BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**
W.P.(MD)No.3852 of 2019

P.Ponnupandi ... Petitioner

Vs

1.The Managing Director,
REPCO Bank,
"Repco Tower", Repco Bank Ltd,
No.33, North Usman Road,
T.Nagar, Chennai-600017.

2.The Chief Manager,
REPCO Bank,
Madurai South Branch,
Madurai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records connected with the order in Ref.SDL No.45/2018-2019/067/MDS dated 04.02.2019 passed by the second respondent and quash the same as illegal, consequently directing the respondents 1 and 2 to permit the petitioner to withdraw fixed deposits made by his father with the second respondent in A/c Nos.1) CC No.4855, 2) CC No.4864, 3) CC No.4865 and 4) CC No.4866 within the time stipulated by this Court.

For Petitioner : Mr.S.Malaikani
For R2 : Mr.Pala Ramasamy
Standing Counsel

ORDER

Heard the learned counsel on either side.

2. Thiru.A.Palanivel, father of the writ petitioner had five fixed deposits in the respondent Bank. The total value is Rs.20,00,100/- (Rupees Twenty Lakhs and One Hundred only). The petitioner's father is no more. The petitioner as the nominee wanted the respondent Bank to refund the said Fixed Deposit amount. The respondent Bank by the impugned communication dated 04.02.2019 stated that the petitioner's father is the guarantor for a loan account, which had turned as a NPA (Non Performing Asset). Invoking the right under Section 171 of the Indian Contract Act, the respondent Bank, informed the petitioner that the Fixed Deposit amount cannot be refunded. This communication is under challenge in this writ petition.

3. When the matter was taken up for hearing, the learned counsel appearing for the writ petitioner submitted that the

liability under the loan account, for which, the petitioner's father had guaranteed is less compared to the value of the fixed deposits made by him.

4. The learned Standing counsel appearing for the respondent Bank states that the petitioner's father is the guarantor in three loan accounts and co-applicant in two loan accounts.

5. This Court called upon the learned counsel on either side today to make a quick calculation. It is submitted that while the Fixed Deposit value would come to Rs.20,00,000/- (Rupees Twenty Lakhs only), the loan liability will not exceed Rs.15,00,000/- (Rupees Fifteen Lakhs only). Therefore, in the guise of enforcing the Banker's lien under Section 171 of the Contract Act, the respondent is not justified in retaining all the Fixed Deposit amounts. Therefore, this Court directs the respondent Bank to pay the balance amount after adjusting the over all loan liability.

6. The Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To
1.The Managing Director,
REPCO Bank,
"Repco Tower", Repco Bank Ltd,
No.33, North Usman Road,
T.Nagar, Chennai-600017.

2.The Chief Manager,
REPCO Bank,
Madurai South Branch,
Madurai.

+1 CC to M/s.PALA.RAMASAMY, Advocate (SR-56846[F] dated 27/03/2019)

+1 CC to M/s.S.MALAIKANI, Advocate (SR-56196[F] dated 25/03/2019)

RMK

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25.03.2019

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