

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5855 OF 2021

SHAHURAO VASANTRAO GAIKWAD

VERSUS

MAHARASHTRA GRAMIN BANK,
A SCHEDULED BANK ESTABLISHED BY GOV. OF INDIA,
SPONSOR BANK AND OTHERS

Advocate for Petitioner : Mr. J.A. Menezes

Advocate for Respondent Nos. 1 to 3 : Mr. Pradeep Shahane

**CORAM : A.S. GADKARI AND
S. G. MEHARE, JJ.**

DATE : 18.02.2022

P.C. :

1. By the present petition, the petitioner co-borrower has prayed for a writ of mandamus or any other appropriate writ or direction to the respondents to release the amount of pension of Rs. 6,25,500/- along with interest at the rate of 5 % p.a., illegally recovered from the petitioner's Pension Saving Bank Account No. 54259007090 by the respondents.

2. We have heard Mr. Menezes, learned counsel for petitioner and Mr. Shahane, learned counsel for respondents. Perused record annexed to Writ Petition.

3. It is an admitted fact on record that, the petitioner along with his daughter namely Ms. Rucha Shahurao Patil (Gaikwad) and wife Smt. Ratnamala Gaikwad had obtained Educational Loan of Rs. 4,00,000/- for pursuing Masters Degree by Ms. Rucha Patil, on certain terms and

conditions. The said amount was accordingly disbursed by the respondent No. 1. The borrowers thereafter did not repay the said amount and in due course of time it got accumulated. The respondents in furtherance of the various documents executed by the petitioner, thereafter deducted an amount of Rs. 6,25,500/- from the saving account of the petitioner being co-borrower of the said loan.

In this brief premise present petition is filed for the aforestated relief. In addition to the said relief, petitioner has also prayed for quashment and setting aside of notice dated 11.12.2020, calling upon the petitioner to repay the entire loan along with interest availed by him.

4. It is the contention of the learned counsel for the petitioner that, the deduction of amount or recovery of amount of Rs. 6,25,500/- from the pension saving bank account of petitioner is illegal and bad in law and the respondents have no authority in law to do the same.

5. As far as notice dated 11.12.2020 issued by the respondents bank is concerned, it is a simplicitor notice calling upon petitioner to repay the loan amount availed by them. According to us, it is well within the four corners of law and there is no perversity in issuing the notice by the respondents. As far as the contention of the petitioner that, the recovery of amount from his pension saving bank account is illegal is concerned, we are of the view that, there is no illegality committed by the respondents in recovering of the said amount. It is an admitted fact on record that, the petitioner has availed the loan from respondents and has

executed various documents towards its Security. Despite repeated demands from the respondent Bank, the petitioner did not repay it. We, *prima facie*, find no illegality in deduction of the said amount from the petitioner's pension saving bank account. The learned counsel for the Bank submitted that, the amount so deducted by his client is as per the provisions of law.

6. It is the settled position of law that, money claims *per se* particularly arising out of contractual obligations are normally not entertained except in exceptional circumstances in writ jurisdiction under Article 226 of the Constitution of India. It is also the settled position of law that, disputed questions of fact wherein documentary evidence for determination of issue involved is necessary, should not be dealt with by the High Court under Article 226 of the Constitution of India. Reliance is placed on the decisions of the Hon'ble Supreme Court in the cases of Joshi Technologies, International Inc. V/s Union of India and Others, reported in (2015) 7 SCC 728 and Punjab National Bank and Others V/s Atmanand Singh and Others, reported in (2020) 6 SCC 526.

8. In view of the settled principles of law as noted herein above and taking into consideration the facts involved in present case, we are of the opinion that, there are no merits in the petition and is accordingly dismissed.

[S.G. MEHARE, J.]
SPC

[A.S. GADKARI, J.]