BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.9685 of 2022
and
W.M.P.(MD)Nos.7308 and 7310 of 2022

Muthaiyan ... Petitioner

vs.

1.The Branch Manager,
Canara Bank, Thuraiyur, Trichy District.

2.The Branch Manager,
Canara Bank (Formerly Syndicate Bank),
Puthanampatti Branch, Trichy District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents Bank not to debit the petitioner's pension amount from his Savings Bank Account No.63632200036865 of the second respondent Bank and re-credit the petitioner's pension amount of Rs.46,888/- debited from pension account and further to direct the respondents Bank to activate the petitioner's ATM card within the time stipulated by this Court.

For Petitioner :Mr.M.R.Sreenivasan
For Respondents :Mr.Pethu Rajesh

*****

ORDER

This Writ Petition has been filed in the nature of a Mandamus seeking a direction to the respondents not to debit the petitioner's pension amount from the Savings Bank Account in No.63632200036865 of the second respondent Bank and re-credit the pension amount of Rs.46,888/- debited from the pension account and to activate the petitioner's ATM account.

2.Heard Mr.M.R.Sreenivasan, learned Counsel for the petitioner and Mr.Pethu Rajesh, learned Counsel for the respondents.

3.I am deeply conscious of the fact that this Court had been called to invoke its jurisdiction under Article 226 of Constitution between a banker and its customer, who are primarily governed by the terms as provided when an Account is opened and have a purely contractual relationship. But the facts, as stated, are quite shocking and therefore, it is only appropriate that this Court exercises its power under Article 226 of Constitution.

4.Even before moving forward on the facts of the case, my attention is drawn to a judgment reported in ***(2009) 1 SCC 376 [Radhey Shyam Gupta vs Punjab National Bank and another]***, wherein, it had been very categorically held that pension and gratuity amount when received by a retiree do not loose their character and continue to be covered by proviso (g) to Section 60(1) of the Code of Civil Procedure. In effect, it had been held that the pension amount cannot be attached or cannot be debited from the bank account of the retiree.

5.In the instant case, the petitioner, who has agricultural lands, had taken an agricultural loan of Rs.6,00,000/- from the first respondent, Canara Bank, Thuraiyur Branch, on 06.12.2013. He had retired earlier as Block Development Officer at Ariyalur. He was receiving monthly pension of Rs.27,492/- through the second respondent, which was formerly Syndicate Bank, Puthanampatti Branch, Trichy District. The said Bank has merged now with the respondent Bank. The wife of the petitioner was also a Government servant, who worked in Government Panchayat Union Centre as a Nurse and had attained superannuation on

30.10.2002. She died in the year 2014. The petitioner is also getting family pension of Rs.13,860/- through the second respondent Bank.

6.Thereafter, consequent to the loan being offered to the petitioner herein, the petitioner had also offered as security, five acres of land in S.No.56/1B and 56/1-D at Elanthalapatti Village, Alathoor Taluk, Perambalur District, worth about, according to the petitioner, Rs. 50,00,000/-. It is claimed that he had repaid a sum of Rs.1,50,000/- towards the loan till the date of filing of the Writ Petition.

7.There were various reasons stated like failure of crops and COVID-19 pandemic, consequent to which the petitioner had suffered loss. Since he could not re-pay the agricultural property loan, he had sought waiver of interest and to settle the loan in an one time settlement. However, from 02.04.2022 onwards, the first respondent had debited the monthly pension amount of Rs.41,234/- and also the arrears of pension of Rs.5,554/- credited in the account of the petitioner. It was under those circumstances that the Writ Petition has been filed.

8.It is stated by the learned Counsel for the petitioner that the entire amount had now been recovered by the respondents and the petitioner had now been left in an extremely penury condition.

9.Section 60(1)(g) of Code of Civil Procedure is as follows:

"60.Property liable to attachment and sale in execution of decree.

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following properties shall not be liable to such attachment or sale, namely:-

.....

(g) stipends and gratuities allowed to pensioners of the Government [or of a local authority or of any other employer], or payable out of any service family pension fund notified in the Official Gazette by [the Central Government or the State Government] in this behalf, and political pensions;"

10.It is very clear that that any stipend/gratuity granted to the pensioners of Government or local authority or payable as service family pension, cannot be the subject matter or liable for attachment for sale.

11.The respondents have violated a basic principles and they have violated this particular provision of law.

12.This provision is affirmed in the aforementioned judgment in ***(2009) 1 SCC 376 [Radhey Shyam Gupta vs Punjab National Bank and another]***, wherein, the Supreme Court was also concerned with attachment of family pension and after discussing the earlier positions of law, particularly the judgment reported in ***(1976) 3 SCC 607 [Union of India vs Jyoti Chit Fund and Finance]***, had stated as follows:

> "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 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."*

13.It is thus seen that the amount deducted by the respondents from the pensionary benefit can be categorised as an illegal deduction. It is pure violation of principles of law as laid in Code of Civil Procedure.

14.A Mandamus is issued directing the respondents to re-credit the amount deducted. The respondents are at liberty to proceed in manner known to law against the security offered by the petitioner, but they cannot deduct the pensionary amount. The Writ Petition stands allowed.

15.Since the respondents have violated the provisions of law and had deducted the pension amount received by the petitioner, costs of Rs.25,000/- is also imposed, which should be borne by the first respondent and paid to the credit of District Legal Services Authority, Perambalur District. The Chairperson, District Legal Services Authority, Perambalur District, may forward the said amount to the Government General Hospital or Primary Health Centre in Perambalur for treatment of poor patients.

16.The Writ Petition stands allowed with costs of Rs.25,000/-. The respondents are directed to re-credit the pension amount unlawfully debited from the account of the petitioner within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Index :Yes / No **12.06.2023**
Internet :Yes
NCC : Yes/No

cmr

C.V.KARTHIKEYAN, J.

cmr

Order made in
W.P.(MD)No.9685 of 2022

12.06.2023