IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 9TH DAY OF FEBRUARY 2026 / 20TH MAGHA, 1947

WA NO. 3077 OF 2025

AGAINST THE JUDGMENT DATED 14.11.2025 IN WP(C) NO.34654 OF 2025 OF HIGH COURT OF KERALA

APPELLANT(S)/RESPONDENT IN WP(C)34654 OF 2025 (1 TO 3):

1 THE DIVISIONAL MANAGER & ASSISTANT GENERAL MANAGER, CANARA BANK
THE DIVISIONAL MANAGER & ASSISTANT GENERAL MANAGER CANARA BANK RO REGIONAL OFFICE, PALAKKAD 31/1003, II FLOOR, AZEEZ COMPLEX, PALAKKAD, PIN - 678014

2 THE SENIOR MANAGER SPECIALISED SME BRANCH, CANARA BANK
THE SENIOR MANAGER SPECIALISED SME BRANCH, KANJIKODE D NO. V/424, MENONPARA ROAD, KANJIKODE, PALAKKAD, KERALA, PIN - 678621

3 THE BRANCH MANAGER PALAKKAD SULTANPET MAIN BRANCH, CANARA BANK
THE BRANCH MANAGER PALAKKAD SULTANPET MAIN BRANCH PB 7.XII/785,A.P.VASU MENON MEM MUNICIPAL SHOPPING CENTRE PALGHAT, PIN - 678001

BY ADVS.
SHRI.P.PAULOCHAN ANTONY
SHRI. G.VISWANATHAN
SMT.ASWNI M.P.

RESPONDENT(S)/PETITIONER(S) IN WP(C)34654 OF 2025 (1 TO 3 AND 4TH RESPONDENT):

1 AGI KUMAR S
AGED 57 YEARS
S/O SURYANARAYANA PILLAI, RESIDING AT CHELLAM,

BHAGAVATHY NAGAR, PUDUSSERY WEST PALAKKAD,
KERALA, PIN - 678623

2 ADWAITHA AJITH
AGED 24 YEARS
D/O AGI KUMAR S, PROPRIETOR OF A & A CARTONS,
RESIDING AT CHELLAM, BHAGAVATHY NAGAR,
PUDUSSERY WEST PALAKKAD,KERALA, PIN - 678623

3 LIJI N NAIR,
AGED 55 YEARS
W/O AJI KUMAR, RESIDING AT CHELLAM, BHAGAVATHY NAGAR,
PUDUSSERY WEST PALAKKAD, KERALA, PIN - 678623

4 ADDL.R4: BANKING OMBUDSMAN,
RESERVE BANK OF INDIA BAKERY JUNCTION,
THIRUVANANTHAPURAM, PIN - 695033
ADDL.R4 IS IMPLEADED AS PER ORDER DATED 06.10.2025 IN I.A.01/2025 IN WP(C)34654/2025.

BY ADVS.
SHRI.M.P.SHAMEEM AHAMED
SHRI.AHAMED IQBAL
SHRI.MUHAMMED ASHIQUE
SMT.K.REEHA KHADER
SMT.O.M.SHALINA DSGI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20.01.2026, ALONG WITH WA.3176/2025, THE COURT ON 09.02.2026 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 9TH DAY OF FEBRUARY 2026 / 20TH MAGHA, 1947

WA NO. 3176 OF 2025

AGAINST THE JUDGMENT DATED 14.11.2025 IN WP(C) NO.34654 OF 2025 OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER:

1 AGI KUMAR S
AGED 57 YEARS
S/O SURYANARAYANA PILLAI, RESIDING AT CHELLAM,
BHAGAVATHY NAGAR, PUDUSSERY WEST PALAKKAD,
KERALA, PIN - 678623

2 ADWAITHA AJITH
AGED 24 YEARS
D/O AGI KUMAR S, PROPRIETOR OF A & A CARTONS ,
RESIDING AT CHELLAM, BHAGAVATHY NAGAR,
PUDUSSERY WEST PALAKKAD, KERALA, PIN - 678623

3 LIJI N NAIR,
AGED 55 YEARS
W/O AJI KUMAR, RESIDING AT CHELLAM, BHAGAVATHY NAGAR,
PUDUSSERY WEST PALAKKAD, KERALA, PIN - 678623

BY ADVS.
SHRI.M.P.SHAMEEM AHAMED
SHRI.AHAMED IQBAL
SMT.K.REEHA KHADER
SHRI.MUHAMMED ASHIQUE

RESPONDENT(S)/RESPONDENT:

1 THE DIVISIONAL MANAGER & ASSISTANT GENERAL MANAGER,
CANARA BANK

THE DIVISIONAL MANAGER & ASSISTANT GENERAL MANAGER
CANARA BANK RO REGIONAL OFFICE, PALAKKAD 31/1003, II FLOOR, AZEEZ COMPLEX, PALAKKAD, PIN - 678014

2 THE SENIOR MANAGER SPECIALISED SME BRANCH,
CANARA BANK
THE SENIOR MANAGER SPECIALISED SME BRANCH,
KANJIKODE D NO. V/424, MENONPARA ROAD, KANJIKODE, PALAKKAD, KERALA, PIN - 678621

3 THE BRANCH MANAGER PALAKKAD SULTANPET MAIN BRANCH,
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THE BRANCH MANAGER PALAKKAD SULTANPET MAIN BRANCH PB 7.XII/785, A.P.VASU MENON MEM MUNICIPAL SHOPPING CENTRE PALGHAT, PIN - 678001

4 ADDL.R4: BANKING OMBUDSMAN,
RESERVE BANK OF INDIA BAKERY JUNCTION,
THIRUVANANTHAPURAM, PIN - 695033 *
ADDL.R4 IS IMPLEADED AS PER ORDER DATED 06.10.2025 IN I.A.01/2025 IN WP(C)34654/2025.

