates.

39. Record reveals that the mortgage over the lease hold property at Sector V, Bidhannagar, Saltlake was created as a security for the term loan facility.

40. The question that arises is whether after repayment of the said loan the bank could claim general lien and retain the said documents. A Division Bench of the Madras High Court in ***M. Shanthi*** (supra) after noting the provisions of Sections 58, 59 and 60 of the Transfer of Property Act held that the Bank cannot exercise right of lien under Section 171 by retaining the title deeds which are offered as a security in relation to a particular loan transaction. After considering the scope of Section 60 of the Transfer of Property Act and the scope and object of Section 171 of the Contract Act, the Court held that the bank cannot retain the title deeds which were offered as security in relation to an independent loan transaction after the Borrower discharged his entire liability in connection with the loan which is secured by deposit of title deeds.

41. Bankers have a general lien under Section 171 of the Contract Act to retain as a security for a general balance of account any goods bailed to them in the absence of a contract to the contrary. The expressions “the contract to the contrary” and “a general balance of account” assumes significance.

42. In ***M. Shanthi*** (supra) Madras High Court reiterated the proposition of law that the mortgage deed has to be considered as “a contract to the contrary” referred to in Section 171 of the Contract Act and, therefore, the bank cannot claim to retain the title deed deposited to create equitable mortgage by invoking the power of lien under Section 171 of the Contract Act. It was further held that every mortgager is entitled to collect the mortgage deeds and all other documents relating to the mortgaged properties, which are in possession or

power of the mortgagee. Such right of the mortgager is certainly a legal enforceable right and the mortgagee is under an obligation to return the title deeds upon payment of the entire money due. This legal obligation of the mortgagee to return the title deeds to the mortgager upon discharge of mortgage loan for which the title deeds were secured, can be certainly treated as an implied contract contrary to Section 171 of the Indian Contract Act. Since the 1st respondent has already repaid the loan amount there is no question for a "general balance of account".

43. In ***Syndicate Bank*** (supra), the Bank was given liberty to adjust the proceeds covered by the Fixed Deposit Receipts to the loan/ overdraft account and it was also agreed that the said FDR's and renewals shall remain with the Bank so long as any amount on any account is due to the Bank from its customers. On such facts it was held that the general lien was created in favour of the Bank over the two FDR's by executing two letters. The Hon'ble Division Bench of the Madras High Court in ***M.Shanthi*** (supra) after noting the decision in the case of Syndicate Bank (supra) observed that the issue relating to mortgage by deposit of title deeds and the right of lien to retain the title deeds after the discharge of mortgage loan was not dealt with by the Hon'ble Supreme Court. The decision in ***M. Shanthi*** (supra) is squarely applicable to the case on hand.

44. By applying the ratio of the decision in ***M. Shanthi*** (Supra) this Court holds that the appellant bank could not have retained the title deeds of the property situated at Sector V at Bidhannagar, Saltlake since the 1st respondent has discharged its entire liability in connection with the term loan facility.

45. Mr. Banerjee would refer to Clause 13.3(b) of the term loan agreement in support of his contention that the bank can retain the securities as SITI falls within the definition "affiliates" as defined in the term loan agreement.

46. SITI is not a party to the Term Loan Agreement. Therefore, merely because SITI falls within the definition of "affiliate", the contractual right conferred upon the Bank under Clause 13(b) of the term loan agreement cannot be asserted by Bank against SITI, a third party to such agreement.

47. Section 172 of the Contract Act defines pledge to mean the bailment of goods as security for payment of a debt or performance of a promise. In case of pledge, pawnor delivers the goods to the pawnee as security upon a contract that when the debt is paid or the promise is performed, the goods shall be returned or otherwise disposed of according to the directions of the pawnor.

48. Section 174 of the Contract Act states that the pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they were pledged.

49. Mr. Banerjee sought to rely upon Clause 12(a) and (b) of the pledge agreement which deals with right of set off and lien to support the action of the Bank. Clause 12(b) comes into operation upon the occurrence and continuance of an Event of Default. The expression "Event of Default" has been defined under Clause 1.1 to mean the events of default as specified in the Facility Agreement. Facility Agreement has been defined to mean the facility agreement as described in Serial No.8 of the Schedule. Serial No.8 of the Schedule refers to the Term Loan Facility Agreement dated 30.03.2019 executed between the Borrower and the Bank.

50. Accordingly, this Court holds that the shares which were pledged by SITI as collateral security for the Term Loan Facility could not have been retained by the Bank upon repayment of the loan by the Borrower/1st respondent.

51. This Court is, therefore, of the considered view that Clause 12 of the Pledge Agreement could not have been resorted to by the Bank in the case on hand as there is no default on the part of the Borrower/1st respondent.

52. At this stage it would be relevant to note that the appellant bank issued a letter dated 16.1.2023 urging SITI to pledge shares of the 1st respondent herein held by SITI to the facilities extended by the Bank to SITI. The conduct of the appellant bank also supports the aforesaid finding.

53. In ***Deepak Malviya*** (supra), the issue that fell for consideration was whether the Bank can claim lien on the ornaments pledged with the bank for a specific loan for the satisfaction of any other debt or promise. It was held that the Bank

can claim lien over the pledged gold ornaments. The said decision being distinguishable on facts cannot be applied to the case on hand.

54. In ***K.Kalaiarasan*** (supra), the notice issued by a private bank intimating the writ petitioner therein to remit the arrears of the loan payable by the petitioner as well as the action of the bank in repossessing the vehicle on the ground of default in payment of installments was challenged in the writ petition. It was held therein that a writ petition alleging violation of the terms and conditions of the loan agreement against a private bank cannot be entertained.

55. In ***Fidous Ali Mallick*** (supra), this Bench held that dispute arising out of a hire purchase agreement is a private dispute between the appellant therein and the private bank and there is no flavour of public element in the transaction and, therefore, the writ petition was not maintainable.

56. The decisions in the case of ***K. Kalaiarasan*** (supra) and ***Firdous Ali Mallick*** (supra) being distinguishable on facts cannot come to the aid of the appellant.

57. The pledge agreement was executed by SITI as pledgor and the appellant bank herein. The possession of the said share certificates was handed over by the SITI to the appellant bank. SITI is the sole beneficial owner of the pledged securities. As rightly argued by Mr. Banerjee, the prayer for issuance of writ of mandamus directing the appellant bank to return the original pledge agreement and the original share certificate to the 1st respondent herein cannot be entertained as SITI is not a party to this writ petition.

58. For the reasons as aforesaid, this Court holds that failure on the part of the bank to return the title deeds in respect of the property at Sector V, Bidhannagar, Saltlake and to issue no dues certificate even after repayment of the credit facilities amounts to “deficiency in service” on the part of the appellant bank which is a regulated entity under the 2021 Scheme. The order of the learned Single Judge directing the appellant bank to issue the requisite no dues certificate to the 1st respondent herein and to return the title deeds in respect of the property as well as other securities apart from the pledge agreement and the shares pledged by SITI does not call for interference.

59. For the reasons as aforesaid, the appeal is allowed in part. The impugned order directing return of the original pledge agreement as well as the shares of the 1st respondent pledged by SITI stands set aside and quashed. Other portions of the impugned order stand affirmed. Consequently the application stands disposed of.

60. There shall be, however, no order as to costs.

61. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, CJ.) **(Hiranmay Bhattacharyya, J.)**

(P.A – Sanchita, Rinki)