

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 414 OF 2019

Pravin Damodardas Thakkar	...	Petitioner
versus		
Canara Bank and Others	...	Respondents

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Mr.Hara Kar with Mr.Mainak Adhikary and Mr.Amit Kumar
Sanghavi i/b. Inter Juris for the Petitioner.

Mr. Piyush Shah with Mr. Jay Vora for Respondent Nos. 1 to 3.

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**CORAM : NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 9 JUNE 2023

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioner is seeking a direction to the Respondents to pay retirement benefits, that is, provident fund, deposit with SWF, SPF differential installment and gratuity with interest therein at the rate of 16% per annum from 1 August 2008 till realization.

3. This is a peculiar case where the Petitioner, who was working with the Respondent- Bank, had stood a guarantor for repayment of education loan advanced by the Respondent- Bank to his son. On

23 December 1996, the Petitioner had given an undertaking to the Bank to repay the subject loan from his retirement benefits. It is an admitted position that the loan account of the Petitioner's son turned into a non-performing asset. Thereafter, the Respondent- Bank has proceeded to adjust the retirement benefits of the Petitioner against the outstanding loan amount of Rs.4,68,935/-, towards gratuity, as per case of the Respondent-Bank. In these circumstances, the Petitioner is before us.

4. The learned Counsel for the Respondent-Bank contends that the Petitioner is bound to comply with the undertaking which is a contract between the Respondent- Bank and the Petitioner, and the Respondent- Bank has appropriated the amount. Reply of the Petitioner to this stand is that the manner in which appropriation is done is not correct and the entire amount need not have been appropriated.

5. As stated earlier, the Petitioner was not only an employee of the Respondent – Bank but had given an undertaking in the capacity as a guarantor to the loan availed by his son. If there is dispute that arises from working of this contract, then it will entail several disputed questions. The learned Counsel for the Petitioner states that all contentions be kept open in this regard. In view of this position, we dispose of the Petition, leaving it open to the parties to

agitate the issue arising from the Petitioner's undertaking and the action of the Respondent- Bank in proceeding on the basis of the said undertaking, subject to limitation.

6. The issues raised by the parties in respect of the contract as above are kept open.

7. If the Petitioner invokes the provision of section 14 of the Limitation Act, we have no doubt that the concerned Court will keep in mind the fact that the Petition was pending in this Court.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)