BY ADVS.
SHRI.P.PAULOCHAN ANTONY
SHRI.SREEJITH K.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20.01.02.2026, ALONG WITH WA.3077/2025, THE COURT ON 09.02.2026 DELIVERED THE FOLLOWING:

JUDGMENT **"C.R."**

[WA Nos.3077/2025, 3176/2025]

Muralee Krishna S., J.

W.A.No.3077 of 2025 is filed by respondents 1 to 3, and W.A.No.3176 of 2025 is filed by the petitioners in W.P.(C)No.34654 of 2025, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 14.11.2025 passed by the learned Single Judge in that writ petition. Since the point to be decided in both these writ appeals is the same, they are heard together and are being disposed of by this common judgment. For convenience of reference, the parties are referred to in this judgment as they were referred to in the writ petition.

2. The 1st petitioner is a Senior Technical Assistant in the Fluid Control Research Institute (FCRI), which is a Central Government undertaking. The 2nd petitioner is the daughter of the 1st petitioner, who is running a proprietorship firm, by name 'A & A Carton', which is engaged in the manufacturing of corrugated carton boxes. The 2nd petitioner applied for financial assistance from the 2nd respondent Canara Bank, SME, Kanjikode branch, under the Prime Minister's Employment Generation Scheme

(PMEGP Scheme) with a project cost of Rs.50 lakhs. For the loan, the 1st petitioner stood as a guarantor and had extended the property on which the unit is running as collateral security, which is in the joint name of the 1st petitioner and his wife. The 3rd petitioner is yet another guarantor to the loan. The 1st petitioner is maintaining his salary account with the 3rd respondent, Canara Bank, Sultanpet branch, Palakkad. The 1st respondent is the regional office of the Canara Bank, having administrative control over respondents 2 and 3.

2.1. The PMEGP Scheme was implemented through the Khadi and Village Industries Commission (KVIC). As per the scheme, the loan availed by the 2nd petitioner is eligible for 35% of the project cost as a percentage of Margin Money Subsidy. The petitioners state that, as per the PMEGP Scheme guidelines, the 2nd petitioner has to deposit her contribution and a copy of the EDP training certificate with photo and other number to the financing bank within thirty days of receiving the communication of the sanction of the loan. As per Clause 11.17 of the PMEGP Scheme, the financing bank will release the first instalment of the loan and submit the claim for Margin Money Subsidy through the online portal of the nodal Bank/KVIC portal. The petitioners

produced the circular dated 01.06.2022 pertaining to the PMEGP Scheme as Ext.P1 in the writ petition.

2.2 According to the petitioners, as per Ext.P1 guidelines, the 2nd respondent, which is the financing bank, was supposed to file the application for Margin Money Subsidy as soon as the 2nd petitioner had deposited her contribution and the copy of the EDP training certificate to the Bank as per the procedure prescribed under the PMEGP Scheme. As per Ext.P2 sanction letter dated 30.11.2022 issued by the 2nd respondent, the term loan of Rs.40.54 lakhs was sanctioned for the construction of a shed and purchase of machines, apart from the working capital limit of 6.9 lakhs sanctioned for the day-to-day business requirements. The 2nd petitioner made her contribution of Rs.2,14,000/- and had deposited all the EDP training certificates and related documents with the 2nd respondent Bank, and hence, the 2nd respondent Bank was supposed to make the application for Margin Money Subsidy at the earliest with the KVIC through the portal. It is the further case of the petitioners that the 2nd respondent Bank failed to complete the necessary formalities in connection with the availment of the loan under the PMEGP Scheme, and therefore, the Margin Money Subsidy claim was not processed by the KVIC.

As a result of the non-receipt of the Margin Money Subsidy through the KVIC, the 2nd respondent Bank had started debiting the term loan account with the higher EMI. If the Margin Money Subsidy was credited on time, the outstanding principal amount would come down, and the 2nd petitioner would be required only to pay the reduced EMIs.

