



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.15812 of 2020

M.Sangiliraj

... Petitioner

-Vs-

1.State Bank of India,
Rep.by Chief Manager,
Rajapalayam Branch,
Rajapalayam,
Virudhunagar District.

2.Indian Bank,
Rep. by Branch Manager,
Rajapalayam Branch,
Rajapalayam,
Virudhunagar District.

... Respondents

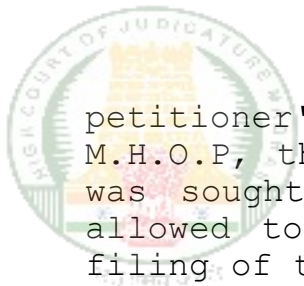
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents Bank to permit the petitioner as curator of his wife Rosalin Mary to operate and withdraw the amount from the accounts (Saving Account No.11099227663, Fixed Deposit No.34716918528 and SBI Mutual Funds Deposit in folio No.16960999 and 16961255) with the first respondent Bank and the accounts (Savings Account No.514770523 and Fixed Deposit No.939594174) with the second respondent Bank which are stand in the name of Rosalin Mary.

For Petitioner	: Mr.M.Arumugam
For R1	: Mr.G.Radhakrishnan
For R2	: Mr.C.Jawahar Ravindran

ORDER

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent Bank. Considering the nature of relief to be granted, notice to the second respondent is dispensed with.

2.The petitioner's counsel states that his wife Rosalin Mary was working as nurse in the Kelavikulam Primary Health Hospital, Virudhunagar District. She retired on 28.02.2018 on reaching the age of superannuation. Thereafter, she is said to have contracted certain mental ailments. The petitioner therefore filed M.H.O.P.No.2 of 2018 before the District Court, Virudhunagar at Srivilliputhur seeking appointment as a curator under the Mental Health Act, 1987. The said petition was allowed on 21.01.2020 and the petitioner was appointed as curator for his wife. The



petitioner's counsel brings it to my notice that in the said M.H.O.P, the respondent Bank are very much parties. But no relief was sought against them. The petitioner however is not being allowed to operate the wife's bank account and that necessitated filing of this writ petition.

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3.Though the submissions of the petitioner's counsel are persuasive, as rightly pointed out by the learned counsel for the Bank, having filed M.H.O.P before the jurisdictional Court under the relevant provisions of the statute, the petitioner has to necessarily work out his rights only there. The petitioner could have as well sought relief against the respondent Bank in the said M.H.O.P. This was not done. Therefore, I permit the petitioner to file I.A in the said M.H.O.P No.2 of 2018 on the file of the District Court, Virudhunagar, Srivilliputhur.

4.I am conscious that M.H.O.P was filed under the Mental Health Act, 1987 which has been repealed by the Mental Health Care Act,2017.

5.The petitioner's counsel would point out that there is no provision for appointment of a curator and other relief under the New Act. Be that as it may, the case of the petitioner rests entirely on the order dated 21.01.2020 in M.H.O.P.No.2 of 2018. The remedy will have to be found only before the very same Court which passed the order. Therefore, I permit the petitioner to file I.A. and I direct the learned trial Judge to number the said I.A for the relief now sought for in the writ petition. The learned trial Judge is directed to number the said I.A and without going into the issue of maintainability, decide the matter entirely on merits.

6.The learned counsel for the bank would state that the current mental condition of the petitioner's wife is not known. Therefore, this is a matter that definitely calls for summary enquiry atleast. The learned Judge disposed of M.H.O.P.No.2 of 2018, is competent to undertake such an enquiry and not the writ Court. Thus, relegating the petitioner to seek relief now sought for before this Court in the said M.H.O.P.No.2 of 2018 by filing an IA, the Writ Petition is disposed of. The learned trial Judge is requested to dispose of the application to be filed by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

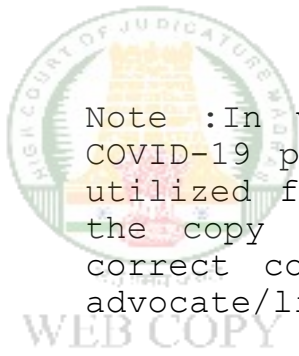
Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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

The Principal District Judge,
Virudhunagar(Dt) at Srivilliputhur.

W.P.(MD)No.15812 of 2020
08.02.2021

(NSM) CO
AP(23/02/2021) 3P 2C