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In the Manipur High Court

Case No : Writ Petition (C) No. 175 of 2015

Longjam Narahari Singh — APPELLANT

Vs

The State of Manipur and Others — RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 21, 226

Citation : AIR 2015 Manipur 22

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : N. Mahendra, for the Appellant; K. Jagat, Govt. Advocate and Samom Ibjen, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J.—Heard Shri N. Mahendra, learned counsel appearing for the petitioner; Shri K. Jagat, learned Govt. Advocate appearing for the respondent No. 1 an Shri Samom Ibjen, learned Advocate appearing for the respondent No. 2.

2. By this writ petition, the petitioner is seeking for a direction from this court to direct the respondent No. 2 to allow him to operate his Savings Bank Account No. 10329790536 maintained at the State Bank of India, Imphal Secretariat Branch.

3. The petitioner is presently working and is posted as Peon at the Secretariat, Imphal vide order dated 01-02-1989 and had opened a Savings Bank Account at the State Bank of India, Secretariat Branch through which he had been drawing his monthly salary till recently when the respondent No. 2 restrained him from operating his aforesaid Savings Bank Account. On his enquiry, the petitioner was informed that one Shri Akhom Nimai Singh to whom a Fishery Loan of Rs. 1,80,000/- (Rupees one lakh and eighty thousand) only was granted, failed to repay the loan amount and the petitioner being a Guarantor of the said loan amount, had been restrained from operating his account. The grievance of the

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petitioner is that despite repeated request being made by him, the respondent No. 2 has failed to allowing him to operate his account and the action of the respondent No. 2 has amounted to deprivation of the petitioner of his livelihood and that of his dependants being violative of the Article 21 of the Constitution of India.

4. The writ petition is vehemently contested by the respondent No. 2 by filing an affidavit-in-opposition contending that the writ petition is not maintainable at all because the issue involved herein is purely contractual one. It is further stated that the petitioner stood as Guarantor in respect of the Fishery Loan granted to one Shri Akhom Nimai Singh by executing a Deed of Guarantee and in the "Certificate from the Employer" issued by the State Government and produced by the petitioner, he has agreed to allowing the respondent No. 2 to deduct money from his account towards the re-payment of the loan amount. Despite its repeated demand notices and reminders, since the petitioner failed to persuade the borrower Shri A. Nimai Singh to regularise his loan account, on 31-10-2014, a notice was served upon the petitioner informing that the outstanding amount would be deducted from his Savings Bank Account and for that purpose, the petitioner was not permitted to withdraw money from his account.

5. It is submitted by the learned counsel appearing for the petitioner that the respondent No. 2, instead of resorting to other legal means to recover the loan from the borrower, has restrained the petitioner from operating his account which is arbitrary and unreasonable being violative of Article 21 of the Constitution of India. To substantiate his contention, he has relied upon the decision rendered by the Hon''ble Supreme Court in the case of Union Bank of India Vs. Manku Narayana, AIR 1987 SC 1078 : (1987) 2 JT 24 : (1987) 1 SCALE 669 : (1987) 2 SCC 335 : (1987) 1 UJ 434 wherein the Hon''ble Supreme Court has held that where the decree in execution is a composite decree, personally against the defendants and also against the mortgaged property, the decree holder bank has to proceed against the mortgaged property first and then proceed against the Guarantor. Reliance has been placed in the decision rendered by the Hon''ble Gauhati High Court in the case of Tilendra Nath Mahanta Vs. United Bank of India and Others, AIR 2002 Guw 1 : (2002) 111 CompCas 571 : (2001) 1 GLT 397 wherein the Hon''ble High Court has held that where an amount deposited with the bank in a separate account which has no connection or relation with the loans in suit in a different account, cannot be adjusted in the claim against the suit in the absence of a specific contract.

6. In response to the argument of the learned counsel for the petitioner, the learned counsel appearing for the respondent No. 2 has submitted that the issue involved herein is purely contractual one and that this court may not exercise its discretionary jurisdiction under Article 226 of the Constitution. He has relied upon the decision rendered by the Hon''ble Supreme Court in the case of State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, AIR 1999 SC 1786 : (1999) 2 JT 604 : (1999) 2 SCALE 381 : (1999) 4 SCC 43 : (1999) 2 SCR 323 : (1999)

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AIRSCW 1376 : (1999) 3 Supreme 414 wherein the Hon''ble Supreme Court has observed as under:

"6.....It is true that Article 21 of the Constitution is of the utmost importance, violation of which, as and found, directly or indirectly, or even remotely, has to be looked upon with disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforesaid article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claims relating to the legal or contractual rights of the parties completely ignoring the person approaching the court and the alleged violation of the said right...."

He has placed reliance on Canara Bank and others Vs. M/s. Taraka Prabhu Publishers Pvt. Ltd., and others, AIR 1991 AP 258 : (1992) 75 CompCas 281 wherein the respondents have borrowed loan from the bank which they failed to repay and consequent upon which bank was trying to exercise the right of set-off in terms of the contractual obligations assumed by the respondents by transferring the amounts deposited by them in the current account to the loan account. The Hon''ble High Court observed that it would be far-fetched to say that having borrowed the loans, the respondent''s current account cannot be interfered with for the discharge of the loans as it would result in the deprivation of the rights of the respondents guaranteed to them under Articles 19(1)(a) and 21 of the Constitution of India as they would be prevented from carrying out their profession. The Hon''ble High Court has further observed that the matter falls within the domain of the law of contract and the right of set-off claimed by the bank cannot be denied on the pretext that the transfer of the amount in the current account will result in the negation of the activities of the respondents in publishing the newspaper, weeklies, etc.

7. It is not in dispute that the petitioner stood as Guarantor in respect of the Fishery Loan granted to one Shri A. Nimai Singh by executing the Deed of Guarantee and moreover, he has produced a certificate from his employer wherein he has agreed to recovering the loan amount by the bank from his account in the event of the said loan amount not being repaid by the borrower. In view of these undisputed facts, it cannot be held that the petitioner''s right guaranteed under Article 21 of the Constitution has been infringed and it is the petitioner who has relinquished his right voluntarily and consciously by giving specific instruction to the bank and the respondent No. 2 has simply carried out the said instruction. Further, it is the petitioner who has connected his Savings Bank Account to the loan transaction. The rulings cited by the counsel for the petitioner are not applicable to the facts of the present case and the Hon''ble Supreme Court has not observed therein about the violation of Article 21 of the Constitution when the bank deducted, on instruction, money from the account of

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the Guarantor towards the repayment of loan amount. On the other hand, there is substance in the submissions of the learned counsel appearing for the respondent No. 2 that the issue involved herein is a contractual matter and the rulings cited by the counsel for the respondent No. 2 have relevance as regards the facts of the present case. In case the petitioner is aggrieved by the action of the respondent No. 2, it is open to him to approach the appropriate forum for redressal of his contractual rights. Considering the facts and circumstances of the present case, this court is of the view that this is not a fit case where this court shall exercise its discretionary jurisdiction under Article 226 of the Constitution to interfere with the action of the respondent No. 2 in recovering the loan amount from the account of the petitioner.

8. With the above observations, the writ petition fails and is accordingly dismissed.

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