2.3. The petitioners state that due to the inaction on the part of the 2nd respondent, higher EMIs were deducted from the 2nd petitioner. Due to the lapses and negligence on the part of the Bank, the 2nd petitioner was not able sustain because of the recurring operational cost coupled with the huge EMI which she had to pay every month. Even though multiple follow-ups were done by the 2nd petitioner, there was no positive action from the part of the 2nd respondent. An e-mail dated 03.10.2024, sent by the 2nd petitioner to the KVIC, is produced as Ext.P3 in the writ petition to show that the 2nd petitioner was following up the matter. On receipt of Ext.P3 e-mail, KVIC had sent Ext.P4 reply dated 04.10.2024 stating that the 2nd respondent Bank has not uploaded the sanction letter on the portal. It was further informed that once the sanction letter is uploaded, the financing bank needs to resubmit the final Margin Money Subsidy claim on the portal.

By Ext.P5 email dated 04.10.2024, the Bank replied that they have uploaded the sanction letter with the seal and signature. There was a considerable delay of more than one year from the part of the 2nd respondent to upload the sanction letter. By Ext.P6 e-mail dated 25.02.2025, the 2nd petitioner again requested KVIC for its urgent intervention to expedite the disbursement of the subsidy. By Ext.P7 e-mail dated 27.02.2025, KVIC informed the 2nd petitioner that the application for Margin Money Subsidy was referred back to the 2nd respondent Bank since the sanction letter date does not match with the margin money claim.

2.4. The petitioners state that the screenshot obtained from the KVIC portal indicates that the subsidy claim submitted by the Bank was repeatedly rejected due to persistent errors such as mismatched sanction letter dates and improper documentation, etc. The petitioners plead that it is due to the inaction at the proper time and lapses on the part of the Bank that the disbursement of the subsidy was delayed. Therefore, vide Ext.P12 letter dated 14.03.2025, the second petitioner made a request to the bank that the loan account shall not be treated as NPA since there were no lapses on the side of the 2nd petitioner, and it was purely due to the delay in releasing the margin money, she had to face the

financial crisis. By Ext.P13 letter dated 04.04.2025, the 2nd respondent informed the 2nd petitioner that it had recalled the credit facilities for the reason that the loan accounts had become NPA as on 19.03.2025. By Ext.P14 letter dated 24.03.2025, the 2nd petitioner was informed that the account was classified as NPA on 08.03.2025. Later, the Bank initiated the proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ('SARFAESI Act' for short) by invoking the provisions under Sections 13(2) and 13(4) of the said Act. Those proceedings were challenged by the 2nd petitioner before the Debts Recovery Tribunal, Ernakulam, in S.A.No.484 of 2025, which is currently pending before the Tribunal. The 2nd petitioner further filed Ext.P15 complaint before the Banking Ombudsman.

2.5. Meanwhile, the salary account of the 1st petitioner maintained with the 3rd respondent, Canara Bank, was frozen at the instance of the 1st respondent Bank, and the 1st petitioner was not able to make any transaction in the salary account. According to the petitioners, it was without giving proper notice that such an action was taken by the respondents. Therefore, by Ext.P16 e-mail dated 01.08.2025, the 1st petitioner made a request to the

1st respondent to release the attachment of the salary account. In response to Ext.P16 e-mail, the 1st respondent Bank issued a backdated letter bearing the date 22.07.2025, which was dispatched only on 06.08.2025 reiterating that the 1st petitioner was guarantor to the loan and the loan was classified as NPA on 19.03.2025 and that the Bank had invoked proceedings under the SARFAESI Act while claiming a right of general lien under Section 171 of the Indian Contract Act. The copies of the letters dated 22.07.2025 and 07.08.2025 issued by the 1st respondent Bank are produced by the petitioners in the writ petition as Exts.P17 and P18. Though the petitioners escalated the matter vide Ext.P19 e-mail dated 06.08.2025, there was no reply from the higher authorities of the Bank. Therefore, contending that classifying the loan account of the 2nd petitioner as NPA and also taking coercive steps against the 1st petitioner by freezing the salary account by invoking Section 171 of the Indian Contract Act as illegal, arbitrary and against the statutory guidelines, the petitioners filed the writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Bank to release the attachment/lien over the salary account of the 1st petitioner maintained with the 3rd respondent Bank and to issue a writ of

mandamus commanding the 4th respondent Banking Ombudsman to dispose of Ext.P14 complaint in a time bound manner.

3. Respondents 1 to 3 filed a counter affidavit dated 10.10.2025 in the writ petition, opposing the reliefs sought for and producing therewith Exts.R1 and R2 documents. Paragraphs 2 to 9 of that counter affidavit read thus:

> "2. The petitioner is the guarantor of the credit facilities availed by his son from the respondent bank. To secure due repayment of the said facilities, the petitioner executed a guarantee agreement dated 29.09.2023, produced herewith and marked as Exhibit R1. By the said document, the petitioner undertook to 'indemnify the respondent bank against all losses and further covenanted to pay and satisfy on demand the general balance due from the borrower.
> 3. The challenge raised by the petitioner is only against the lien marked by the respondent bank in respect of the liability of the borrower. The contention sought to be raised is that Section 171 of the Indian Contract Act does not empower the respondent bank to exercise such rights. This contention is misconceived, since Exhibit R-1 itself expressly recognizes and affirms the right of the respondent Bank to enforce repayment by applying lien and set off.
> 4. The wording of the agreement is clear in its commercial effect. The expression "to indemnify the Bank against all losses and to pay and satisfy the general balance due" encompasses not merely a limited right under Section 171 but a wider contractual right enabling the bank to recover

outstanding dues by adjusting monies, securities, or accounts standing in the name of the borrower or guarantor. The clause thus creates rights in favour of the bank and corresponding obligations upon the borrower and guarantor, which the petitioner voluntarily undertook at the time of execution of Exhibit R1.

