BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2023**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.4803 of 2020
and
W.M.P.(MD) Nos.4179 to 4181 of 2020

S.Jacob P.Jeyakumar ... Petitioner

/vs./

1.The Regional Manager,
Canara Bank,
2nd Floor, Noor Sait Plaza,
BLG Bazar Building,
Perualpuram,
Tirunelveli 627 002.

2.The Manager,
Canara Bank,
Rahmathnagar Branch,
Palayamkottai,
Tirunelveli 627 002.

3.The Manager,
Canara Bank, Perumalpuram Branch,
No.56/B-H, Sara Tucker College Road,
Perumalpuram,
Tirunelveli 627 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the undated impugned communication of the 2nd respondent addressed to the petitioner and quash the same as illegal and consequently direct the 2nd respondent to re-credit a sum of Rs.75,314.43/- that illegally debited in between 01/12/2018 and 01/05/2019 in the bank account of the petitioner in A/C.No. 2998111000742 of Canara Bank, Rahmathnagar Branch, Tirunelveli District.

For Petitioner : Mr.V.Angusamy

For Respondents : Mr.C.Jawahar Ravindran
Standing Counsel

ORDER

The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the undated impugned communication of the second respondent, quashing the same as illegal and consequently directing the second respondent to re-credit a sum of Rs.75,314.43/- that illegally debited in between 01/12/2018 and 01/05/2019 in the bank account of the petitioner in A/C.No.2998111000742 of Canara Bank, Rahmathnagar Branch, Tirunelveli District.

2.The facts necessary for disposing of the above writ petition are herein below briefly set out.

3.The petitioner would submit that he is a retired employee of Canara Bank receiving pension for his services and he has an account with the second respondent's branch and his pension amount is being credited to this account.

4.On 01.07.2019, the second respondent had blocked the operation of this account with effect from the said date. The petitioner had made a representation dated 25.07.2019 to the second respondent to de-freeze this account. To this, the second respondent had issue an undated communication, which is the subject matter of challenge here which intimated that the Bank had automatically blocked his account on account of the unpaid EMI's due under the educational loan extended to his son. The petitioner is a co-borrower for this educational loan with the third respondent's branch. The petitioner had approached the second respondent and informed them that the account with them was being maintained only for receiving the pension. However, the second respondent informed him that since the educational loan was overdue, his account has been blocked. Despite blocking the account, the second respondent had debited a sum of Rs. 75,314.43/- without his concurrence on various dates. This amount was debited towards the educational loan of his son.

5.The petitioner would submit that the interest, which has been imposed on the educational loan, was exorbitant and instead of levying simple interest during the moratorium period, the Bank had levied compound interest. This is challenged by the petitioner before the Debt's Recovery Tribunal, Madurai in S.A.No.398 of 2019. The petitioner had also obtained an order of stay against the recovery proceedings overdue against the educational loan. In these circumstances, the petitioner has approached this Court for the relief set out herein above.

6.The third respondent has filed a counter *interalia* contending that the petitioner has availed the educational loan for the higher education of his son, J.Samuelvijayapathy. On 13.07.2004, a sum of Rs.15,00,000/- was extended as the educational loan. In addition to the educational loan, the petitioner had also availed pension loan from the Bank. The petitioner had also failed to repay the amounts and consequently his account was converted into a non performing asset on 07.04.2018 and the Bank had commenced proceedings under the SARFAESI Act. Demand notice under Section 13(2) dated 07.03.2019 was issued to the petitioner to repay the loan amount. However, the petitioner failed to repay the same and therefore, the Bank had followed it up with the possession notice under Section 13(4), under which symbolic possession of the secured asset was taken. Without repaying the money, the petitioner has rushed to the Debts Recovery Tribunal, Madurai and has filed S.A.No.398 of 2019. The petitioner has also obtained a conditional stay in the above matter. This appeal is still pending disposal.

7.The respondents would submit that the inbuild software computer system of the Bank would, when the loan was overdue, put the defaulter's account on hold from operating the savings bank account. On 01.07.2019, the petitioner's bank account was withhold for non payment of loan. The EMI was being deducted from the SB account only on the instructions given by the petitioner and the allegation that it was credited without the concurrence of the petitioner is absolutely false. The interest was levied as per the terms and conditions of the educational loan and the second respondent Bank has not deviated from the above. As on 31.03.2023, a sum of Rs.25,93,979.02/- is due in the educational loan account of the petitioner. Further, the petitioner is drawing a pension of Rs. 24,425/- from the SB account without paying any amount to the educational loan account. The respondents would submit that the writ petition is without merits and ought to be dismissed.

8.The *Prima facie* argument of the petitioner counsel is that there is no contract between the Bank and the petitioner to deduct the amounts from his account towards the educational loan. The petitioner has already challenged the proceedings initiated by the Bank for attaching his immovable properties by filing S.A.No.398 of 2019 before the Debts Recovery Tribunal, Madurai. Reading of the petition filed therein would indicate that the petitioner has challenged the interest levied therein, which is once again the issue raised in this writ petition.

9.It is the petitioner's case in the proceedings before the Depts Recovery Tribunal, Madurai that a sum of Rs.1,02,617/- has been paid towards excess interest, which has to be adjusted to the main educational loan account. Further in

Ground No.F, the petitioner has raised the following ground:-

"f) The 2nd defendant is doing atrocity by debiting an amuont of Rs.75,314.43/- from my pension account (SB 2998111000742) and credited the same towards the EL account. The said amount had been debited under various dates given below:-

Sr.No	***Date***	***Amount Debited (Rs)***
1	*01.12.2018*	*8573*
2	*12.12.2018*	*54425.29*
3	*01.01.2019*	*8442.38*
4	*01.03.2019*	*47.10*
5	*08.03.2019*	*1500*
6	*22.03.2019*	*219.36*
7	*02.04.2019*	*448.00*
8	*01.05.2019*	*1659.30*
	Total	***75,314.43***

The said deductions cannot be from my pension account. Even Courts cannot do against the judgment debtor, because, the concept of enabling pension is for survival of a retired employee and not for his lavish life. By doing such atrocity the 2nd defendant make the applicant to fell in starvation. Therefore, the above deductions from the pension account of the applicant is illegal in the eye of pension rules."

10.Therefore, considering the fact that these issues are already under the consideration of the Debts Recovery Tribunal, Madurai, the petitioner cannot ride two horses and initiate parallel proceedings. Therefore, the Writ Petition is dismissed. Since the issue is already pending consideration of the Debts Recovery Tribunal, Madurai, the Tribunal shall endeavour to dispose of the same within a period of 4 months from the date of receipt of production of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

14.06.2023

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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P.T.ASHA, J.

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