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Collateral, Not Commerce: Rereading Canara Bank v. N.G. Subbaraya Setty for Intellectual Property-Backed Lending in India

KHUSHWANT PAWAR*

ABSTRACT

This case comment takes an alternate approach to the interpretation of Canara Bank v. N.G. Subbaraya Setty, viewing it not as precedent for the categorical proposition that Indian banks cannot take intellectual property as security, but as a case establishing the boundaries. Analysis of the transaction and of paragraphs 40 and 41 of the judgment reveals that it was a doctrine of characterisation that gave rise to the impugned transfer and to the ten-year exclusive use right. The Court, therefore, regulated the line between security and prohibited non-banking commercial activity. The outcome is acceptable, though the reasoning is incomplete, in that it did not explicitly define a functional test for an intellectual property security interest nor square the Banking Regulation Act, 1949 with the secured transactions framework surrounding intangible assets. That is what counts today. The current prudential rules do not recognise intellectual property as eligible financial collateral for regulatory-capital relief, while CERSAI registration makes intangible security something that is genuinely "seen" in the legal sense. The judgment should, therefore, be interpreted restrictively: the Indian problem is not the legal recognition of intellectual property collateral, but the coordination of creation, perfection, priority, valuation and bank-safe realisation.

Keywords: *Intellectual Property Collateralisation, Banking Regulation, Secured Transactions, Prudential Regulation*

I. INTRODUCTION

Debate in India about intellectual property backed lending is usually framed in binary terms: either intangible collateral is unproblematic, or *Canara Bank v. N.G. Subbaraya Setty* has closed the question. The ruling supports neither position.[1] Its controversies concerned the limits of *res*

* Author is an Assistant Professor of Law at KLE Society's Law College, Bengaluru, Karnataka, India.

[1] *Canara Bank v. N.G. Subbaraya Setty*, (2018) 16 SCC 228 (India); *see also* SINGH & SINGH LAW FIRM LLP & CONFEDERATION OF INDIAN INDUSTRY, INTELLECTUAL PROPERTY RIGHTS: A CASE FOR MONETIZATION 18-19 (2019), https://www.ciiipr.in/pdf/CII-Singh-%26-Singh-Report-IPR-A-Case-for-Monetization-2019.pdf.

judicata where an earlier decree has allowed an illegality to stand and, on the trade mark question, where in the statute book that illegality was to be found.[2]

The banking-law discussion is therefore consequential without being categorical, and a better reading begins with the design of the transaction. Intellectual property finance turns intangibles into credit, and treating intellectual property as property is the easy part. The hard part is making the lender's interest identifiable, prioritised, enforceable and, crucially, prudentially credible.[3]

Read in that light, *Canara Bank* is not an anti-collateral precedent. It separates a security transaction that is incidental to the business of banking from a bank's assumption of an independent commercial function in exploiting a mark. The Court under-explained the distinction, but this comment argues that the distinction is doctrinally sound, and that the real Indian problem is legal recognition without operational and regulatory recognition. The discussion reconstructs the facts, isolates the assignment and security question, tests the judgment against the current secured-transactions and prudential framework, and closes with a reform agenda.

II. Facts and Holding

The first respondent availed a credit facility from Canara Bank in 2001 and defaulted in repayment of a sum of ₹53,49,970.22, whereupon the Bank moved the Debts Recovery Tribunal at Bangalore. On 8 October 2003 he executed a deed assigning to the Bank the exclusive use of, and the benefits attaching to, the EENADU trade mark for agarbathies for ten years, from 1 October 2003 to 30 September 2013.[4]

The economic structure was atypical, and it ran in the opposite direction to an ordinary recovery arrangement. The Bank, as assignee, was to pay ₹76,000 a month for the first six years, of which ₹40,000 was to be credited every month to the assignor's loan account and the balance of ₹36,000 paid to him or permitted to be drawn by him. For the remaining four years the monthly sum rose to ₹83,600, again with ₹40,000 credited to the loan account and ₹43,600 payable to the assignor. The Bank was entitled to collect royalty from permitted users during the currency of the assignment, and the ten-year term ran irrespective of what remained outstanding on the

[2] *Canara Bank*, (2018) 16 SCC 228, ¶¶ 5, 39-41.

