BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 14.06.2016

ORDERS DELIVERED ON : 16 .06.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.9580 of 2016
and
WMP(MD)No.7619 of 2016

Natarajan .. Petitioner

vs.

1.The District Collector,
Thanjavur District, Thanjavur.

2.The Zonal Manager,
Indian Overseas Bank,
Thanjavur.

3.The Manager,
Indian Overseas Bank,
Pookkollai Branch,
Pookkollai, Thanjavur District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 2nd and 3rd Respondents not to recover the petitioners monthly pension for the agriculture loan due on the basis of the petitioner's representation, dated 21.03.2016.

For Petitioner : Mr.B.Anandan

For R1 : Mr.S.Kumar,
Additional Government Pleader

For R2 and R3 : Mr.N.Dilip Kumar

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O R D E R

Heard the Learned counsel for the Petitioner; the Learned Additional Government Pleader appearing for the first Respondent and the Learned counsel appearing for the Respondent Nos.2 and 3.

2.By consent, the main writ petition itself is taken up for final disposal.

3.According to the Petitioner, he worked in the Tamil Nadu Electricity Board and retired from service in the year 2007 as Commercial Inspector. He is receiving a sum of Rs.16,000/- towards his monthly pension. His pension amount alone is the only source of income to his entire family. The Education expenses of his children are spent by utilising his monthly pension.

4.The petitioner is having Savings Bank Account in the third Respondent/Indian Overseas Bank, Pookkollai Branch, Thanjavur District and the account number is A/c.074901000004020. He is receiving his pension through the third Respondent/Bank in the aforesaid amount. The stand of the petitioner is that he is facing financial crisis in his life and therefore, he is not in a position to lead his life along with his family because of the fact that the monthly pension amount, which he receives is not enough to his family. Therefore, he has decided to carry on the agricultural activities in his field. Because of the financial crisis, during the year 2012, he approached the third Respondent/bank and obtained a sum of Rs.15,000/- as an agricultural loan.

5.The plea taken on behalf of the petitioner is that due to failure of the rain, he suffered a heavy loss in agriculture and received the same result in subsequent years also. As such, he is not in a position to repay the loan amount to the third Respondent/bank. The non payment of loan due amount is neither wilful nor wanton, but due to his financial crisis and also because of failure of the agriculture.

6.The Learned counsel for the petitioner submits that during the month of December, 2015, to his shock and surprise, he received a statement from the third Respondent/Bank in respect of the loan due. It is represented on the side of the petitioner that he approached the third Respondent/Bank immediately and explained his family situation and sought for an apology as regards the non payment of loan due amount and assured that he will pay the monthly due in future without fail. However, the third Respondent/Bank had not yielded his request and continuously took his entire monthly pension towards loan due amount from the month of December, 2015, till date.

7.The stand of the petitioner is that he made a written representation before the first Respondent/District Collector, and the Zonal Manager, Indian Overseas Bank, Thanjavur, on 21.03.2016. The first Respondent after receipt of the written representation from the petitioner, forwarded the same to the second Respondent for necessary action. The second and third Respondents after receiving his representation, till date, have not taken effective steps on the representation so made by the petitioner.

8.Added further, it is brought to the notice of this Court on behalf of the petitioner that the petitioner borrowed money from local money lender for huge interest and with that financial support, he is running his family for the past six months.

9.At this juncture, the Learned counsel for the petitioner cites the decision of this Court in ***LAKSHMINARAYANAN, I. v.***

A.VEERARAGHAVALU reported in ***1990-1-L.W.135***, wherein at paragraph Nos.3 to 5, it is observed as follows:-

