IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.2835 of 2012

P.Kandasamy Pillai ... Petitioner

Vs

1.Indian Overseas Bank
Rep. by Chief Manager,
Asset Recovery Management
Branch, C.O.Annexe Building,
I Floor, 763, Anna Salai,
Chennai 600 002.

2.Indian Overseas Bank,
Rep. by Branch Manager,
Radhapuram Branch,
Radhapuram Town & Taluk,
Tirunelveli District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein and quash the impugned demand notice issued by him in Ref.No.ARMB/611/2012 dated 25.01.2012 demanding unjustly huge amount from the petitioner and consequently, direct the first respondent to restore the sum of Rs.3,26,248/- illegally withdrawn by them into the petitioner's savings Bank A/c.No.1948 held with the second respondent Bank forthwith.

For Petitioner : Mr.M.Balasubramanian

For Respondents : Mr.F.B.Benjamin George

O R D E R

Heard Mr.M.Balasubramanian, learned counsel for the petitioner and Mr.F.B.Benjamin George, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein and quash the impugned demand notice issued by him in Ref.No.ARMB/611/2012 dated 25.01.2012 demanding unjustly huge amount from the petitioner and consequently, direct the first respondent to restore the sum of Rs.3,26,248/- illegally withdrawn by them into the petitioner's savings Bank A/c.No.1948 held with the second respondent Bank forthwith."

3. The case of the petitioner is as follows:-

The petitioner was employed as Village Administrative Officer and retired from service. The petitioner along with his two brothers and their wives held certain properties in their names. The two brothers viz., P.Kalyanasundaram Pillai and P.Sokkalingam Pillai along with Mrs.Vasantha, wife of Sokkalingam Pillai, formed a partnership firm called M/s.Sivaram Metal Corporation. In furtherance of the business of firm, they had obtained a loan from the respondent Bank to the tune of Rs.7,50,000/-. Since there was a default in payment of the loan to the respondent Bank, the Bank approached the Debts Recovery Tribunal(DRT) for recovery of sum of Rs.7,50,000/- together with interest. The petitioner was also made as a party in the proceedings, since he stood as a guarantor for repayment of the loan.

4. The original application in O.A.No.1029 of 1999, which was filed for recovery of Rs.10,27,195.19/- as on 01.10.1999 was ordered on 21.09.2000 and thereafter, recovery certificate was issued for a sum of Rs.12,50,941.19/-. Pursuant there to, the mortgaged properties were put to sale and the sale consideration of Rs.2,97,000/- was realised towards the partial discharge of loan amount. Even after the adjustment of the sale properties, there was still a balance payable by the firm including the petitioner, who stood as guarantor, as sum of Rs.9,53,951.19/-, with further interest.

5. It appears that the petitioner had savings account with the second respondent and a sum of Rs.3,26,248/- was lying in the said account. In view of non-recovery of the entire dues payable by M/s.Sivaram Metal Corporation, the Bank had decided to exercise the general lien over the savings Bank account maintained by the petitioner and in that regard, notice was issued about the decision to the petitioner on 25.01.2012. Pursuant to the said notice, a sum of Rs.3,25,700/- was adjusted towards loan amount on 08.02.2012 and the same was also communicated to the petitioner. Against the above adjustment of the amount lying in the savings deposit belonging to the petitioner, the present writ petition is filed.

6. According to the petitioner, the action of the respondent Bank in adjustment of the savings account by exercising the general lien over the same is unsustainable in law for the reason that the amount lying in deposit represent gratuity and Provident Fund due to the petitioner on his retirement as Village Administrative Officer on 31.12.2011. According to him, the amount towards Provident Fund and Gratuity are non-attachable and therefore, the impugned action of the respondent Bank is per se illegal and liable to be interfered with.

7. The learned counsel for the petitioner would submit that it is a settled legal principle that the Provident Fund and Gratuity amount cannot be attached in any proceedings and in the instant case, admittedly, the amounts pertaining to Provident Fund and Gratuity were deposited from the treasury on 11.01.2012 in the second respondent Bank and on the same day, without any notice to the petitioner, the same stood transferred to sundry account of the Bank. Such action on the part of the respondent Bank is contrary to law. He would draw the attention of this Court to the Pass Book details and the entries made during the relevant period which establishes the fact that when a treasury deposit was made on 11.01.2012, on the same day, it came to be transferred as per Regional Office instructions by withdrawing the same from the savings account of the petitioner.

8. The learned counsel for the petitioner would submit that under Section 13 of the Payment of Gratuity Act, 1972, the protection is given towards non-attachability of Gratuity. The Section 13 of the said Act is extracted below:-

> "13. Protection of gratuity:-- No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal Court."

9. The learned counsel for the petitioner would also draw the attention of this Court to Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, wherein, similar protection is given against the attachment. Section 10 of the said Act is also extracted hereunder:-

> "10. Protection against attachment:--(1) The amount standing to the credit of any member in the Fund or of any exempted employee in a Provident Fund shall not in any way be capable of being assigned or charges and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee

appointed under the Presidency Towns Insolvency Act, 1909 (3 of 1909), nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to, or have any claim on, any such amount.

2. Any amount standing to the credit of a member in the Fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

3. The provisions of sub-section (1) and sub-section (2) shall, so far as may be, apply in relation to the pension or any other amount payable under the Pension Scheme and also in relation to any amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the Fund."