[3] World Intellectual Property Organization, *Intellectual Property Finance*, https://www.wipo.int/en/web/ip-financing (last visited Aug. 7, 2026); Iwan Davies, *Secured Financing of Intellectual Property Assets and the Reform of English Personal Property Security Law*, 26 Oxford J. Legal Stud. 559, 561-64 (2006).

[4] *Canara Bank*, (2018) 16 SCC 228, ¶ 6.

loan.[5] The Bank repudiated the deed by a letter of 27 January 2004, and two rounds of civil litigation followed before the matter reached the Supreme Court.[6]

The Court held that *res judicata* cannot lend finality to an erroneous decision on a question of law that sanctions what a statute forbids.[7] It then identified two statutory bars. The first was evidentiary. An instrument in respect of which no entry had been made in the register could not be admitted in evidence in proof of title to the trade mark by assignment or transmission under section 45(2) of the Trade Marks Act 1999, unless the court otherwise directed.[8]

The second bar came from the Banking Regulation Act 1949. Section 8 directly interdicted the Bank from dealing in the selling of goods except in connection with the realisation of security given to or held by it, so the Bank could not use the EENADU mark to sell agarbathies; and permitting third parties to use the mark and earning royalty on it fell outside section 6(1) and was therefore hit by section 6(2), which bars a banking company from engaging in any form of business other than those listed in sub-section (1).[9] It was counsel for the respondents, and not the Bank, who urged that sections 6(1)(f) and 6(1)(g) permitted the arrangement. The Court rejected that reading. The trade mark could not be said to be property which had come into the possession of the Bank in satisfaction or part satisfaction of any of its claims, and the marks were not part of any security for the loans or advances made to the first respondent, or connected with such security. The deed of 8 October 2003 was accordingly hit by section 6(2) and section 8, read with the penalty provision in section 46(4), and the appeal was allowed.[10]

III. The Doctrinal Hinge: Assignment Is Not Security

The judgment comes into focus once assignment and security are held apart. A security interest is accessory to an obligation: it is an interest in property that secures payment or performance and gives the creditor recourse against the property on default.[11] An assignment, by contrast, may be absolute, or it may, depending on its substance and its conditions, operate by way of security. The label alone will not decide the question.

The 2003 deed carried weak indicia of collateral. It created no charge or other interest that would arise on default and fall away on discharge. It granted exclusive use for a fixed ten-year

[5] *Id.*
[6] *Id.* ¶¶ 7-10.
[7] *Id.* ¶ 5.
[8] *Id.* ¶¶ 34, 39; The Trade Marks Act, No. 47 of 1999, India Code (1999), § 45(2).
[9] *Canara Bank*, (2018) 16 SCC 228, ¶ 40; The Banking Regulation Act, No. 10 of 1949, India Code (1949), §§ 6(2), 8.
[10] *Canara Bank*, (2018) 16 SCC 228, ¶¶ 41-42; Banking Regulation Act, §§ 6(1)(f), (g), 46(4).
[11] The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code (2002), § 2(1)(zf) [hereinafter SARFAESI Act]; Davies, *supra* note 3, at 562-64.

term and obliged the Bank to make unconditional periodic payments. It carried licensing rights, and it did not tie the Bank's rights to repayment of the debt. The only economic tether to repayment was the credit of ₹40,000 a month to the loan account, and a credit to a loan account does not by itself convert a commercial bargain into a security. On characterisation, the Court's reasoning holds.

The statutory text strengthens that reading. Section 6(1)(g) permits a banking company to acquire, hold and generally deal with any property, or any right, title or interest in property, which forms or is part of the security for loans or advances or which is connected with such security; and section 8, in carving out dealings "in connection with the realisation of security given to or held by it", preserves realisation while forbidding trade.[12]

That is what confines the Court's conclusion to its facts. The finding was that EENADU was not part of any security, not that a trade mark cannot be security. The negative implication matters. Where an intellectual property right is genuinely constituted as collateral, section 6(1)(g) supplies the enabling hook and section 8 preserves realisation. What the Bank could not do was become a ten-year operator of a trade mark and a royalty business merely because some contractual payments were routed to a debt.