5. It is relevant to submit that the drafting of banking agreements may vary from bank to bank. In certain documents, the provisions are explicit, conferring in express terms the right of lien and set-off over all accounts maintained by the borrower and guarantor. In others, the drafting is more general, employing phrases such as ”indemnify the bank against all losses” or "pay the general balance due.” By accepted construction, such expressions necessarily include and often extend beyond the rights of lien and set-off. The substance, however, remains the same: that the bank retains a general right to appropriate or adjust monies and securities in its hands towards the discharge of outstanding liabilities. The liability of the guarantor is coextensive with that of the principal debtor as per Sec 128 of the Contract Act, 1872.

6. In banking practice, lien and set-off are recognised not only under statutory provisions but as part and parcel of the customary incidents of the banker-customer relationship. They operate by force of agreement, usage, and the general custom prevailing in banking business. Exhibit R1 is therefore nothing but a formal affirmation of these rights, and the petitioner cannot now resile from the obligations voluntarily undertaken.

7. The petitioner has not disputed the existence of the loan liability of his son or the execution of the guaranty agreement. His contention is confined to an interpretation of the terms of the agreement. Where the scope and meaning of such contractual terms are put in issue, the same necessarily requires appreciation of evidence, examination of the agreement, and reference to documents, all of which fall within the domain of a civil court. Such disputed questions of fact cannot be adjudicated in proceedings under Article 226 of the Constitution of India.

8. Another contention raised by the petitioner is with regard to the classification of the loan account as a Non-Performing Asset (NPA). The petitioner seeks to suggest that such classification is not attributable to him but arose on account of a delay in releasing margin money. This submission is untenable. The classification of NPA is governed strictly by the prudential norms and guidelines issued by the Reserve Bank of India, which the respondent bank is duty-bound to follow. The delay in release of margin money, which is an external factor not within the control of the respondent bank, cannot dilute or postpone the application of the RBI guidelines. The loan account, having met the criteria for asset classification, was necessarily classified as NPA in compliance with the mandatory regulatory framework. In this connection, the DIC report dated 07.05.2025 is produced herewith and marked as Exhibit R2.

9. It is further submitted that the writ petition is not maintainable under Article 226 of the Constitution of India, since the issue raised is a purely private contractual dispute

> between the bank, the borrower, and the guarantor. The fact that the respondent bank is a nationalised bank does not clothe the transaction with any public law element. The proper forum for the petitioner, if any grievance subsists, is the competent civil court, where questions of fact and evidence can be addressed."

4. After hearing both sides and on appreciation of the materials on record, the learned Single Judge by the impugned judgment dated 14.11.2025 allowed the writ petition in part, directing respondents 1 to 3 to permit the 1st petitioner to operate his salary account forthwith, limiting the lien of the respondent Bank over the salary of the 1st petitioner to the extent and to the period permissible under Section 60(1)(i) of the Code of Civil Procedure 1908 ('CPC' for short). It was made clear in that judgment that the direction therein will not be applicable if amounts other than salary belonging to the 1st petitioner are credited in his account.

5. Being aggrieved by the findings of the learned Single Judge that the Bank has a lien over the salary account of the 1st petitioner, the petitioners filed W.A.No.3176 of 2025 and aggrieved by the limiting of the lien over the salary account of the 1st petitioner to the extent and the period permissible under

Section 60(1)(i) of the CPC, the respondents 1 to 3 filed W.A.No.3077 of 2025.

6. Heard the learned counsel for the petitioners-appellants in W.A.No.3176 of 2025, who are the respondents in W.A.No.3077 of 2025 and the respondents 1 to 3 who are the appellants in W.A.No.3077 of 2025.

7. The learned counsel for the writ petitioners-appellants in W.A.No.3176 of 2025 argued that the money in the bank accounts will not come under the word 'goods' defined under Section 2(7) of the Sale of Goods Act, 1930, so as to understand it as the 'goods' mentioned in Section 171 of the Indian Contract Act. The 'goods' referred to in Section 171 of the Indian Contract Act are saleable goods, and hence the general lien of bankers mentioned in Section 171 of the Indian Contract Act cannot be applied to the salary account of the 1st petitioner. In support of his aforesaid argument, the learned counsel relied on the judgment of the Apex Court in **R.D.Saxena v. Balram Prasad Sharma [(2000) 7 SCC 264]**. The learned counsel further submitted that, though in the judgment of the Apex Court in **Syndicate Bank v. Vijaykumar [(1992) 2 SCC 330]**, it was held that the general lien of the bankers extends to FDRs also, which are deposited by

the customers, the said judgment is not applicable to the facts of the instant case since it was rendered in the case of FDRs, which are given as bank guarantee and moreover, Section 171 of the Indian Contract Act was not considered in that judgment. As far as the clause in Ext.R1 guarantee agreement executed by the petitioners, the learned counsel argued that the guarantee thereby assured by the 1st petitioner can be executed only by the method known to law. As far as the protection granted under Section 60(1)(i) of the CPC is concerned, the learned counsel supported the judgment of the learned Single Judge.

