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W.P. No.7311 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI, J.

WP No.7311 of 2020

and

WMP.No.8731 of 2020

R.P. Somasundaram

... Petitioner

vs.

Indian Overseas Bank,
Rep. by its Manager,
Onnupuram Branch,
Arani,

Thiruvannamalai District – 632 315.

...Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent not to adjust the monthly old age pension remitted in the petitioner's account No.07740100000326 in respondent's bank under the Old Age Pension Scheme of Tamil Nadu State Government.

For Petitioner : Mr.B. Balaji

For Respondent : Mr. K.R. Ananda Gomathy

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the respondent not to adjust the monthly old age pension remitted in the petitioner's Account No.07740100000326 with the



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respondent's bank under the Old Age Pension Scheme of Tamil Nadu State Government.

2. It is the case of the petitioner that he is getting a pension of Rs.1,000/- per month under the Old Age Pension Scheme introduced by the State Government and the said pension amount is remitted in his Account maintained with the respondent's bank. While so, it is averred that his daughter has availed an educational loan and paid three instalments and his monthly pension amount has been adjusted by the respondent for the said loan repayment. Aggrieved over the said action of the respondent, he has taken legal steps against them. But the same has not been responded in a proper manner. Hence this writ petition.

3. Learned counsel for the petitioner submitted that the only source available to the petitioner to eke out his livelihood has been deprived by the attachment of his pension amount by the respondent. Hence, he vehemently opposed the act of the respondent viz., attaching the pension amount of the petitioner, which is impermissible in law as the said amount cannot be attached for clearing any outstanding amount. He drew the the attention of this Court to a decision of the Hon'ble Supreme Court in the case of ***Radhey Shyam Gupta Vs. Punjab National Bank***



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and another reported in 2009 1 SCC 376 more particularly to paragraph

No.33, wherein it has been held that pension and gratuity amount could not be attached for recovering the outstanding amount. In the light of the above, he prays for issuance of appropriate directions to the respondent.

4. Learned counsel for the respondent submitted that the petitioner stood as Surety for the said educational loan, which was availed by the petitioner's daughter. Since, there is no other option available to the respondent, they recovered the loan amount from the petitioner's pension account. In view of the settled position, he has no objection for issuance of any such directions to the respondent.

5. Heard the submissions made by the learned counsel on both sides and perused the materials placed on record.

6. It is not in dispute that the petitioner is getting a pension of Rs.1,000/- under the Old Age Pension scheme introduced by the State Government. Further, it is an admitted fact that the petitioner's daughter has availed an educational loan from the respondent bank and the same is yet to be recovered. It is well settled that attachment of pension amount that too old age pension cannot be made for realization of any



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outstanding as rightly pointed out by the learned counsel for the petitioner and the decision relied upon by him would squarely apply to the facts of the instant case. For better appreciation, Paragraph No.33 of the said decision is extracted hereunder for ready reference :

“33. 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 Jyothi Chit Fund case has been considerably watered down by later decision which have been indicated in para 22 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.”

7. In view of the settled position, this Court directs the respondent bank not to attach the petitioner's pension account for recovering the outstanding amount. However, liberty is granted to the respondent to recover the said amount from the petitioner in any other mode or in the



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manner known to law.

WEB COPY 8. With the aforesaid directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

13.06.2023

Internet : Yes/No

Index: Yes/No

Speaking order/Non-speaking order

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To
The Manager,
Indian Overseas Bank,
Onnupuram Branch,
Arani,
Thiruvannamalai District – 632 315.

M.DHANDAPANI, J.



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