The reasoning nonetheless has a real gap. Section 6(1)(f) permits the managing, selling and realising of any property which may come into the possession of a banking company in satisfaction or part satisfaction of any of its claims.[13] The Court asserted, rather than demonstrated, that a post-default transfer which expressly directed part of its consideration to the loan could never fall within that language, and it did not explain how "possession" is to work for an intangible right. A firmer opinion would have taken control or title as the appropriate analogue, and then asked whether the commercial incidents of the deed were reasonably incidental to prompt realisation of the Bank's claim. The result might well have been the same, but the *ratio* would have been explicit.

IV. The Regulatory Afterlife: Legal Recognition, Prudential Non-Recognition

Two features of the present landscape make a broad anti-collateral reading of *Canara Bank* untenable. The first is that the evidentiary limb of the case is transaction-specific. Section 45(2) bars an unregistered instrument from being received in proof of title by assignment or

[12] Banking Regulation Act, §§ 6(1)(g), 8.
[13] *Id.* § 6(1)(f); *Canara Bank*, (2018) 16 SCC 228, ¶ 41.

transmission. It says nothing about whether a trade mark may stand as security, and the bar is in terms defeasible, since the court may direct otherwise.[14]

Second, the general secured-transactions framework expressly reaches intangibles. SARFAESI defines "property" to include intangible assets, being know-how, patents, copyright, trade marks, licences, franchises and other business or commercial rights of a similar nature, and defines a security interest to include a right, title or interest in an intangible asset created in favour of a secured creditor.[15] Registration with CERSAI supplies public notice and governs priority: a secured creditor may not exercise the enforcement powers in Chapter III unless the security interest created in its favour has been registered, and registered secured debt takes priority under section 26E.[16]

By a circular of 27 December 2018 the Reserve Bank directed banks and financial institutions to file with CERSAI security interests over immovable property other than equitable mortgages, and over movable and intangible assets. Subsisting charges were to be filed by 31 March 2019 and current charges on an ongoing basis, and the circular records that CERSAI had been registering such interests since 2016.[17]

Corporate borrowers add a further layer. The Companies Act 2013 defines a charge as an interest or lien created on the property or assets of a company as security, and section 77 requires registration of charges on property or assets "whether tangible or otherwise".[18] Patent law expressly contemplates the mortgage of a patent and the registration of the mortgagee's interest, while trade mark law works through assignment and transmission.[19]

The architecture of recognition is therefore not one clear doorway but several.

Prudential regulation is the harder barrier. The Banking Regulation Act defines a "secured loan or advance" as one made on the security of assets the market value of which is not at any time less than the amount of the loan or advance.[20]

That formulation sits uneasily with assets whose value turns on validity, renewal, licensing restrictions, reputation, infringement risk and a thin secondary market. More concretely, the Reserve Bank's capital-adequacy framework allows an exposure to be reduced for regulatory-

[14] The Trade Marks Act, § 45(2); *Canara Bank*, (2018) 16 SCC 228, ¶ 34.
[15] SARFAESI Act, §§ 2(1)(t), (zf).
[16] *Id.* §§ 26C-26E.
[17] Reserve Bank of India, *Filing of Security Interest Relating to Immovable (Other than Equitable Mortgage), Movable and Intangible Assets in CERSAI*, RBI/2018-19/96, DBR.Leg.No.BC.15/09.08.020/2018-19 (Dec. 27, 2018), https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11439&Mode=0.
[18] The Companies Act, No. 18 of 2013, India Code (2013), §§ 2(16), 77(1).
[19] The Patents Act, No. 39 of 1970, India Code (1970), §§ 68-69; The Trade Marks Act, § 45.
[20] Banking Regulation Act, § 5(n).

capital purposes on account of collateral only where the collateral is "eligible financial collateral", and that list is closed. It comprises cash and comparable deposits with the lending bank, gold, securities issued by the Central and State Governments, Kisan Vikas Patra and National Savings Certificates, life insurance policies with a declared surrender value, qualifying rated and unrated debt securities, and units of regulated mutual funds. Intellectual property appears nowhere in it.[21]

