



W.P(MD)No.1385 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1385 of 2024

1.P.Mahesh

2.P.Thangaraj

... Petitioners

Vs.

1.The Branch Manager,
Canara Bank,
Boothapandi,
Thovalai Taluk,
Kanyakumari District.

2.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondents to return the gold jewel, weighting of 129 grams, to the petitioner, pledged by petitioner father Pandian, in Jewel Loan Account No.51058, dated 03.12.2020 on the basis of the petitioner's representation dated 04.01.2024.



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For Petitioners : Mr.A.Elis Chitra Devi

For Respondents : Mr.C.Deepak for R.1

Mr.A.Albert James
Government Advocate (Criminal Side)
for R.2

ORDER

Heard both sides.

2. The petitioners are sons of one R.Pandian. The said R.Pandian had pledged the petition mentioned jewellery with the first respondent Bank. Contending that the the father of the petitioner / R.Pandian is missing, the petitioners approached the first respondent for return of jewellery. The Bank rightly declined to honor the petitioners' request. That led to filing of this writ petition.

3. When the matter was taken up for hearing, the learned Government Advocate appearing for the Boothapandi Police Station informed the Court that the said R.Pandian is figuring as A9 in a murder case (S.C.No.158 of 2017 on the file of Additional District Sessions Court, Nagercoil). It is also stated that NBW has been issued against



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him. The case appears to be not a man missing case but the case of absconding accused.

4. As rightly pointed out by the learned Standing Counsel appearing for Canara bank, even according to the petitioners, Pandian is found missing since 2021. The mandatory statutory period of 7 years have not yet lapsed. There is nothing on record to show that Pandian is no more. This Court cannot make any presumption also. At the same time, equities obtaining in this case cannot be lost sight of. What was pledged was the 'Thali Chain' of the petitioners' mother Sathyabama. She passed away on 05.02.2011. There is no dispute that the petitioners are the legal heirs of the deceased Sathyabama along with Pandian.

5. The learned counsel appearing for the petitioners gives an undertaking that the pledged jewellery can be returned to the first petitioner / P.Mahesh and that Mahesh will keep it in his safe custody without alienating the same. The petitioners undertake to clear all the loan liabilities and also execute indemnity bond and comply with all the other formalities that may be required by the first respondent.



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6. Subject to the petitioners paying the outstanding liability and also complying with other usual formalities, the first respondent is directed to return the pledged jewels to the petitioners herein. The first petitioner shall undertake to keep it in safe custody till a formal declaration is obtained from the jurisdictional civil Court. If this undertaking is breached and Pandian moves this Court, the petitioners will be dealt with severely. The question of obtaining Succession Certificate will not arise at all.

7. This writ petition is allowed on these terms. There shall be no order as to costs.

27.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

1.The Branch Manager,
Canara Bank,
Boothapandi,
Thovalai Taluk,
Kanyakumari District.

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2.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.

Copy to

The Additional District Sessions Court, Nagercoil.

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