BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.07.2019
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.14779 of 2019
W.M.P.(MD) No.11195 of 2019

Karungsivalingam ... Petitioner

Vs.

1.The Indian Overseas Bank Main Branch
Kadayanallur represented through its
Branch Manager, at Kadayanallur,
Tirunelveli District.

2.The Indian Overseas Bank
represented through its
General Manager,
at its Central Office,
D.No.763
Anna Salai, Chennai ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 1st respondent Bank to refund all the amounts arbitrarily and illegally recovered from the petitioner's pension account and forbear from making any such Recoveries in the future, from the pension account of the petitioner in Savings Bank A/c.No.032401000037131 with the 1st respondent Bank Branch, towards the repayment of the Educational loan availed by the petitioner's daughter in Educational Loan Account No.8 of 2007.

For Petitioner :Mr.S.Ramesh @ Ramiah
For Respondents :Mr.Pala Ramasamy

ORDER

The prayer sought for in this writ petition is for a writ of mandamus to direct the respondent Bank to refund all the amounts arbitrarily and illegally recovered from the petitioner's pension account of the petitioner in Savings Bank A/c.No.032401000037131 with the respondent Bank, towards the repayment of the Educational loan availed by his daughter in Educational Loan Account No.8 of 2007.

2.Heard the learned counsel for the petitioner and the learned standing counsel for the respondent Bank.

3.The short facts required to be noticed for the disposal of the writ petition is that, the petitioner, for the educational purpose of his daughter, availed a loan sometime in the year 2007 for a sum of Rs.1,60,000/-. As per the conditions of the said sanctioned loan with the respondent Bank, the petitioner, after a particular period, must start repaying the loan, accordingly, the terms and conditions between the petitioner and the respondent Bank have been entered upon and signed by both parties.

4.Accordingly, the savings bank account No.032401000037131 of the respondent Bank had been given by the petitioner to recover the loan amount due from that account.

5. The petitioner was an employee of a transport Corporation, subsequently, retired and he is getting pension more than Rs.10,000/- and the said pension is deposited in the said account and according to the respondent Bank, they started recovering or adjusting some amount every month, from the account of the petitioner towards the loan amount for a sum of Rs.500/- initially, subsequently, it was Rs.1,500/- and as of now, according to the learned counsel for the respondent Bank, the bank is adjusting a sum of Rs.3,000/- per month towards the loan amount.

6. So far only Rs.65,000/- had been recovered from the petitioner or paid by the petitioner. However, still the due with interest is nearly about Rs.3 lakhs as of now. Therefore, if the petitioner does not pay the bank continuously, the interest component would mount further and therefore, in order to lower the burden of the petitioner, some more amount ie., Rs.3,000/-, which is less than 1/3rd of the pension he received, is being adjusted.

7. However, the learned counsel for the petitioner would submit that, as per the settled legal proposition, no recovery can be made from the pension and in this regard, he has relied upon some judgments of this Court and submitted that, the petitioner, no doubt, has to repay the amount to the respondent Bank. However, for the said purpose, the respondent Bank cannot recover anything from the pension account of the petitioner. Therefore, the said recovery, being made by the respondent bank, is impermissible.

8. However, in this context, the learned counsel for the respondent bank would rely upon the terms and conditions signed by both parties at the time of sanctioning the loan, where, he relied upon the following condition:

> "1.Applicant's father should serve the quarterly interest and other charges delited to the loan account, till repayment is started by the applicant. If the interest and other charges are not remitted by the parent, further stage of loan would not be released."

9. Among other conditions, condition No.1 as extracted above, has also been agreed upon by the petitioner and in this context, the

learned standing counsel would further rely upon the demand promissory note given by the petitioner, dated 02.11.2007, which reads thus:

> "A sum of Rs.1,60,000/- (Rupees one lakh sixty thousand only) has been advanced executed by myself and undertaking to repay the amount in 60 months. I hereby irrevocably authorise you to recover the above such instalments and interest due thereon from my Savings Bank Account No.38184/37131 with your branch until the loan is completed liquidated notwithstanding any accidental lose, theft or damage to the article(s) purchased.
>
> Further, I authorise you to credit the proceeds of the above loan to my current/savings bank account with you. I also authorise you to pay S.Veerasamy Chettiar College of Engineering & Technology to the debit of my current/savings bank account a sum of Rupees 1,60,000/- being the cost of B.E.(I.T) college fees purchased from him/them with instructions to deliver the article(s) to me."

10. Only pursuant to these mandate and the undertaking given by the petitioner, a small amount to the extent of Rs.3,000/- is being adjusted, the learned counsel for the bank submitted.

11. I have heard the said submissions made by both sides.

12. That the petitioner's plea is that, he is getting pension of Rs.10,000/- and more and out of which, he and his wife is surviving and his only daughter for whose benefits, the loan was obtained, though she subsequently married, who is unemployed, since her marriage life ran into rough weather, she is also living with the petitioner and therefore, a substantial sum is very much required for their livelihood. Therefore, the learned counsel for the petitioner submits that, the petitioner is ready and willing to repay the loan, however, the petitioner can part away only a sum of Rs.1,500/- from the said pension amount, towards the loan amount.

13. However, the learned counsel for the respondent Bank would submit that, since the due is very huge to the extent of Rs.3 lakhs, if very lesser amount of Rs.1,500/- is paid every month, further, the interest component will go further high and will have additional burden on the petitioner. Therefore, to protect the interest of the petitioner, some substantial amount can be paid by the petitioner further.

14. I have considered the said submissions made by both sides and having regard to the said factual matrix of the case, this Court is inclined to dispose of this writ petition with the following direction:

(i) That the petitioner shall pay a sum of Rs.2,000/- (Rupees two thousand only) per month from and out of his earning by way of pension and the said amount of Rs.2,000/-, with the consent of the petitioner, can be recovered by way of adjusting the same in the very same account, where the petitioner's pension is deposited and the remaining amount, apart from this Rs.2,000/- being adjusted by the bank every month, the petitioner shall entitle to withdraw and in this regard, the bank shall not interfere with the petitioner to withdraw the sum apart from Rs.2,000/- ;

(2) Apart from this arrangement, the petitioner shall take endeavour to make substantial due in future and if he desires, he can go with the bank for One Time Settlement and in such case, the bank shall consider to reduce the interest component enabling the petitioner to settle or wipe out the entire loan in one stroke ;

(3) Till such closure of the loan amount by completely repaying the loan amount, by way of One Time Settlement, the present arrangement of paying Rs.2,000/- on voluntary basis from the petitioner shall continue.

No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

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22.07.2019

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