An intellectual property backed loan may therefore rest on a perfectly enforceable security interest and still carry no collateral value under that capital-relief structure. That is the gap between legal recognition and prudential recognition. Valuation expertise, illiquidity and the absence of reliable disposal channels are the reasons banking scholarship gives for the reluctance of Indian lenders to lend against intellectual property.[22]

V. Critical Appraisal and a Reform Agenda

Canara Bank was right to refuse to let the language of recovery bank an impermissible side business. What it failed to do was to state the transactional test that separates collateral from commerce, and to reconcile its reading of the Banking Regulation Act with SARFAESI's treatment of intangibles. The omission matters, because SARFAESI was already in force and already classified intellectual property as property. The Court did not need to approve the deed; it needed only to restrain the reach of its own reasoning.

The reform implication is accordingly narrower than a call to "recognise intellectual property as collateral". Several elements of recognition are already in place in India. What is missing is coordination. A functional rule should make it clear that a charge, hypothecation or assignment over intellectual property falls within section 6(1)(g), and that after default a bank's dealings are permitted only so far as they are reasonably directed to preserving and realising that security. The notice and priority rules of CERSAI and those of the specialist intellectual property registries should be made interoperable, so that a lender does not face two publicity systems, working on different principles, for the same security.[23]

Valuation rules should require independent initial valuation, diligence on legal validity and on the licence position, concentration limits and realistic disposal assumptions. A specialist

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[21] Reserve Bank of India, *Master Circular - Basel III Capital Regulations*, RBI/2025-26/08, DOR.CAP.REC.2/21.06.201/2025-26, ¶ 7.3.5 (Apr. 1, 2025).

[22] Bibekananda Panda & Sara Joy, *Intellectual Property Rights-based Debt Financing to Startups: Need for a Changing Role of Indian Banks*, 46 Vikalpa 143, 147-50 (2021); Divya Upadhyay, *Unleashing India's Inventive Capital: Intellectual Property as Loan Collateral*, 17 Law & Fin. Mkts. Rev. 225, 229-35 (2023); Singh & Singh Law Firm LLP & Confederation of Indian Industry, *supra* note 1, at 19-22.

[23] *See* Singh & Singh Law Firm LLP & Confederation of Indian Industry, *supra* note 1, at 22-23 (identifying registration and valuation reforms); Davies, *supra* note 3, at 576-82.

receiver can realise the asset without turning the bank into the underlying intellectual property business.

Prudential reform should be measured rather than promotional. Making every patent and trade mark "eligible collateral" would convert uncertainty into a risk borne by depositors. The better course is conservative advance rates, haircuts and revaluation, with graduated capital recognition once the data are liquid enough to support it. Comparative secured-finance scholarship treats transparency in creation, notice, priority and enforcement, rather than headline numbers, as the core of workable intellectual property collateralisation.[24]

That is also the direction of current intellectual property finance practice, which treats value and marketability at the point of enforcement as the bankability criteria.[25]

VI. CONCLUSION

Canara Bank should not be made to stand for a doctrine that intellectual property is unbankable in India. The more pertinent proposition is that a bank may realise a security, but it may not construct a security rationale after the fact for an arrangement that turns it into a continuing commercial exploiter of a trade mark. The absence of security was dispositive, and it is what keeps the boundary where the Court placed it.

For firms whose assets are intellectual property and little else, the question of property is only a small part of the problem. Indian law has no single system of collateral: it can create and register interests in intangibles, but the valuations, the rules and the prudential incentives attached to the various registries are not compatible with one another. *Canara Bank* is therefore not the end of intellectual property backed lending. It is a drafting lesson and a warning from the regulators. The next step in reform is to make genuine collateral work in a lawful, prudent and institutional way, without requiring banks to trade in the assets they lend against.

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[24] Davies, *supra* note 3, at 559-64, 576-83.

[25] WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Valuing Intellectual Property Assets*, https://www.wipo.int/en/web/business/ip-valuation (last visited Aug. 7, 2026).