ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

W.P.O. No.1108 of 2021

Subhasis Bandyopadhyay.
Versus
Central Bank of India & Anr.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date : 21st February, 2022.

Mr. Ranajit Chatterjee
With Mr. Aniruddha Mitra, Advs.
… for Writ Petitioner.

Mr. Gautam Chakraborty, Adv.
… for Respondents..

The issues which fall for consideration in the instant writ petition are manifold. The petitioner has, however, restricted it towards his objection to recover the outstanding loan amount from the provident fund money of the petitioner. The petitioner says that the character of the money on account of provident fund does not change even if the same is retained by the employer or the authority concerned as its custodian. It continues to remain as provident fund being part of the employee's retiral benefit and the same cannot be touched for realising any outstanding loan taken by the employee (here the petitioner) from the bank which has remained unpaid.

Objecting to petitioner's contention, the respondent bank in its affidavit, has contended that there were three loans altogether. One of such loans has been availed as Provident Fund Staff loan. The interest rates in respect of the three accounts are different. The bank says that they are entitled to recover any unpaid loan along with interest and penal interest from its employee like the petitioner from his provident fund dues of the petitioner. Relying upon page 60 of the bank's affidavit it is submitted by the bank that it is entitled to recover any outstanding loan amount with interest and penal interest from the petitioner's provident fund account on there being any default.

The fact remains that the provident fund amount, after deduction of a sum of Rs.6,37,299/- has been paid to the petitioner. The petitioner was also dismissed from services with effect from 24th January, 2014. The order of dismissal has been confirmed by Division Bench of this Court by an order dated 27th April, 2021. The question is whether such deduction can be made or not. Be that as it may, taking a practical approach to the matter since the petitioner has been dismissed from services as far back as on 24th January, 2014 and that the provident fund amount, after deduction, has already been disbursed to the petitioner, there can be a settlement in terms of Clause 7.11(ii) of the Recovery Policy of the respondent bank. Although, an out of Court settlement between the parties have failed and that, Court cannot re-write the agreement between the parties but a balance can be struck, keeping in mind that the petitioner is a former employee of the respondent, by removing the penal interest and reducing the interest charged by the bank to a fair and reasonable rate. As per the loan agreement the interest, at the rate stipulated therein, is recoverable from the petitioner. At the same time, the petitioner had pledged the Life Insurance Policies as securities against the loan. The Life Insurance policies were admittedly neither encashed nor returned on the date of maturity of each of such policy to the petitioner. If the bank had enforced the securities in form of policy at the time of default the balance outstanding would have been reduced which the bank did not opt. At the same time having failed to return the LIC policies, the bank has deprived the petitioner from deriving benefit therefrom. The net result is that the petitioner lost interest. By equating the loss of interest by the petitioner with the interest charged by the bank against the three loan accounts, I think justice will be subserved if the rate of interest with regard to the two loan accounts (except the Provident Fund Staff loan) is reduced to 6% per annum from the applicable rate to arrive at an acceptable situation for the parties without keeping the issue pending any further which is inevitable if the question of legality of the deduction has to be decided. The bank is directed to reconcile the outstanding amount on the two loan accounts except the Provident Fund Staff Loan and arrive at a figure by applying interest @ 6% per annum on the outstanding amount in the said two accounts instead of applying the contracted rate and penal rate. The difference between Rs.6,37,299/- and the reconciled outstanding amount in the three loan accounts by reducing the applicable interest in respect of two accounts as aforesaid (except the Provident Fund Staff Loan), if any, shall be refunded to the petitioner. The entire exercise of computing the amount by reconciling the three loan accounts in the manner, as aforesaid, shall be done within a period of three weeks from date. The bank shall pay the petitioner the amount, if any, on such reconciliation within a period of two weeks thereof.

Nothing further remains to be adjudicated.

The writ petition is accordingly disposed of.

(ARINDAM MUKHERJEE, J.)

K. Banerjee
A.R. [C.R.]