HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

<u>WRIT PETITION No. 12811 OF 2012</u>

<u>ORDER</u>:

There was no representation on behalf of the petitioner, who is appearing in person, on three dates i.e., on 13.07.2015, 29.07.2015 and on 19.08.2015. Hence, on 19.08.2015, the matter was directed to be listed on 26.08.2015 under the caption 'for dismissal'. Even today, when the matter is taken up for hearing, the petitioner is not present in the Court and hence the petition is disposed of after hearing learned counsels for respondent Nos.1, 3 and 4.

The present Writ Petition came to be filed seeking to declare the action of the respondents as illegal and arbitrary and consequently direct the respondent bank to pay back the petitioner, the sum of all his monthly subsistence allowance which were transferred against his fundamental right from his salary account to his loan account since March, 2010, without any Court Order, with interest @ 24% per annum from the date of filing of this petition till the date of paying the amount.

The facts in issue are as under:

The petitioner, who was working under the control of the Mandal Educational Officer, Chirala, Prakasam District, was sanctioned and paid a loan amount of Rs.2,06,000/- by the respondent Bank, under personal loan scheme in the month of September, 2007, against his salary A/c.No.10939862306, with a condition of deducting Rs.4,740/- per month payable to the respondent Bank under loan A/c.No.30240544272. It is stated that the petitioner is involved in Crime No.260 of 2007 of II town Police Station, Chirala, Prakasam District, for the offences punishable under Section 498-A of Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act. Consequently, the fourth respondent placed the petitioner under suspension vide proceedings R.C.No.864/A4/2010, dated 09.04.2010, and sanctioned subsistence allowance of Rs.5,282/- per month to the petitioner from 26.03.2010 which was enhanced to Rs.7,957/- per month from 09.12.2011, and the same was credited to his salary account by the third respondent. During the period of suspension, the first respondent transferred the subsistence allowance from the salary account of the petitioner to the personal loan account for recovery of personal loan. The effort made by the petitioner to stop the bank from transferring the subsistence allowance to the personal account went in vain resulting in issuance of legal notice dated 23.06.2010 to the bank officials. In reply dated 16.07.2010, the respondent bank stated that "it is settled law that once the amount is credited to the savings bank account, the amount looses its character and nature and the bank is entitled to deduct the installments and if three consecutive installments were not paid, the account has to be treated as non-performing asset and initiate proceedings to recover the entire loan amount." Dissatisfied with the reply given by the respondent bank, the petitioner opened a new account in Andhra Bank, Bapatla Branch and requested the third respondent to credit the subsistence allowance to his newly created account by giving prior information to the respondent bank vide letter dated 05.08.2010. Subsequently, the first and third respondents colluded and stopped crediting the subsistence allowance to the Andhra Bank Account and resumed to credit the said allowance to the salary account of the petitioner. The conspiring act of the first and third respondents came to the notice of the petitioner at the time when the respondent bank filed its counter in HRC No.8407 of 2010 filed by the petitioner against the action of the first and third respondents. It is stated that on 05.01.2011, 15.02.2011, 24.03.2011, 14.06.2011 and 17.08.2011, HRC case was adjourned on different grounds. On 27.10.2011, the said case was adjourned by giving a direction to issue notice to the Bank Manager, State Bank of India, Perala Branch, Chirala Mandal, Prakasam District and to file statement of account pertaining to the deductions of subsistence allowance from out of the petitioner's savings bank account, by 08.12.2011. Subsequently, when the matter came up on 27.01.2012, the petitioner was not present and that it was held that as it relates to recovery of loan advanced to the petitioner by the respondent bank, the same has to be settled somewhere else.

While the petitioner was agitating before APHRC, the first respondent issued 'urgent registered notice', dated 30.05.2011 demanding payment of Rs.95,406/- within ten days, failing which he proposed to initiate legal action against him. The petitioner stated that the acts of the respondents are against Article 21 of the Constitution of India and that his fundamental right is being infringed. It is averred that the third respondent also failed to pay D.A. on time, inspite of instructions from the Government. It is alleged by the petitioner that the fourth respondent failed to complete inquiry on time in order to re-instate the petitioner into his job, causing great hardship to him. It is stated that the respondent bank transferred Rs.6,000/- from the salary account of the guarantor for six consecutive months. It is also stated that from May, 2010, till 21.02.2012, the total sum of Rs.75,820/- was realized by transfer of the amounts from the savings bank account to the loan account of the petitioner and the outstanding balance by the end of March, 2012, and the amount payable to the respondent bank is around Rs.30,000/. It is further alleged that due to the action of the respondents, the petitioner lost his case vide Crl.P.No.6508 of 2008 and the said HRC case. Aggrieved by the action of the respondent, the present Writ Petition came to be filed.

The petitioner availing personal loan and his agreement to pay monthly installment amount is not disputed by the first respondent in his counter. In his counter, the first respondent stated that he was not aware of the involvement of the petitioner in a criminal case and subsequent suspension and payment of subsistence allowance, besides enhanced subsistence allowance.
It is further stated that the adjustment of the amount made by the bank is towards the admitted loan account of the petitioner and the same cannot be kept pending for a long time without making any repayment, not withstanding his suspension or dismissal from service. The first respondent denied the allegations made by the petitioner that the bank conspired with the third respondent. It is stated in the counter that the act of the petitioner resulted in unnecessarily dragging the bank to the A.P.Human Rights Commission, since the recovery of loan was beyond the jurisdiction of the Commission. Issuance of notice dated 30.05.2011, was not denied in the counter, but at the same time, it was clarified that their intention was not to harass the petitioner or to violate the fundamental right of the petitioner. It is not disputed in the counter that the an amount of Rs.6,000/- for six consecutive months was recovered from the salary account of the guarantor, but it was stated that the same was done in order to discharge the debt due by

the petitioner. However, it is stated that the petitioner made inordinate delay for repayment only with an intention to realize debt from the guarantor. The transfer of amount of Rs.75,820/- by the respondent bank was not denied in the counter. It is stated that the total sum payable by the petitioner along with interest by the end of 31.05.2012 is Rs.16,656/- and not Rs.30,000/-, as alleged by the petitioner. Even the petitioner's contention that he lost his case in a criminal petition and the HRC Case was also denied in the counter filed by the first respondent. In the entire counter affidavit, the respondent reiterated that the action of the respondents was just and the same do not violate the fundamental right of the petitioner.

At the time when the matter came up for hearing, learned counsel for the first respondent submitted that the petitioner has cleared the entire loan amount and as such no further orders need be passed in this Writ Petition.

Learned counsel for the third and fourth respondents submits that the entire loan amount was deducted from the subsistence allowance of the petitioner, which was credited to the account of the petitioner.

In the absence of representation on behalf of the petitioner and taking into consideration the submission made by the learned counsels for the respondents that the entire loan amount has been paid, no further orders are necessary in this Writ Petition.

Accordingly, the Writ Petition is closed. No costs. Consequently, the Miscellaneous Petitions, if any, pending in this Writ Petition shall also stand closed.

JUSTICE C. PRAVEEN KUMAR

26.08.2015
vhb