8. On the other hand, the learned counsel for respondents 1 to 3-appellants in W.A.No.3077 of 2025 argued that the learned Single Judge arrived at a right conclusion regarding the general lien of the bankers available over the bank accounts of the defaulters, relying on the judgment of the Apex Court in **Vijaykumar [(1992 (2) SCC 330]**, and that of this Court in **Lakshmi v. State Bank of Travancore [1987 (1) KLT 789].** The learned counsel further relied on the judgment of this Court in **Thankappan V.K. v. Uthiliyoda Muthukoya [2011 (2) KHC 738]** and that of the Punjab High Court in **Punjab National Bank Ltd. v. Satyapal Virman [AIR 1956 Punjab 118]** and **Firm**

Jaikishen Dass Jinda Ram v. Central Bank of India [AIR 1960 Punjab 1] in support of his arguments. The learned counsel further submitted that the banker's lien is a substantial right and hence it cannot be subjected to the protection granted under Section 60 of CPC, which is applicable only in the case of attachment in execution of decree and similar matters.

9. The 2nd petitioner had availed a loan of Rs.50 lakhs from the 2nd respondent Bank, and the loan became NPA due to default in repayment of EMIs. From the materials placed on record, it appears that there is laches on the part of either the Bank or the petitioners in applying for 35% subsidy entitled under Ext.P1 Scheme from the KVIC in time. However, we are not entering into that aspect in this judgment for the reason that on that issue matter is pending before the Debts Recovery Tribunal, Ernakulam, as S.A.No.484 of 2025. The only point to be considered in these writ appeals is whether the respondents are entitled to exercise a general lien over the salary account of the 1st petitioner, and if entitled, whether the 1st petitioner is entitled to protection under Section 60(1)(i) of the CPC? To answer that point, it would be relevant to extract Section 171 of the Indian Contract Act, which deals with the general lien of the bankers,

factors, wharfingers, attorneys and policy brokers. The said section reads thus:

> "**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 a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other person have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

10. Section 2(7) of the Sale of Goods Act, 1930, which defines 'goods', reads thus:

> "**2(7)**. "Goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be served before sale or under the contract of sale."

11. Section 148 of the Indian Contract Act, which defines bailment, bailor and bailee, reads thus:

> "**148. Bailment, bailor and bailee defined.-**
> A 'bailment' is 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. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called

the 'bailee'.

Explanation.- If a person is already in possession of the goods of other contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment."

12. It is also relevant to note the judgments relied on by the parties to substantiate their contentions regarding the applicability of Section 171 of the Indian Contract Act, as well as Section 60(1)(i) of CPC, to the instant case. In **Vijaykumar [(1992) 2 SCC 330]**, while answering the question, what is the meaning of "Banker's Lien", in the legal terminology and how it is understood and exercised in the banking system, the Apex Court held thus:

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

"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."

In Chalmers on Bills of Exchange, Thirteenth Edition page 91 the meaning of "Banker's lien" is given as follows:

"A banker's lien on negotiable securities has been judicially defined as "an implied pledge." A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in

respect of any balance that may be due from such customer.

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 process may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked. (Emphasis supplied)

In Paget's Law of Banking, Eighth Edition, Page 498 a passage reads as under;

"THE BANKER'S LIEN

Apart from any specific security, the banker can look to his general, lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognised as such.

"In Brandao v. Barnett, 1846 12 Cl and Fin 787 it was stated as under:

"Bankers most undoubtedly have a general lien on all 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."

The above passages go to show 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 reduction of customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which are deposited by the customer.

13. In this context it is also necessary to consider the extent to which the Court can go into the nature of the securities offered for the Bank guarantee in the light of the banker's lien. In United Commercial Bank v. Bank of India, AIR 1981 SC 1426 this Court referred to a passage from R. D. Harbottle (Mercantile) Ltd. v. National Westminster Bank Ltd. (1977 (2) All ER 862) with approval which runs as under:

"It was only in exceptional cases that the Courts would interfere with the machinery, of irrevocable obligations assumed by banks. They were the life blood of international commerce. The machinery and commitments of banks were on a different level. They must be allowed to be honoured,

free from interference by the Courts. Otherwise trust in internal commerce could be irreparably damaged." In R. D. Harbottle (Mercantile) Ltd. case it was stated in the Headnote as under:

"(i) Only in exceptional cases would the Courts interfere with the machinery of irrevocable obligations assumed by banks. In the case of a confirmed performance guarantee, just as in the case of a confirmed letter of credit, the bank was only concerned to ensure that the terms of its mandate and confirmation had been complied with and was in no way concerned with any contractual disputes which might have arisen between the buyers and sellers....." The above passage has also been referred in U. P. Cooperative Federation Ltd. V. Singh Consultants and Engineers (P) Ltd. (1988 (1) SCC 174) wherein this Court held that the aforesaid represents the correct state of the law. In this case, this Court has affirmed the obligation of payment without dispute by the Bank in the Indian context in cases relating to Bank guarantees. But it is equally obvious that the same liability or obligation on the part of the Bank will not be there when the Bank guarantee is discharged, and this needs no emphasis."

