



W.P. No.33062 of 2022

2. It is stated that one K.N. Duraj Raj was the Proprietor of M/s.Sabari Paper Products and availed loan from the respondent bank and thus, he was the principal borrower and the petitioner's mother stood as guarantor for the said loan. While so, the respondent bank filed a suit for recovery of money in O.S. No.123 of 1989 on the file of the Sub Judge, Udumalpet for the recovery of the loan amount. Thereafter, a preliminary decree came to be passed in the year 1994 for a sum of Rs.8.14 lakhs and during the pendency of final decree application the principal borrower as well as the guarantor, who is the petitioner's mother died and the legal representatives were brought on record. Subsequent to passing of final decree, the respondent bank filed an application before the Debt Recovery Tribunal, Coimbatore in O.A. No.43 of 2005 for recovery of sum of 17.16 lakhs as on 24.01.2005. At that point of time, the DRT, Coimbatore passed a decree in O.A. No.43 of 2005 on 10.05.2007, wherein, the petitioner was arrayed as 8th defendant. Pursuant to the aforesaid decree, the petitioner and other defendants were held liable to repay the aforesaid loan amount. It is further stated that aggrieved by the aforesaid decree, the petitioner preferred an appeal in M.A. No.3 of 2021 before the DRAT. As per the directions issued in I.A. No.255 of 2020 in AIR No.80 of 2020, dated 02.11.2020, he complied the precondition stated therein and



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thus deposited two demand drafts, dated 18.11.2020 and 16.12.2020 for a total sum of Rs.30,00,000/-. Shockingly, the said appeal before the DRAT was dismissed on 03.03.2021 and resulted against the petitioner. It is his grievance that the pre-deposit amount of Rs.30,00,000/- along with accrued interest have to be refunded. In such circumstances, he sent a detailed representation dated 22.09.2022 to the respondent bank, ventilating his grievances that he acted as legal heir of the deceased mortgagor viz., Kuttiammal and he is not the mortgagor of the said loan and thereby requested to refund the entire amount of Rs.30,00,000/- with accrued interest from the date of deposit before the DRAT. Hence, this writ petition has been filed with the aforesaid prayer.

3. Learned counsel for the petitioner submitted that the petitioner is not the mortgagor to the said loan and he is the legal heir of the mortgagor. But without considering the same, the respondent bank is insisting for huge amount of refund from the petitioner. Hence, it would suffice if this Court issues direction to the respondent to consider the petitioner's representation, dated 22.09.2022 seeking for refund of entire amount of Rs.30,00,000/- (pre-deposit amount) with accrued interest, within a time frame to be fixed by this Court.



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4. Per contra, Mr.F.B. Benjamin George, learned counsel for the respondent reiterating the counter affidavit submitted that the order passed by the DRAT, dated 03.03.2021 passed in M.A. No.3 of 2021 was confirmed by this Division Bench of this Court vide order dated 15.06.2022, in W.P. No.12852 of 2022. Hence the petitioner's request cannot be considered at any level and the revised amount was worked out and the calculation memo to that effect is filed before this Court, today. Therefore, he prays for mere dismissal of this writ petition.

5. Heard the learned counsel on both sides and perused the entire materials placed on record.

6. Considering the limited relief sought for by the petitioner, this Court without expressing any opinion on the merits of the case directs the respondent to consider the petitioner's representation dated 22.09.2022 on on merits and pass appropriate orders in accordance with law as expeditiously as possible. In the mean time, if the petitioner intends to refund the amount, he is at liberty to make payment. Since, the petitioner has deposited the pre-condition amount, further liberty is also granted to the petitioner to challenge the adverse orders, if any passed by the respondent bank before the appropriate authority.



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7. This Writ Petition is disposed of with the aforesaid directions.

No costs.

24.09.2024

Index : Yes / No
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To
The Branch Manager,
Indian Overseas Bank,
Pollachi Branch
New Scheme Road,
Pollachi,
Coimbatore.



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M.DHANDAPANI, J.

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