



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANW.P.(MD)No.4881 of 2019

WEB COPY

S.Chandramouly

... Petitioner/Petitioner

Vs.

1. The Chief Manager(RBD),
The State Bank of India,
Zonal Officer,
No.25, Swamy Nellaiyappar High Road,
Tirunelveli Nagar,
Tirunelveli District.
 2. The Manager,
The State Bank of India,
Muttakad Branch,
Sree Moogambika Complex,
Muttakad Junction,
Kumarapuram,
Kanyakumari District.
 3. The Manager,
The State Bank of India,
Eraniel-Thuckalay Road,
Kalkulam Branch,
Thuckalay,
Kanyakumari District.
- ... Respondents/Respondents

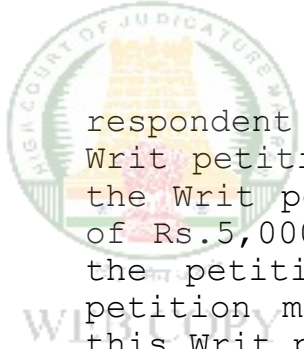
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to release the blocked savings account No.11014141344, in which pension amount of the petitioner is credited.

For Petitioner : M/s.G.Cenil
For Respondents : Mr.G.Radhakrishnan

O R D E R

Heard the learned counsel on either side.

2. In the petition mentioned account, the Writ petitioner's pension amount is credited every month. The petitioner is a borrower. Since he failed to clear the loan dues, the second



respondent creditor branch initiated recovery action against the Writ petitioner. Since action was taken against the guarantor also, the Writ petitioner appears to have given consent for paying a sum of Rs.5,000/- every month from the petition mentioned account. But the petitioner could not do so. That resulted in putting the petition mentioned account on hold. Seeking release of the same, this Writ petition came to be filed.

3. It is not in dispute that the petitioner's monthly pension is credited only in the said Bank's Savings Account. Even though the Bank is claiming the rights of lien, the question that arises is whether the Bank is justified in attaching the pension amount of the petitioner. It has been held in several cases that the pension amount cannot be a subject matter of attachment.

4. The learned counsel appearing for the petitioner placed reliance on the order dated 27.11.2015 in W.P.(MD)No.17838 of 2015. In the said decision, it was held as follows:-

"6. It is well settled that attachment of pension amount cannot be made for realization of any outstanding. In this aspect, the above decision of the Apex Court relied on by the learned counsel appearing for the petitioner can be usefully quoted, wherein, in paragraph No.33, the Supreme Court has observed that the pension and gratuity amount should not attached under the provision of the Code of Civil Procedure. Paragraph No.33 reads as follows:-

'33. However, we are also of the view that having regard to proviso(g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the trial Court in its revisional jurisdiction, particularly, when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in Jyothi Chit Fund case has been considerably watered down by later decision which have been indicated in para 22 herein before and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso(g) to Section 60(1) of the Code.'

7. Therefore, if there is any outstanding due



payable by the petitioner, it is for the respondents bank to work out their remedy to recover the said amount, in the manner known to and permissible by law, before the appropriate forum. Without doing so, resorting to attach the pension amount by way of passing the impugned order is impermissible."

5. Accordingly, the Writ petition stands allowed. The respondents are directed to lift the hold on the petition mentioned account and the petitioner shall be permitted to operate the said account without any hindrance. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Chief Manager(RBD),
The State Bank of India,
Zonal Officer, No.25, Swamy Bellaiyappar High Road,
Tirunelveli Nagar, Tirunelveli District.
2. The Manager,
The State Bank of India,
Muttakad Branch,
Sree Moogambika Complex, Muttakad Junction,
Kumarapuram, Kanyakumari District.
3. The Manager,
The State Bank of India,
Eraniel-Thuckalay Road,
Kalkulam Branch, Thuckalay,
Kanyakumari District.

+1cc to Mr.G.Radhakrishnan, Advocate, SR.No. 56790

+1cc to Mr.G.CENIL, Advocate, SR.No. 56774

W.P.(MD)No.4881 of 2019
26.03.2019

PMU

KK/SAR/10.04.2019/ 3P- 6C

—