> *3. The Learned Counsel no doubt cited the decision reported in State of Punjab v. Dinanath (A.I.R. 1984 S.C. 352). But that decision has no application to the present case. That decision arose under the Punjab Land Revenue Act and the Court held that Section 60 of C.P.C. is not applicable to the order for recovery passed under the said Act, since it is not 'decree' within the meaning of that term under C.P.C. In the present case, in view of Order 38, Rule 11-A, C.P.C, Section 60 C.P.C. will certainly be applicable to attachment before judgment i.e. even though the suit has not yet resulted in a 'decree' as such.*
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> *4. The Learned Counsel for the appellant then submitted that what was sought for was only an injunction under Order 39 of C.P.C. and not an attachment under Order 38, Rule 5 of C.P.C. But the injunction or the direction sought for amounts only to an attachment of a debt due to the defendant employee from his employer, the garnishee, by an issue of a prohibitory order, to the garnishee, as in the case under Order 21, Rule 46(1), C.P.C. which provides the mode of 'attachment' of debts and other properties not in possession of judgment-debtor, the said mode being issue of such prohibitory Orders.*
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> 5. Further, the injunction under Order 39, Rule 1, or Rule 2 of C.P.C. is a discretionary relief and where the property cannot be attached as stated above, the injunction under Order 39, Rule 1 or Rule 2 of C.P.C. cannot be granted restraining the actual possessor of the said property of the defendant from giving that property to the defendant. The object with which Section 60(1), Proviso, is enacted cannot be frustrated by resorting to Order 39."

10.In effect, the relief sought for by the petitioner in the present writ petition is for passing of an order by this Court in directing the second and third Respondents not to recover his monthly pension towards the outstanding agricultural loan amount on the basis of his representation, dated 21.03.2016.

11.The Learned counsel for the petitioner relies on the decision of this Court in ***K.MURUGAN v. ELULAGANATHAN*** reported in ***2009 (2) CTC 725***, wherein it is held as follows:-

> "The settled law on this subject is that retiral benefits are not liable for attachment not only while they were with the employer concerned, but also when it passes to the hands of the employee after retirement, since such benefits will not lose their character as retiral benefits entitling them to be clothed with exemption under Section 60(1), Proviso (g) of C.P.C."

12.In response, the Learned counsel for the second and third Respondents/Bank contends that that petitioner approached the Respondent/Bank for a term loan of Rs.75,000/- for digging a Bore Well along with his son N.Rajasekaran in October, 2012 and he was sanctioned with the loan as per Credit Sanction Advice, dated 06.10.2012, setting forth therein, various terms and conditions of sanction.

13.The Learned counsel for the second and third Respondents emphatically submits that the loan in question, as per terms, has to be repaid in ten equal half yearly instalments @ Rs.10,000/- per instalment plus the interest and other charges to the Bank with a holiday period of two yeas initially and in fact, the repayment started on 06.04.2015.

14.At this stage, the Learned counsel for the second and third Respondents brings it to the notice of this Court that the borrowers executed a Demand Promisory Note, dated 06.10.2012 for Rs.75,000/- undertaking jointly and separately to repay the loan, agreement of term loan and Hypothecation, dated 06.10.2012 besides other documents as per the norms of the Bank. Also, a revival letter, dated 01.05.2015 was executed by the borrowers.

15.Continuing further, it is the case of the Respondent/Bank that the petitioner and his son had not paid the loan instalments amount as committed and also that the petitioner has mandated the Bank to recover the instalments from his Savings Bank Account and the Bank exercised its option to recover the over due instalments from his Savings Bank Account. Since the borrowers had not responded to the repeated telephonic and personal demands of the Bank, the recovery measure was resorted to by the Bank.

16.In this connection, it is represented on behalf of the Respondent/Bank before this Court that as per paragraph Nos.18 and 19 of the Agreement of Term Loan and Hypothecation, dated 06.10.2012, the borrowers had undertaken to perform their obligation and they run as under:-

> "18.The borrower agrees to open and or maintain with the Bank, Savings Bank Account and keep the account in sufficient funds and hereby irrevocably authorise the Bank to debit the same with the amount of each instalment of the loan and interest thereon as and when it falls due. The Bank shall also have the right to set off the balance due in the said account against the balance due in the said Loan Account at any time after the balance in the said Loan Account has become payable under the terms hereof.
>
> 19.Where the borrower is more than one individual each one of them shall be bound and liable hereunder jointly and severally with the other or others of them and all covenants, conditions, agreements herein contained shall be performed by them and each of them jointly and severally."

