

3rd August, 2023
(D/L No.43)
(SKB)

W.P.A. 24048 of 2018

Kalidasi Ray(Bhandary)
Versus
Allahabad Bank and others

Mar. Satyajit Mondal,
Mr. Amar Nath Sen,
Mr. Malay Dhar,
Mr. P. K. Ghosh,
Mr. Amit Bikram Mahata
... for the petitioner.

Ms. Sangita Misra
... for the respondent Bank.

1. Both the writ petitioner and the respondent Bank (previously Allahabad Bank now Indian Bank) and its officials are represented by their respective learned advocates.
2. On behalf of the respondent Bank and its officials an accommodation has been sought for.
3. Considering the long pendency of the matter and considering the urgency as involved in the instant writ petition, prayer for accommodation is considered and rejected.
4. By filing the instant writ petition, the writ petitioner has prayed for issuance of writ of mandamus against the respondent Bank as well as its officials from withholding the pensionary benefits of the writ petitioner which are lying in her pension account being 50320661680 with Shyambasur Chak Branch

in district South 24 Parganas with a further prayer to direct the Bank authority to allow her to operate her another account bearing No.50306038968 lying with Dalanghata Branch in village and Post Office Ratneswarpur, Diamond Harbour, Dist. 24 Parganas.

5. At the very outset, learned advocate for the writ petitioner draws attention of this court to page 18 of the writ petition being Annexure 'P-1' which is the details of the pension account of the present writ petitioner lying with the respondent no.1 Bank. Attention of this court is also drawn to Annexure 'P-2' being the details of another savings account of the present writ petitioner with the respondent no.1 Bank with Dalanghata Branch.
6. It is submitted that since the writ petitioner could not repay her loan, the respondent Bank started a recovery proceeding under the SARFAESI Act, 2002 which is evident from Annexure 'P-4' and during the pendency of the said SARFAESI proceeding, the respondent no.1 Bank most illegally prohibited the present writ petitioner from withdrawing her pension from her pension account as well as the money lying in the other savings account which has been transferred from the pension account taking advantage that two such accounts are lying with the respondent no.1 Bank. It is further submitted on

behalf of the petitioner that it is settled position of law that a pension account and/or the other deposits which has been converted from pension account cannot be prohibited to be withdrawn and even then the respondent Bank without any authority or without any order of any competent court of law did not allow the present writ petitioner to withdraw her money either from the said pension account or from the said savings account wherein a sum of Rs.1,85,000/- has been transferred.

7. In support of his contention, learned advocate for the petitioner places reliance upon a reported decision of *Radhey Shyam Gupta Vs. Punjab National Bank and another* reported in (2009)1 CHN (SC) 125. The relevant portion of which is as under:

“24. Having considered the submissions made on behalf of the respective parties, we are inclined to accept Mr. Mentals submission that the order impugned in the revision petition before the High Court did not attract the bar of the proviso to sub-section (1) of section 115 of the Code as it sought to finally decide the manner in which the decree passed in Suit No. 66 of 1992 by the learned Additional and Sessions Judge, Bayana, Rajasthan, was to be satisfied. However, we are also of the view that having regard to proviso (g) to section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be

satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the Trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into Fixed Deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in the Jyoti Chit Fund case (supra) has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a Court decree in view of proviso (g) to Section 60(1) of the Code.

26. The High Court, in our view, erroneously proceeded on the basis that a concession had been made by the appellant that he was willing to have the decretal amount adjusted partly from his fixed deposits, which represented his retiral benefits and that he had also volunteered to produce the vehicle before the Bank so that the same could be sold to recover the major portion of the dues. Furthermore, although the Bank was entitled to proceed both against the principal-debtor and the guarantor for recovery of its dues, the mode of recovery was prescribed by the Trial Court, which, in our view, clearly indicates that the Bank should at first recover whatever amount it can from the sale of the

Matador. The right of the Bank to proceed against either the principal-debtor or the guarantor stood restricted by the directions or the Trial Court. Except for recording that the vehicle was not traceable, nothing is recorded in the impugned judgment of the High Court as to what steps were actually taken by the Bank for recovery of the Matador for sale in order to recover its decretal dues. In our view, instead of disturbing the order of the Executing Court, which was passed in consonance with the provisions of the Code of Civil Procedure, the High Court should have directed the respondent Bank and the Executing Court to seriously pursue the recovery of the Matador or against any other property of the principal-debtor, having particular regard to the finding of the Executing Court that the said fixed deposits represented the retiral benefits of the appellant.”

8. In course of reply, learned advocate for the respondent no.1 Bank could not place any scrap of paper which authorizes the respondent Bank to stop transaction of a pension account though learned advocate for the respondent Bank contended that in the loan agreement, there was a clause by which the Bank can withdraw its due from the other accounts of the borrower who is the writ petitioner herein.
9. This court has considered the rival contentions of the contending parties. This court has also perused the reported decision of Radhey Shyan Gupta (supra).

10. It is undisputed that account no. 50320661680 lying with Shyambasur Chak Branch of the respondent no.1 Bank is a pension account and, therefore, in view of the proposition of law as laid down in the case of Radhey Shyam Gupta(supra), the respondent no.1 Bank has no right to create any obstruction upon the writ petitioner from withdrawing her pensionary benefits from her pension account. It also reveals that in account No.50306038968 which is a savings account lying with Dalanghata Branch of the respondent no.1 Bank, a sum of Rs.1,85,000/- was transferred from the pension account of the writ petitioner to the said savings bank account and in view of the proposition of law in Radhey Shyam Gupta(supra), the respondent Bank authority also cannot cause any hindrance to withdraw the money which has been transferred from the pension account.
11. In view of such, the instant writ petition is hereby allowed on contest. the respondent Bank i.e. the Indian Bank and its other officials especially the Manager of Shyambasur Chak and Manager of Dalanghata Branch are hereby directed not to cause any hindrance to the present writ petitioner in withdrawing her pension from her pension account being account no. 50320661680 as well as

withdrawal of Rs.1,85,000/- from the account no. 50306038968 as lying with Dalanghata Branch. The branch managers of the aforesaid two branches of the respondent no.1 Bank are further directed to refund the entire arrear pensionary benefits, if there be any as payable to the writ petitioner within a period of 15 days from the date of communication of this order.

12. With the aforementioned observations, it is made clear that the time limit as fixed by this court is mandatory and in the event such order is not complied with within the time as fixed by this court, the branch managers of the aforesaid two branches of the Indian Bank may face necessary consequences in accordance with law.
13. All the parties are directed to act on the server copy of this order.
14. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Partha Sarathi Sen, J.)