BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2020

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD).No.16960 of 2019

P.M.Neelamegam .. Petitioner

Vs

1.The Senior Manager,
Indian Bank,
Asset Recovery Management (ARM) Branch
100-101, East Avana Moola Street,
Madurai-625 001.

2.The Manager,
Indian Bank,
Ariyamangalam Branch,
Ariyamangalam,
Trichy-620013. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the first respondent to return the sum of Rs.2,00,000/-(Rupees Two Lakhs only) with interest from the date of deposit held in "No lien" account.

For Petitioner : Mrs.D.Geetha
For Respondents : Mr.Pala Ramasamy
Standing Counsel

O R D E R

This writ petition has been filed seeking for issuance of Writ of Mandamus directing the first respondent to return a sum of Rs.2,00,000/-(Rupees Two Lakhs only) with interest from the date of deposit, held in "No lien" account.

2.According to the petitioner, the petitioner has availed five loans from the second respondent Bank and out of which, four loan accounts had already been settled. The fifth loan was availed by the petitioner in the name of "Sri Krishna Surgicare", which belonged to the petitioner's son. It is further stated that the petitioner was a guarantor of the loan taken by the third person by name C.Kannan. The outstanding loans standing in the name of his son could not be repaid in time and hence, the petitioner requested the second respondent to provide one time settlement to settle the outstanding dues. Therefore, the petitioner has agreed to deposit a sum of Rs.2,00,000/- in a "No lien" account to show his bonafide and further, a sum of Rs.2,00,000/- in another "No lien" account towards settlement of loan taken by the third party for which, the petitioner stood as a guarantor. The petitioner deposited the said amount of Rs.2,00,000/- in "No lien" account to consider the one time settlement proposal submitted by the petitioner's son and another sum of Rs.2,00,000/- in another "No lien" account towards one time settlement proposal in relation to the loan taken by one Mr.C.Kannan.

3.Now, it is represented before this Court that the settlement proposal was accepted in respect of one account and the respondent Bank has proceeded to recover the amount in relation to other loan account, since the settlement did not fructify. Hence, the petitioner approached the respondent/Bank for refund of the amount, which was deposited by the petitioner in "No lien" account with interest. However, the amount was not permitted to be withdrawn by the petitioner with interest. The petitioner has therefore filed the present writ petition.

4.Though the petitioner admits that out of two deposits in "No lien" account, the petitioner has withdrawn the amount deposited in "No lien" account in respect of one loan transaction. The present writ petition is filed to direct the first respondent to return a sum of Rs.2,00,000/- with interest from the date of deposit held in "No lien" account.

5.The respondent Bank does not dispute its liability to refund of Rs.2 lakhs. The short question arises in this writ petition is whether the petitioner is entitled to get interest for the deposit, which he had made with the first respondent Bank under "No lien" account.

6.It is to be seen that the amount deposited by the petitioner in "No lien" account is to facilitate repayment under one time settlement. The Bank is entitled to have a lien in terms of Section 171 of the Indian Contract Act, if there is no contract contrary. If any amount is paid towards one time settlement to close any loan account, the borrower is required to pay the initial amount to show his bonafide in a 'no lien' account. In such instance, the Bank cannot exercise their right to appropriate in terms of Section 171 of the Indian Contract Act, as there is a contract contrary. This arrangement is only to avoid the Bank exercising their right of lien and to enable the borrower to withdraw the amount, in case the settlement proposal does not fructify. The amount deposited in such "No lien" account is to facilitate repayment under settlement. If the amount is lying in the deposit and the settlement is arrived at, the Bank as part of the settlement appropriate the amount in "No lien" account without any interest. However, if no settlement is reached, the petitioner or the borrower is entitled to withdraw the amount with interest by treating the amount as lying in deposit under any one of the scheme offered by the Bank. The minimum interest cannot be denied by the Bank. Even though in the counter affidavit, it is stated that the amount remitted will not fetch any interest as it is deposited in a current account, the respondent Bank has not produced any Rules or Norms which are framed by the Reserve Bank of India in this regard, before this Court. If the borrower pays any amount as a deposit in a "no lien" account expecting that there is a possibility of one time settlement or settlement, such amount goes to the Bank and utilized by the Bank unless the proposal is withdrawn and money is returned. Once the settlement does not fructify, the borrower should be allowed to withdraw the amount which was deposited to facilitate the terms made before the initiation of the settlement process.

7.As regards the rights of the respective parties, the status quo should be restored. In a case, where the settlement failed after considerable time and the Bank does not agree to pay interest, the Bank cannot be permitted to take undue advantage or reap unjust enrichment.

8. As in the present case, money was deposited under "no lien" account and the settlement had not taken place, it is inequitable to deny interest payable to the petitioner for a period of 7 years. This Court, however, considering the overall situations, fix 7% interest as payable by the respondent Bank. Accordingly, the first respondent is directed to return a sum of Rs.2,00,000/- with interest at the rate of 7% p.a., from the date of deposit held in "no lien" account till the date of payment, which shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

9.With the above direction, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

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