(Underline supplied)

13. In **R.D.Saxena [(2000) 7 SCC 264]**, the Apex Court considered the issue 'has the advocate a lien for his fees on the litigation papers entrusted to him by his client'. In paragraph 8 of the said judgment the Apex Court held thus:

"8 Files containing copies of the records (perhaps some

> original documents also) cannot be equated with the "goods" referred to in the Section. The advocate keeping the files cannot amount to "goods bailed". The word "bailment" is defined in S.148 of the Contract Act as the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned or otherwise disposed of according to the directions of the person delivering them, when the purpose is accomplished. In the case of litigation papers in the hands of the advocate there is neither delivery of goods nor any contract that they shall be returned or otherwise disposed of. That apart, the word "goods" mentioned in S.171 is to be understood in the sense in which that word is defined in the Sales of Goods Act. It must be remembered that Chap.7 of the Contract Act, comprising S.76 to 123, had been wholly replaced by the Sales of Goods Act, 1930. The word "goods" is defined in S.2(7) of the Sales of Goods Act as "every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale."

14. In **Thankappan V.K. [2011 (2) KHC 738]**, a learned Single Judge of this Court was posed with an issue whether the second petitioner Bank therein could exercise its general lien and adjust the amount payable to the respondent under a cheque, towards an amount which was due to the Bank from the respondent and in respect of which the suit filed by the Bank was

dismissed as time barred. After referring to various judgments on the point by different High Courts, the learned Single Judge held thus:

> "14. In the light of the authorities mentioned above, the principles are fairly clear. The bank has general lien over the securities which come to its hands. It may be in the form of money, negotiable instrument or any form of security or it may be goods. S.171 of the Indian Contract Act statutorily recognises the banker's lien. To apply the banker's lien, it is not necessary that the debt in respect of which and for the recovery of which the lien is exercised should be one which is not barred by limitation. Bar of limitation for realisation of a debt does not destroy or extinguish the right of the creditor for the debt. It only destroys the remedy. The creditor is not precluded from appropriating or adjusting the amounts of the debtor which come to his hands and from appropriating it towards a barred debt. The law of limitation only bars the remedy and it does not confer any right except in the contingencies mentioned in S.27 of the Limitation Act. S.27 provides that on the expiry of the period of limitation for filing a suit for possession, the right itself gets extinguished. The extinguishment of right is because there is vesting of right on the opposite party. In the case of a debt barred by lapse of time, the right of the creditor to recover the debt is not transferred to or conferred upon the debtor. It becomes dormant and becomes unenforceable in a Court of law. That does not mean that debt is destroyed or extinguished and that the creditor is not entitled, under

any circumstances, to claim or recover it in any manner whatsoever. Exercise of banker's lien is one method by which even a barred debt can be recovered by adjusting from the amount of the debtor which later comes to the hands of the bank. The position does not change even if the bank was defeated in the suit filed by it, the suit having been dismissed on the ground of limitation. By dismissing the suit as barred by limitation, the Court only held that the bank was not entitled to recover the amount by filing a suit. Dismissal of the suit on the ground of limitation does not mean that the debt is extinguished. There cannot be any difference between a case where the bank did not file a suit and a case where the bank filed a suit but it was dismissed on the ground of limitation. In either case, the rights which the bank otherwise would have in respect of the debt would still be available to the bank."

(Underline supplied)

15. The Punjab High Court in **Satyapal Virman [AIR 1956 Punjab 118]**, while considering the issue of banker's lien or lien by agreement on the amount in suit for others debts due from the appellant Bank, in an appeal filed by the Bank against a decree for Rs.14,361/4/- passed by the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, held thus:

8. Even if there was no specific agreement as given in Ex.D-1, the Bank submits that there is a general banker's lien on this amount against the debts due from the original applicant. Section 171, Contract Act provides for a general

banker's lien as follows:

"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:

In Mulla's Contract Act at p. 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."

According to the law merchant, the banker can look to his general lien as a protection against loss on account, or loss on loan or overdraft. And money has been held to be a species of goods over which lien may be exercised: Punjab National Bank Ltd. v. Harnam Singh', Civil Revn. No.40 of 1953 (Punj.) (A), where reliance is placed on 'Lloyds Bank Ltd. v. Administrator-General of Burma, AIR 1934 Rang.66 (B), 'Devendrakumar Lalchandji v. Gulal Singh', AIR 1946 Nag.114(C) 'Mercantile Bank of India, Ltd. v. Rochaldas Gidumal and Co', AIR 1926 Sind 225 (D), and 'Union Bank of Australia v. Murray Aynsley', (1898) A.C. 693(E).

xxxx xxxx xxxx

12. A review of these authorities shows that where a banker has advanced money to another, he has a lien on all securities which come into his hands for the amount of his general balance, unless there is an express contract or circumstances to the contrary. In the present' case an argument was raised that as alleged in the application of