10. In addition to the above reference, the learned counsel for the petitioner would also bring to the notice of this Court that under Section 60 (g) of Civil Procedure Code, certain amounts are not liable to attachment, which is extracted hereunder:-

"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:--

(g). stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions."

11. Therefore, the learned counsel for the petitioner would submit that the amount which represent Gratuity and Provident Fund which came to be deposited on 11.01.2012, in the saving Bank account of the petitioner in the second respondent Bank, cannot be subjected to attachment and the withdrawal of the said amount by the Bank, was nothing but, an illegal action.

12. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit.

13. In the counter affidavit, it is stated in detail how the Bank in the circumstances of the case could exercise general lien over the deposit of the borrowers including guarantors. Since admittedly, the borrowers and guarantors stood jointly and severally liable for the dues to the Bank, the Bank has decided to exercise its general lien over the deposit of the petitioner and even then it was only a partial recovery and as on date, the outstanding due is to the tune of Rs.30,09,939.38/-. Therefore, the action taken by the respondent Bank cannot be faulted with.

14. According to the learned counsel appearing for the respondents, once a deposit had been made in the Bank, it cannot be said that the amounts would still represent the character of Provident Fund and Gratuity. Therefore, the learned counsel would submit that the petitioner was not entitled to any relief and the writ is not maintainable against the bona fidy exercise of power by the Bank in recovery of dues from the petitioner.

15. The learned counsel for the petitioner would also rely on the decision of the Hon'ble Supreme Court of India in the case of Union of India Vs. Jyoti Chit Fund and Finance and others, reported in AIR 1976 SC 1163. The Hon'ble Supreme Court has held that as long as the amounts like Provident Fund, Pension etc., are actually paid to the Government servants who is entitled to on retirement, the same cannot be subjected to attachment. According to the learned counsel for the petitioner, in this case that the deposit had been made in the savings Bank account of the petitioner, on the very same day, the amounts were withdrawn by the Bank and therefore, the character of the amounts deposited had not undergone any change at all.

16. This Court has given its anxious consideration to the rival submissions and perused the materials and pleadings placed on record. From the facts narrated above, what emerges in clear terms is that the deposit of certain amounts in the savings Bank account of the petitioner in the second respondent Bank on 11.01.2012, was from the treasury and the amount was nothing but, Provident Fund and Gratuity which was paid to the petitioner on his retirement on 31.12.2011. This Court has to

see whether on such deposit being made in the savings Bank account of the petitioner and whether the character of the amount is lost and whether it could be still stated that those deposits were Provident Fund and Gratuity. No doubt that once the amount deposited in the Bank be that Provident Fund or Gratuity and the same is encashed or re-deposited, the same losses its character as being Provident Fund or Gratuity which becomes personal money of the employee concerned.

17. In the instant case, from the facts as evidenced in the documents filed on behalf of the petitioner, the treasury deposit was made on 11.01.2012 and without intimation or instruction from the petitioner, the Bank on its own volition by unilateral action, withdrawn the amount on the same day and deposited in sundry account, thereby preventing the petitioner from having access to the Provident Fund and Gratuity amounts.

18. Once by the action of the respondent Bank, the petitioner was prevented from accessing the Provident Fund and Gratuity amount, it must be construed that the Gratuity and Provident Fund amounts had not reached the hands of the petitioner, for it to lose its original character. In such event, the attachment or adjustment of the said amount by the Bank is clearly contrary to the provisions of the Payment of Gratuity Act, 1972, the employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the provisions of Civil Procedure Code and the said action is also contrary to the law laid down by the Hon'ble Supreme Court of India.

19. In the absence of intimation about the treasury deposit of Gratuity and Provident Fund amount to the petitioner, the action of the Bank withdrawing the said amount amounts to unjust and illegal appropriation and the same therefore cannot be countenanced in law. The contention of the Bank about their exercise of general lien over the deposit of the borrowers can be countenanced only in the normal circumstances and the same cannot be applied in respect of Gratuity and Provident Fund deposit.

20. For the above said reasons, this Court is unable to see any justification for the action taken by the Bank in adjustment of the Gratuity and Provident Fund amounts lying in the deposit in the savings Bank account of the petitioner in the second respondent Bank. In the said circumstances, this Court has no hesitation in allowing the writ petition. The impugned demand notice in Ref.No.ARMB/611/2012 dated 25.01.2012, is hereby set aside in so far the amounts on which general lien exercised by the second respondent have the character of Gratuity and Provident Fund. There shall be a consequential direction to the

respondents to refund the Gratuity and Provident Fund amount which came to be deposited in the savings Bank account of the petitioner maintained by the second respondent Bank, on 11.01.2012, within a period of four weeks from the date of receipt of a copy of this order.

21. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

gsk

To

1.The Chief Manager,
Indian Overseas Bank,
Asset Recovery Management
Branch, C.O.Annexe Building,
I Floor, 763, Anna Salai,
Chennai 600 002.

2. The Branch Manager,
Indian Overseas Bank,
Radhapuram Branch,
Radhapuram Town & Taluk,
Tirunelveli District.

+1cc to Mr.M.Balasubramanian, Advocate SR.No.40512
+1cc to Mr.F.B.Benjamin George, Advocate SR.No.40307

W.P.No.2835 of 2012

GN(06/08/2018)