IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.A.No.749 of 2012

B.Kamalakannan .... Appellant / Petitioner

Vs.

1. The Managing Director
   Canara Bank,
   Canara Bank Buildings,
   No.112, J.C.Road,
   P.B.No.6648,
   Bangalore - 560 002.

2. Canara Bank
   Dilshan Garden Branch,
   'Sikka Chambers' "B" Block,
   Delhi - 110 095.

3. The Secretary
   Canara Bank (Employees) Pension Fund,
   Naveen Complex,
   H.O. Annexure,
   14, M.G.Road, Bangalore - 560 053.

4. The Reserve Bank of India,
   No.4, Rajaji Salai,
   Chennai - 1.

5. The Secretary
   Union of India,
   Department of Ministry of Finance,
   Jeevan Deep Building, Parliament Street,
   New Delhi - 110 001.

6. K.Srinivasa Varadhan .... Respondent / Respondent

(R6 impleaded as party respondent,
vide order of Court, dated 09.12.2014
made in M.P.No.1 of 2014)

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court, dated 01.02.2012 made in W.P.No.938 of 2011.

Writ petition filed under Article 226 of Constitution of India praying for issue of a writ of mandamus directing the 1st and 2nd respondents to give credit in petitioner pension S.B. Account No.2222 of the wrongful debits and recovery made towards educational loan close S.B. Account No.2222 and transfer petitioner pension account to Perambur Branch Chennai 21 and direct the 2nd respondent not to deduct any amount in future from the pension account of the petitioner.

For Appellant : Mr.K.V.Ananthakrushnan

For Respondents : Mr.P.R.Raman for R1 to R3
Mr.J.Madanagopal Rao, CGSC for R5
Mr.V.Santhanam for R6
No appearance for R4

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

The instant writ appeal arises from the order, dated 01.02.2012 made in W.P.No.938 of 2011.

2. The facts in nutshell, leading to the filing of the intra court appeal are that the appellant / petitioner served in Canara Bank for about 24 years and opted voluntary retirement, due to his ill health. When he was in service, he took housing loan to the tune of Rs.1,60,000/-. His son, K.Srinivasa Varadhan, availed a Educational loan to the tune of Rs.98,000/- and the appellant stood as co-obligant. After retirement, he settled in Delhi. While he was in Delhi, the appellant's son took second educational loan to the tune of Rs.1,50,000/-, suppressing the earlier educational loan. The appellant also availed other two loans.

3. The appellant is entitled to the pension and his pension was credited to his pension Savings Bank Account. Since the appellant / petitioner as well as his son committed defaults in repayment, notice under Section 13 (2) of SARFAESI Act was issued by the Bank. As far as Educational loans availed by the appellant's son are concerned, the Bank deducted the dues from the pension savings bank account of the appellant. During the period from 2005 to 2008, since the appellant did not submit life certificate, as required by the Regulations, pension amount

was not credited to. When he sought information under Right to Information Act, he was informed by the Bank that an amount of Rs.1,75,809/- was deducted from his Pension account towards the educational loan obtained by his son. The appellant preferred the writ petition, questioning the deduction of the amount from the Pension account.

4. The learned single Judge, dismissed the writ petition, on the grounds that the pension amount loses its character, since it is credited to the Savings Bank Account and the petitioner is also disentitled by his own conduct, to the grant of any relief under Article 226 of the Constitution, as the second educational loan was obtained in Dilshan Garden Branch, Delhi, suppressing the earlier educational loan obtained in Chennai Tondiarpet Branch.

5. The learned counsel for the appellant strenuously contends that the Bank is not entitled to deduct the pension amount of the appellant, under proviso to Section 60 (1) CPC and that the retirement benefits including pension does not lose its character, even if it is credited to the Savings Bank Account and particularly in this case, the pension was credited into the Pension Savings Bank Account of the appellant.

6. It is further contended that the deduction from the pension account offended the Fundamental Rights to life and livelihood of the appellant, warranted under Article 21 of the Constitution. He further contends that the appellant is only a co-obligant and without initiating action against his son, who availed the educational loans, deduction from his pension account for the loan amount is also not correct.