> Satya Pal Virmani there was a specific contract which circumscribed the lien to the advance of call-loan only. Although, this allegation was made there is no evidence in support of it and, as I have already said, I am unable to accept this special contract which is inconsistent with the general lien." (Underline supplied)

16. In **Firm Jaikishen Dass Jinda Ram [AIR 1960 Punjab 1]**, in a letters patent appeal, while answering the question whether a bank is entitled to appropriate the monies belonging to a firm constituted by a certain set of partners for payment of an overdraft of another firm constituted by the same set of partners, the Punjab High Court held thus:

> "5. The relation of banker and customer arises as the result of a contract, express or implied, according to which the customer delivers to the bank money, funds or credits constituting the deposit and the bank assumes obligation to pay out on his demand or order a sum equal to the amount deposited. This arrangement is to the advantage of both the parties, for the customer receives the benefit of banking facilities and the bank the benefit of the use of the customer's money with or without interest. The moment the money is deposited in the bank the relation of debtor and creditor comes into existence, the bank being the debtor of the customer.
>
> The deposit becomes a loan which merges in the general fund of the bank and becomes the property of the bank. Two rights flow out of the relationship of debtor and

creditor, namely (1) the right of the customer to demand repayment of the amounts due to him if and when he so desires, and (2) the right of the bank to appropriate the monies, funds and securities of the customer coming into its possession in the course of their dealings for repayment of the customer's indebtedness. This latter right is known as banker's lien and it rests on the principle of the law-merchant that any credit given by a bank to a customer is given on the faith that sufficient monies and securities belonging to the customer will come into the possession of the bank in the due course of further transactions.

The right is akin to the right of set-off which obtains between persons occupying the relation of debtor and creditor and between whom there exist mutual demands. As mutuality is essential to the validity of a set-off, it is necessary that before one demand can be set off against another both must mutually exist between the same parties and between them in the same capacity. The mutual nature of the debt and not the mutual nature of the parties should be considered. Debts accruing in different rights cannot be set off against each other. A bank can enforce its lien if mutual demands exist between itself and the customer, that is when they mutually exist between the same parties and between them in the same capacity."

(Underline supplied)

17. It is also relevant to note Section 60(1)(i) of CPC, relied upon by the petitioners to claim exemption from action by the Bank, which reads thus:

"Section 60. Property liable to attachment and sale in execution of decree.- (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:--

xxxx xxxx xxxx

(i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree".

xxxx xxxx xxxx

(Underline supplied)

18. In **Lakshmi [1987 (1) KLT 789]**, a Division Bench of this Court, while considering the objection raised by the judgment debtors against the sale of 5 cents of mortgaged property in which they are residing in execution of a decree, held thus:

> 3. S.60 deals with property liable to attachment and sale in execution of a decree. Sub-s.(1) enumerates properties which are liable to attachment and sale, in execution of a decree. Proviso enumerates properties which are exempt from attachment or sale, in sub clauses (a) onwards. Sub clause (c) exempts houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary far their enjoyment) belonging to an agriculturist or labourer or a domestic servant. Appellants are labourers and the property sought to be sold is their residential house and site thereof. If this is a case of attachment and sale in execution of a money decree, undoubtedly, property will have to be treated as exempt under the provisions of S.60(1)(c) of the Act. The answer of the respondent is that S.60 deals only with property liable to attachment and sale in executions of a decree and the property exempted from such process and not with sale of mortgaged property.
>
> 4. The appellant would stress on the expression used in sub-s.(1) 'attachment and sale' and the expression used in the proviso 'attachment or sale' to contend for the position that while sub-s.(1) may not apply to mortgage decrees, proviso

would attract even mortgage decrees. Alternatively learned counsel contended that even sub-s.(1) would apply to mortgage decrees and the expression 'attachment and sale' must be understood as 'attachment or sale'.

5. We find that two Division Benches of this Court had considered the question and answered the same against the appellants. In Kochumariam v. Kshema Vilasam Co. (1973 KLT 761) the Division Bench observed that sale under a mortgage decree, strictly speaking, is not a sale in execution of the decree; it is a sale provided in the document of mortgage and what takes place after the decree is a satisfaction of the decree and that the proviso cannot apply to mortgage decrees where there is no need for attachment. The heading of the section and sub-section uses the expression 'attachment and sale'. Under the provisions of the CPC there can be a sale without attachment. Attachment is uncalled for in the case of sale of property in execution of mortgage decree. That is because by act of parties and operation of the provisions of the Transfer of Property Act property is subject to a charge. The charge could be enforced straight away by sale. S.60(1) is in relation to attachment and sale of property. Sub-s.(1) clarifies what property could be the subject of attachment and sale, i.e., sale in pursuance of attachment by court. Proviso to sub-s.(1) can only operate in the area intended to be covered by sub-s.(1). Sub-s.(1) does not apply to cases of sale without attachment. Equally so proviso also cannot apply to cases of sale without attachment. Sub-s.(1) as well as the proviso apply only to cases of sale following

attachment. Another Division Bench of this Court also considered this question in this manner in Rahima Beevi v. Kerala Financial Corporation (1986 KLT 539). We respectfully agree with the view taken by the two Division Benches of this Court.

