



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4883 OF 2023

Manik Rewaji Shinde
Age 72 yrs. Occu. Pensioner,
r/o Bhose,
Tq. Pathardi, Dist. Ahmednagar

...Petitioner

VERSUS

The Canara Bank,
(Formerly Syndicate Bank)
Karanji Branch, Tq. Pathardi,
Dist. Ahmednagar
Through its Branch Managaer

...Respondent

...
Mr. Umakant U. Wagh, Advocate for the petitioner.
Mr. Aditya N. Sikchi h/b. Mr.V. R. Patil for Respondent-Bank.

...
CORAM : KISHORE C. SANT AND
ABASAHEB D. SHINDE, JJ.
Date : 26.11.2025

JUDGMENT (PER : ABASAHEB D. SHINDE, J.) :

1. Heard learned Counsel for the petitioner and learned Counsel for the Respondent-Bank.
2. Rule. Rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.
3. By this Writ Petition, under Article 226 of the Constitution of India, the petitioner has challenged the action of Respondent-Bank by which the Respondent-Bank has deducted the amount from Saving Bank Account of the petitioner bearing Account No.51012200000396, on

which the petitioner was receiving pension amount from the government, for recovery of agricultural loan obtained by the petitioner.

4. Learned Counsel for the petitioner contends that the petitioner was serving as a teacher. He retired in the month of December 2008 and started receiving pension from the State Government. He would further contend that the petitioner has obtained a crop loan of Rs.2,00,000/- in the year 2014 from the Respondent-Bank against which the Respondent-Bank has already created a charge on his agricultural land bearing Gut No.93. The Respondent-Bank instead of resorting to the other remedies available in law has started deducting the amount from the saving account of the petitioner and in fact has already deducted the amounts from the said saving account on 22.12.2022, 10.03.2023 and 04.04.2023. The learned counsel for the petitioner submits that the said deduction from the amount of pension is not permissible in view of Section 11 of the Pensions Act, 1871 as well as Section 60 of the Code of Civil Procedure, 1908 and therefore urged that the Respondent/Bank be restrained from recovering amount of crop loan from the pension amount received by the petitioner and that the Respondent/Bank be directed to refund the amount already deducted with interest.

5. Per contra, the learned Counsel for the Respondent/Bank vehemently oppose the Writ Petition mainly assailing the conduct of the

petitioner of suppression of material fact. The learned Counsel for the Respondent/Bank submits that the petitioner has not disclosed that beside crop loan of Rs.2,00,000/- the petitioner and his son have also availed the loan for Floriculture and Polyhouse from the Respondent-Bank and has withheld the said information and therefore would urge that on count of suppression of material fact the Writ Petition deserves to be dismissed.

6. We have considered the submissions advanced by learned Counsel for the petitioner as well as learned Counsel for Respondent-Bank. So far as contention of learned Counsel for the Respondent-Bank that the petitioner has withheld the fact of availing two other loans from this Court and therefore the Writ Petition deserves to be dismissed on count of suppression of material fact is concerned, it would not be out of place to mention that this court by passing an elaborate order on 08.08.2024 has permitted the petitioner to amend Writ Petition to the extend of disclosing other two loan accounts subject to petitioner depositing cost of Rs.5,000/-. The petitioner has accordingly amended the Writ Petition and has disclosed the said two loan accounts. We, therefore, are of the view that these technical objections will not foreclose the relief claimed by the petitioner in the light of what we propose to decide in later part of this judgment.

7. The question now that arises for consideration before this Court is as to whether the Respondent-Bank is justified in deducting the pension amount of the petitioner for realization of the outstanding loan as claimed by Respondent-Bank. While considering the said issue it would be apt to first consider the provisions of Section 11 of the Pension Act, 1871 which reads thus :-

"11. Exemption of pension from attachment - No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure attachment or sequestration by process of any court, as the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court".