7. The learned counsel for the respondents 1 to 3 equally contends that the appellant, being retired employee of the Canara Bank is bound by the regulations of the Bank, as his son availed the educational loans from the very same Canara Bank and the appellant stood as co-obligant.

8. As per the Bank Regulations, the Bank shall be entitled to recover the dues to the Bank from the pension and the appellant cannot seek protection under the proviso to Section 60 (1) of CPC. The appellant has not come with clean hands. Having stood as co-obligant for the second educational loan availed by his son, suppressing the first educational loan, the writ appeal deserves to be dismissed.

9. We have examined the rival contentions advanced by the learned counsel for the parties and perused the pleadings and the documents appended thereto.

10. Concededly, the son of the appellant took two educational loans in Canara Bank, one to the tune of Rs.98,000/- in Chennai Tondiarpet Branch in the year 1999 and another to the tune of Rs.1,50,000/- in Dilshan Garden Branch, Delhi in the year 2001 and no repayment was made.

11. It is also admitted fact that in the Canara Bank, a sum of Rs.1,75,089/- was deducted from the appellant's Pension Savings Bank Account towards the educational loans availed by his son.

12. The appellant stood as co-obligant for both the educational loans availed by his son. Both the appellant as well as his son are jointly and severally liable to repay the loan. Educational loan was not repaid for several years. The Bank is entitled to recover the same either from the loanee or from the co-obligant. No doubt, the pensionary benefits of a retired employee cannot be deprived, except by due process of law.

13. Here in this case, the appellant was the employee of Canara Bank and educational loans were availed by his son in the same Bank and the appellant stood as co-obligant for both the educational loans.

14. The learned counsel for the respondents 1 to 3 brought to the notice of this Court, the Regulation 49 of Chapter IX of the Canara Bank (Employees') Pension Regulations, 1995, which reads as follows :

> "49. Recovery of Bank's dues :
> The Bank shall be entitled to recover the dues to the Bank on account of housing loans, advances, license fees, other recoveries and recoveries due to staff co-operative credit society from the commutation value of the pension or the pension or the family pension."

The appellant, being pensioner of the Canara Bank is bound by the Regulations of the Bank.



15. The learned counsel for the appellant emphasises the protection clause regarding pension to a retired employees, as provided under the proviso to Section 60 (1) of CPC. He also circulates our Supreme Court Judgment in Radhey Shyam Gupta v. Punjab National Bank & anr, reported in 2008 STPL (LE) 40958 (SC), for the proposition that even after the retiral benefits, such as Pension and Gratuity had been received by the appellant, they did not lose their character and continue to be covered by proviso (g) to Section 60 (1) of the Code.

16. Though there is protective clause under proviso to Section 60 CPC, regarding attachment of pension, the appellant,

being retired employee of the Canara Bank is bound by the Canara Bank (Employees') Pension Regulations, 1995.

17. Having accepted the regulations to avail the pension, the appellant is estopped from contending that the Bank is not entitled to deduct his pension towards the loan due from him.

18. Under the above circumstances, the contention of the learned counsel for the appellant that pension regulations of the Canara Bank does not have over-riding effect to the provisions of CPC is not acceptable.

19. A person invoking the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution must come with clean hands. The appellant, while in service stood as co-obligant for educational loans obtained by his son in Chennai Tondiarpet Branch and suppressing the first educational loan, second educational loan was obtained in Dilshan Garden Branch at Delhi and the appellant stood as co-obligant for that loan also. For several years, nothing was repaid towards the above educational loans. The conduct of the appellant in availing the second educational loan suppressing the earlier loan is itself a sufficient ground to reject the relief of the appellant under the discretionary jurisdiction.

20. The learned single Judge, has rightly dismissed the writ petition. We do not see any reason to interfere with the finding and conclusion of the learned single Judge. Accordingly, the writ appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

tsvn

To

1. The Managing Director
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5. The Secretary
Union of India,
Department of Ministry of Finance,
Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001.

1 cc to Mr.K.V. Ananthakrishnan, Advocate, Sr. 33261
1 cc to Mr.P.R. Raman, Advocate, Sr. 32937
1 cc to Mr.J. Madanagopal Rao, Advocate, Sr. 32897

W.A.No.749 of 2012

KS (CO)
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