6. Learned counsel for the appellants would contend that those decisions were pronounced without reference to the effect of sub-s. 1(A) of S.60, introduced by amendment in 1976. Sub-s. 1(A) states that notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void. Learned counsel would have it that execution of mortgage in regard to residential houses by a worker would amount to waiver of the exemption provided in the proviso to S.60(1) and such waiver is void. Sub- S.1(A) could not have been considered by the earlier Division Bench because the amendment came only later. Latter Division Bench did not advert to sub-s. 1(A), but the decision turned on the view taken by the court that an order passed under the provisions of the Kerala Financial Corporation Act 1951 did not amount to a decree and therefore it was not a case of execution of a decree. In that view the court held that S.60 itself would not apply except for the procedural aspect. The question as posed by the appellants in this case was not urged before the court.

7. It is not possible to treat execution of a mortgage governed by the provisions of the Transfer of Property Act as a waiver contemplated under sub-s.(1A) of S.60 of the

Code. The question of waiver would arise only in the context of attachment and sale in execution of a decree. The provision was introduced because of difference of opinion among various High Courts as to whether the benefit of exemption under S.60(1) could be waived by judgment debtors. It was to protect the interest of the beneficiaries of the exemption under proviso to sub-s.(1) that sub-s.(1A) was enacted by making it clear that there could be no waiver in the eyes of law. Exemption under the proviso is from the liability of the property from 'attachment and sale' under sub-s.(1); that waiver must be of exemption of property from attachment and sale. We have indicated that sub-s.(1) and the proviso would only operate in relation to money decrees and not decrees in enforcement of mortgages. If sub-s.(1) and the proviso cannot apply in the case of mortgage decrees, equally sub-s.(1A) will not apply in the case of mortgage decrees. That is because the declaration of attachability and saleability of property in sub-s.(1), exemption from such attachment or sale in the proviso and the embargo on waiver can operate only in the same field, that is, decrees other than mortgage decrees".

(Underline supplied)

19. It is true that a reading of Section 171 of the Indian Contract Act coupled with Section 2(7) of the Sale of Goods Act, 1930, and Section 148 of the Indian Contract Act would give a general impression that the banker's lien mentioned in Section 171 of the Indian Contract Act is applicable only in the case of

goods bailed to them and not in respect of money in the hands of the bankers, etc. However, from the judgment of the Apex Court in **Vijaykumar [(1992) 2 SCC 330]**, that of this Court in **Thankappan V.K. [2011 (2) KHC 738]** and also that of the Punjab High Court referred to *supra* would show that the general lien of the bankers was extended even to the money in the hands of the Bank, deposited by the customer. In the instant case, as noticed above, in Ext.R1 guarantee agreement, the petitioners requested the Bank to grant financial assistance to them by way of facilities, including guarantees, subject to the specific condition that the guarantor shall unconditionally and irrevocably guarantee the repayment of all the amount advanced and all liabilities guaranteed by the Bank as also all amounts which may be advanced or all guarantees which may be issued by the Bank from that date. Viewed in the light of the general principles of banker's lien as stated in **Vijaykumar [(1992) 2 SCC 330]** and other judgments referred to *supra*, it can only be said that the respondents 1 to 3 are entitled to exercise their right of lien over the salary account of the 1st petitioner as held by the learned Single Judge.

20. While coming to the question of protection claimed

under Section 60(1)(i) of CPC by the petitioners, it is to be noted that the said section comes under Part II execution in the CPC. A reading of Section 60 shows that the provisions therein are applicable only to property liable to attachment and sale in execution of a decree. Moreover, the principles of Section 60 of CPC stated in the judgment of the Division Bench of this Court in **Lakshmi [1987 (1) KLT 789]**, also make it clear that the protection granted under Section 60 of the CPC is applicable only in the case of execution. In the present case, the action initiated by the respondents by freezing the account of the 1st petitioner is not an attachment, but according to the bank, it is in exercise of the right of adjustment or the right akin to set off the said amount towards the loan account of the 2nd petitioner, the bank frozen his salary account. Therefore, the provisions of Section 60(1)(i) of the CPC cannot be said as applicable to the present case. In such circumstances, it is only to be held that the learned Single Judge went wrong by granting the protection under Section 60(1)(i) of the CPC to the 1st petitioner as far as his salary account is concerned by limiting the lien of the 2nd respondent Bank. The impugned judgment of the learned Single Judge is liable to be set aside to that extent.

In the result, W.A.No.3077 of 2025 is allowed by setting aside the impugned judgment dated 14.11.2025 in W.P.(C)No. 34654 of 2025 to the extent it limits the lien of the respondent Bank over the salary account of the 1st petitioner to the extent and to the period permissible under Section 60(1)(i) of the CPC and the writ petition stands dismissed. W.A.No.3176 of 2025 is dismissed in view of the finding arrived at as above.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
MURALEE KRISHNA S., JUDGE

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