8. From the provisions of Section 11 of the Pension Act, 1871 it is clear that the amount of pension has been exempted from the purview of attachment as well as seizure not only by process of any court but even for the satisfaction of decree or order of any Court.

9. It is also settled position of law by virtue of proviso (g) to Section 60(1) of the Code of Civil Procedure, 1908 that the properties which are not liable to be attached or sell includes the amount of pension as well. For better appreciation, it would apt to reproduce the provisions of Section 60 of the Code of Civil Procedure, 1908 which reads thus :-

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 particulars shall not be liable to such attachment or sale, namely:-

(a)...

(b)...

(c)...

(d)...

(e)...

(f)...

(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. Having considered the provisions of Section 11 of the Pension Act, 1871 as well as proviso (g) of Section 60 (1) of the Code of Civil Procedure, 1908 it is amply clear that an amount of pension and gratuity are completely exempted from attachment or seizure in any manner. The issue now is no longer *res integra* by virtue of law laid down by the Hon'ble Apex Court in the case of ***Radhey Shyam Gupta V Punjab National Bank and Anr.*** reported in ***(2009) 1 SCC 376***, wherein it has been held that the pension and gratuity amount would not be liable to attachment in view of proviso (g) to Section 60 (1) of the provision of Code of Civil Procedure, 1908. It would be profitable to reproduce paragraph No.33 of the Judgment in the case of ***Radhey Shyam Gupta*** (supra) which reads thus :-

“33. However, we are also of the view that having regard to proviso (9) 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."

11. In view of law laid down by the Hon'ble Apex Court in the case of ***State of Jharkhand and Ors. v. Jitendra Kumar Srivastava and Anr.*** reported in ***(2013) 12 SCC 210***, a person cannot be deprived of pension without the authority of law, as pension is considered "property" under Article 300A of the Constitution. Any executive or contractual action that takes away the petitioner's money without explicit legal sanction is ultra vires. It would be apt to reproduce the observations of the Hon'ble Apex Court which read thus :-

"It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different"

12. In the light of the observations of the Hon'ble Apex Court in the case of ***Radhey Shyam Gupta*** (supra) as well as ***Jitendra Kumar*** (supra), we are of the considered view that pensionary benefits being the sole means of sustenance for most retired individuals, acquire heightened significance in such circumstances. The withholding or deduction of

pension funds, particularly when such funds are statutorily protected, would not only cause financial distress but also amount to a violation of the petitioner's right to live with dignity.

13. We therefore are of the view that action of Respondent/Bank in initiating recovery from the pension amount of the petitioner bearing Account No.51012200000396, is illegal and unsustainable in law as it violates petitioner's fundamental right to livelihood under Article 21 of the Constitution of India.

14. We are also of the view that if at all the petitioner is liable to pay the loan amount having borrowed from respondent-Bank, it is for the Respondent/Bank to work out for remedy to recover the said amount in manner known to and permissible by law before the appropriate forum. Even otherwise, it has been pointed out that the Respondent/Bank has already resorted to the said remedy by approaching the Debt Recovery Tribunal by filing Original Application for recovery of the loan amount. In that view of the matter, we hold and declare that the unilateral action of Respondent/Bank for initiating recovery from the Saving Account No.51012200000396, in which the petitioner is having his pension amount is bad in law. We therefore are of the view that the Respondent/Bank needs to be directed to refund the amount recovered from the pension amount of petitioner. Hence we pass the following order:-

:: ORDER ::

- i. Writ Petition is hereby allowed.
- ii. The Respondent/Bank is directed not to recover the loan amount from the saving account in which the petitioner is having pension account against the outstanding loan in whatever manner.
- iii. The Respondent/Bank is further directed to refund the amount deducted by it from the pension amount from his saving account bearing Account No.51012200000396 within a period of four weeks from today.
- iv. Rule is thus made absolute in above terms.

(ABASAHEB D. SHINDE, J.)

(KISHORE C. SANT, J.)

Narwade/