17.The Learned counsel for the second and third Respondents contends that the loan was availed for deepening of Bore Well and considering the projections and the extent of land holdings, the loan was sanctioned for Minor Irrigation purpose. Indeed, at the time of availing the loan, the net income was projected at Rs.25,000/- in agricultural loan and only on that basis, the petitioner's payment was assessed and the loan was sanctioned. Furthermore, the heavy loss in agriculture is untenable even after the holiday period of two years allowed by the Bank for making repayment. It is not in dispute that the borrowers failed to repay the amount, as per the repayment commitments made by them and the account became 'Non Performing Asset'.

18.Lastly, the Learned counsel for the Respondent/Bank proceeds to state that the agricultural lands are held in the petitioner's son's name and that Thanjavur District falls in the Cauvery Delta Region and further, the petitioner had gone for Bore Well irrigation to supplement the irrigation needs of his lands.

19.As far as the present case is concerned, the petitioner after his retirement, approached the Respondent/Bank for a term loan of Rs.75,000/- for digging Bore Wells along with his son N.Rajasekaran in October, 2012, which was sanctioned on 06.10.2012. The said loan is to be repaid in ten equal half yearly instalments @ 10,000/- per instalment plus the interest and other charges to the Bank with a holiday period of two years initially. The repayment of loan commenced from 06.04.2015.

20.It is to be noted that an agreement can be arrived at by the process of 'offer and acceptance'. In short, in every transaction, there is a proposal and when it is accepted in an unqualified manner, then there is a concluded contract. To put it precisely 'an agreement enforceable by Law is undoubtedly a contract', in the considered opinion of this Court. In 'contract', there is proposal, acceptance, promise, promisor, promisee, consideration and agreement, in the considered opinion of this Court.

21. There is no dispute as to the fact that the petitioner and his son executed a promissory note, dated 06.10.2012 for Rs.75,000/- in favour of the Respondent/Bank by giving an undertaking jointly and severally to repay the loan and also executed a loan reviving letter dated 01.05.2015. Only when the loan account of the petitioner became 'Non Performing Asset' the Respondent/Bank was constrained to explore the possibility of recovering the over due loan amount to protect its interest.

22.In view of the fact that the petitioner has not repaid the instalments in time and the loan account has become 'Non Performing Asset', the Respondent/Bank has rightly resorted to the measure of recovering the due amounts from Savings Bank Account of the petitioner, as per the mandate given by him, at the time of availing the loan. Therefore, this Court is of the considered view that the action of the Respondent/Bank in resorting to the measure of recovering dues from the Savings Bank Account of the petitioner, cannot be found fault with. Furthermore, this Court is of the earnest view that it is the duty of the petitioner and his son to repay the loan instalments amount and they cannot, by any means, wriggle out of the situation/predicament that they are in. Viewed in that perspective, the relief sought for by the petitioner praying for passing of an order by this Court in directing the Respondent Nos.2 and 3/Banks not to recover his monthly pension toward agriculture loan due amount, on the basis of his representation, dated 21.03.2016, is not acceded to by this Court. Consequently, Writ Petition fails.

23. In the result, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(W)

/TRUE COPY/

Sub Assistant Registrar

To:

1.The District Collector,
Thanjavur District, Thanjavur.

2.The Zonal Manager,
Indian Overseas Bank,
Thanjavur.

3.The Manager,
Indian Overseas Bank,
Pookkollai Branch,
Pookkollai, Thanjavur District.

+1cc to M/S.N.Dilipkumar,Advocate SR 30798
+1cc to M/S.B.Anandan, Advocate SR NO:30972
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 30996

rj2
JA-SK-SKN-24.06.2016-6P-7C

Pre-Delivery Order Made in
W.P.(MD) No.9580 of 2016
16.06.2016