BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.07.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.6281 of 2012

R.Dwaraganathan ... Petitioner

Vs.

1.The Branch Manager,
IDBI Bank,
"Sree Venkateswara",
No.1, 3rd Main Street,
Subramaniapuram,
College Road,
Karaikudi-630 002,
Sivaganga District.

2.Sreejith S.Nayar ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent Bank to re-transfer the amount of Rs.1,58,500/- respectively which are fraudulently transferred from the account of the petitioner with the first respondent Bank bearing Account No.283104000026886 on 25.02.2011 by one Sreejit S.Nayar namely the second respondent herein to his account.

For Petitioner : Mr.R.Sundar Srinivasan

For R-1 : Mr.S.Madhavan
for Mr.G.Sridharan

For R-2 : No appearance

ORDER

The present writ petition has been filed seeking a Writ of Mandamus, directing the first respondent Bank to re-transfer the amount of Rs.1,58,500/-, which was fraudulently transferred from the account of the petitioner with the first respondent Bank by the second respondent herein to his account.

2. It is the contention of the writ petitioner that he was having an account that the first respondent bank in Karaikudi Branch. According to the learned Counsel for the writ petitioner, on 25.02.2011 by way of four different transactions on the same date, the second respondent has committed an online fraud and taken away the amount lying in the account of the writ petitioner and credited to it to his own account. On

verification, the petitioner came to know that this has been done un-authorizedly by way of a fraudulent means. Immediately, the petitioner has lodged a complaint and based upon the said complaint, the first respondent Bank has also frozen the account of the second respondent. Thereafter, the petitioner is making repeated request to the first respondent Bank to re-transfer the amount which was illegally transferred from his account by the second respondent. Since there was no response from the first respondent Bank, the present writ petition has been filed seeking Mandamus as against the bank to re-transfer the said amount to the petitioner's account.

3. Efforts that were made to serve the second respondent herein have ended in futility. The learned Counsel appearing for the first respondent Bank had contended that criminal prosecution has been lodged as against the second respondent herein before the Court in Kerala and the second respondent is facing trial. According to the learned Counsel for the first respondent Bank, any re-transfer of the amount at this stage would affect the criminal prosecution. According to the learned Counsel for the first respondent, the online fraud that was

done by the second respondent herein is a material object before the said criminal Court. Any de-freezing of the account of the second respondent and thereafter re-transferring the amount to the credit of the writ petitioner would affect the criminal prosecution as against the second respondent. Hence, he contended that the writ petitioner has to await for the disposal of the criminal case.

4. I have considered the submissions made on either side.

5. According to the learned Counsel for the writ petitioner, he had deposited Rs.18,000/- on 28.02.2011 and the said amount has been illegally withdrawn by the second respondent. Thereafter, on 25.02.2011, by way of four different transactions on the same date, the second respondent has illegally withdrawn some amount from the account of the writ petitioner. Even, according to the Bank, the said amounts have been withdrawn by the second respondent by breaching the security key and by way of an online fraud. For the said online fraud, the second respondent is facing criminal prosecution.

6. Admittedly, the account of the second respondent has been frozen and the amounts which were wrongly debited from the account of the writ petitioner are still in the account of the second respondent. Hence, there cannot be any impediment for the first respondent bank in re-transferring the said amount to the writ petitioner account. Any re-transfer made pursuant to the orders of this Court will not affect the criminal prosecution as against the second respondent herein. Even, as per the case of the first respondent Bank, the security key has been breached by the second respondent and he has illegally withdrawn the said amount from the account of the writ petitioner. Hence, the first respondent Bank would not be put to any difficulty in case of re-transfer of the said amount in favour of the writ petitioner.

7. In view of the above said discussion, the first respondent Bank is directed to re-transfer the amount which have been illegally transferred into the account of the second respondent herein. The writ petitioner shall give a personal bond for the same and get the amount re-transferred in his name. The bank shall complete the said exercise within a period of two (2) months from the date of receipt of a copy of this order.

8. The Writ Petition stands allowed. No costs.

18.07.2022

Index : Yes / No
Internet : Yes / No
btr

To

The Branch Manager,
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No.1, 3rd Main Street,
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College Road,
Karaikudi-630 002,
Sivaganga District.

R.VIJAYAKUMAR, J.

btr

Order made in
W.P.(MD).No.6281 of 2012

18.07.2022