



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.08.2021

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

WEB COPY

W.P(MD)No.15350 of 2021

and

W.M.P. (MD) .No.12257 of 2021

1. J.Megala
2. N.Sanjay
3. N.Nivetha Priya

... Petitioners

Vs.

The Canara Bank
Rep. by its Branch Manager,
Inamkulathur Branch,
Asari Street, Inamkulathur,
Trichy District,
Tamil Nadu - 620 009.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondent from in anyway auctioning or alienating the gold jewels of the petitioners pledged in loan account numbers 1505842055174, 1505842055478, 1505842058231, 1505836000583, 1505842058230 and 1505842058990 in the Respondent bank at any future date and consequently direct the Respondent Bank to receive the repayment of the outstanding loan amount with interest from the Petitioners and release the petitioners' gold jewels pledged in the said loan account numbers.

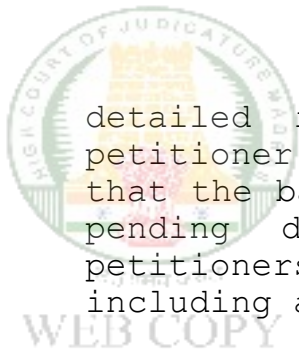
For Petitioners : Mr.Arul Vadivel @ Sekar
For M/s.Wilson Associates

For Respondent : Mr.C.Karthick,
Standing Counsel.

ORDER

The petitioners seek a direction to restrain the respondent from auctioning or alienating the gold jewels pledged under six (6) loan accounts of the petitioners. The first petitioner states that her husband Mr.B.Nirmal Kumar was a former employee of the Canara Bank, who was dismissed from service on 28.07.2020. The challenge to the order of dismissal is said to be pending before this Court in W.P.(MD).No.13818 of 2021.

2. The petitioners state that they had availed of gold loans from the Canara Bank under six (6) loan accounts which are



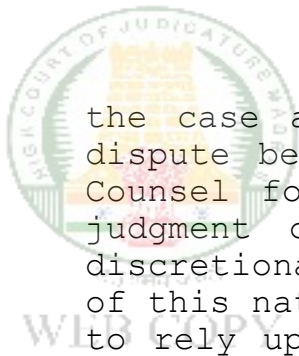
detailed in Paragraph No.3 of the affidavit. When the first petitioner took steps to redeem the pledged jewels, it is stated that the bank refused to permit such redemption on the basis of the pending disciplinary proceedings against her husband. The petitioners have also submitted request letters in this connection, including a request letter dated 04.01.2021.

3. Learned counsel for the petitioners refers to and relies upon three (3) judgments of this Court. The judgment in ***Latha Vs. The Regional Manager Syndicate Bank and others 2016 SCC Online MAD 28343*** is cited to contend that the jewels are liable to be returned as long as the borrower is willing to repay the loan amount with contractual interest. Likewise, the Division Bench judgment of this Court in ***M.Santhi Vs Bank of Baroda in W.P. (MD). No.12613 of 2016*** is relied upon. By referring to this judgment, it is contended that a mortgagor is entitled to redeem the mortgage by paying amounts due and payable to the bank concerned. Likewise, the said judgment is also relied upon for the proposition that a lien cannot be exercised by the bank in relation to an independent loan transaction when the borrower is willing to discharge the entire liability as regards the relevant loan transaction.

4. Mr.C.Karthick, learned Standing Counsel, accepts notice on behalf of the respondent bank. He submits that the husband of the first petitioner was an employee of the bank. On instructions, he submits that such employee had unlawfully and fraudulently sanctioned fake loans and credited the loan proceeds to the accounts of his wife and his children. Therefore, he states that the petitioners are not entitled to the relief claimed in this writ petition.

5. In exercise of extraordinary jurisdiction under Article 226 of the Constitution, ordinarily, the Court does not exercise discretionary jurisdiction in matters relating to loan transactions between a borrower and lender. The reason for such non-interference is that such loan transactions would depend on the terms and conditions of the respective loan agreement, the liabilities under the aforesaid loan accounts, the securities furnished in relation thereto, including the terms and conditions under which such securities were furnished. Consequently, such disputes often involve disputed questions of fact which cannot be conveniently or appropriately addressed by affidavit evidence.

6. In the case at hand, there is an additional layer of complexity inasmuch as the husband of the first petitioner was an employee of the bank concerned. While functioning as an employee of the bank, the bank's allegation is that he sanctioned and disbursed bogus loans and credited the proceeds thereof to the accounts of the petitioners herein. Therefore, the disputed questions of fact in



the case at hand are greater and more complex than in a typical dispute between a borrower and lender. Although learned Standing Counsel for the petitioners cited two (2) judgments, including a judgment of the Division Bench of this Court, in exercise of discretionary jurisdiction, I am not inclined to entertain a dispute of this nature. There is no doubt that the petitioners are entitled to rely upon the principles relating to redemption of a pledge in appropriate proceedings before a competent civil court.

7. With the above observations, W.P.(MD).No.15350 of 2021 is disposed of by leaving it open to the petitioners to institute proceedings before an appropriate civil court seeking the relief sought herein. There will be no order as to costs. Consequently, connected W.M.P.(MD).No.12257 of 2021 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

TheBranch Manager,
Canara Bank
Inamkulathur Branch,
Asari Street, Inamkulathur,
Trichy District,
Tamil Nadu - 620 009.

+1 CC to M/s.P.WILSON ASSOCIATES, Advocate (SR-27692[F] dated 31/08/2021)

W.P(MD)No.15350 of 2021
31.08.2021

RD(7.09.2021) 3P 3C