IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3277/2019

Abdul Ajaj Qureshi Abdul Wab Qureshi.
Vs.
Union of India and others.

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

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Shri R. K. Thakkar, Advocate for the petitioner.
Shri V. A. Bramhe, Advocate for the respondent Nos.1 to 4.
Shri S. D. Pande, Advocate for the respondent No.5.

CORAM : **R.K. DESHPANDE & MILIND N. JADHAV, JJ.**
DATED : **07th NOVEMBER, 2019**

. This petition seeks direction to the respondents to release the amount of family pension, which has been withheld, alongwith the interest at the rate of 18% per annum. The direction is sought to the respondent No. 5 – State Bank of India, wherein the petitioner owns regular saving bank account No. 30614501496 in S.M.B. Hingana Branch, Nagpur.

2. The petitioner was appointed as Constable in the service of Central Reserve Police Force on 02.11.1991. On 26.04.2012, he sought voluntary retirement from service with effect from 01.05.2012. The pension received by the petitioner from his employer is being credited from time to time in the aforestated saving bank account with the respondent

No.5 – Bank. Lastly, the petitioner was permitted to withdraw an amount of Rs.12,000 (Rs. Twelve Thousand only) on 27.06.2018 through ATM and thereafter, till this date, he has not been permitted to withdraw the amount from the said account. Therefore, this petition has been filed seeking direction to the respondents to release the whole kept on the account.

3. On 27.02.2019, we issued notice for final disposal of the matter. None appeared on 03.09.2019 on behalf of the respondent No. 5 - State Bank of India and hence, we were constrained to direct the respondent No. 5 – the Branch Manager of the Bank to personally remain present before us. In spite of service of notice, no one remained present for respondent No. 5. Hence, again on 17.09.2019, we passed an order directing the respondent No.5 – State Bank of India to deposit an amount of Rs.25,000/- (Rs. Twenty Five Thousand only) in this Court as a security for further appearance in the matter on or before the next date. The amount of Rs.25,000/- (Rs. Twenty Five Thousand only) has been deposited in this Court. Thereafter, time was sought on 17.10.2019 by the bank to file reply. Again on 06.11.2019, when the matter was heard, the queries made by the Court remained unanswered and therefore, we were constrained to issue notice to the Regional Manager of the Bank to remain personally present before us. We are informed that the Regional Manager is personally remain present before us today.

4. The petitioner is not being permitted to operate the saving bank account referred to above by the respondent No.5 – Bank and the reason assigned is that there is already a decree passed by the Civil Court in Civil Suit No. 186 of 2014 on 17.01.2017 for an amount of Rs.3,49,297.00 with future interest at the rate of 9.75% per annum with monthly rest. We are informed that as on this date, the total outstanding is Rs.3,34,167.00 alongwith future interest at the rate of 9.75% per annum from today as this is a statement made by the Regional Manager present in person before us.

5. Relying upon the provision of Section 16(1)(j) of the Code of Civil Procedure, it is urged that the pay and allowances of the persons to whom the Air Force Act 1950, or the Army Act 1950, or the Navy Act 1957 applies, is not liable to attachment. We put a specific query to the learned counsel for the petitioner to point out to us, as to how the petitioner, who was an employed in Central Reserve Police Force, is covered by the Army Act 1950. The learned counsel is unable to satisfy us on this aspect of the matter. In view of this, the provision would not help the petitioner in protecting his account.

6. We would have understood had there been a separate pension account opened by the petitioner with the respondent No.5 – Bank, in which only the

amount of pension received by the petitioner could have been deposited. However, this is not a position in the present case. It is the regular saving bank account of the petitioner and there is no separate pension account. In this account, the petitioner deposits the income, which he received from all other sources also and it is not possible for us to segregate the amount of pension or the income derive from other sources. This being general saving bank account, the respondent No. 5 – Banker cannot be prevented from exercising its right under Section 170 of the Indian Contract Act. It is therefore, not possible for us to direct the respondent to release the whole kept on the account.

7. In view of above, we do not find any substance in the petition. The petition is dismissed.

8. We clarify that the Regional Manager of the Bank present before us has made a statement that there is no issue regarding non submission of the life certificate and as and when such certificate is submitting as per the requirement, there would be no question of holding of account on that count.

9. So far as the amount of Rs.25,000/- (Rs. Twenty Five Thousand only) deposited by the respondent No. 5 – Bank in this Court is concerned, we permit the petitioner to withdraw an amount of Rs.5,000/- (Rs. Five Thousand only) and direct the

Registry of this Court to credit balance amount in the account of High Court Legal Services Sub Committee, Nagpur, for the reason that the respondent No.5 – Bank has failed to respond to our notices and wasted the time of the Court on several occasions.

JUDGE **JUDGE**

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