(2020) 04 CHH CK 0024

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 767 Of 2019

Prabhash Chandra Sardar APPELLANT

Vs

State Bank Of India RESPONDENT

Date of Decision : 25-04-2020

Acts Referred:
Indian Contract Act, 1872 — Section 171

Citation : (2020) 04 CHH CK 0024

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Faisal Akhtar, P.R. Patankar

Final Decision : Allowed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the action of the respondent State Bank of India, Branch Station Road, Durg, whereby the petitioner is restrained to withdraw the money from his saving account as well as not allowing to withdraw money from his recurring deposit (RD) account which has matured in the month of February, 2018.

3. The contention of the petitioner is that he was a retired employee of the Government of Higher Secondary School, Saja, District Durg and he retired from the post of Accountant on 28.12.2009. The Assistant General Manager, State Bank of India, had issued a recovery order dated 27.11.2017 (Annexure P-1) whereby direction/order for recovery has been made to the extent of Rs.7,50,552/- for the reason that from 01.11.2009 to 31.01.2017 excess payment of Rs.807550/- in the account of the petitioner was paid. It is further contended that the petitioner is getting pension of Rs.18,873/- and out of that Rs.6291/- is deducted being 1/3rd. It is further stated that the petitioner has separately filed a writ petition bearing WPS No.3151 of 2018, wherein the co-

ordinate Bench of this Court has passed an order on 19.04.2019 whereby the order of recovery which has been passed on 27.11.2017 (Annexure P-1) has been stayed. Now the present petition is against the freezing of the saving account as well as the recurring deposit account i.e. the RD made by the petitioner.

4. Reply of the respondent State Bank of India would show that the petitioner has retired on 01.11.2009 and the respondent Bank being the disbursing agency of pension has fixed the pension as per the 6 th Central Pay Commission Rule and has wrongly paid the dearness allowance (D.A.) on pension as per the 5 th Central Pay Commission, thereby the petitioner was wrongly paid 5 th CPC DA allowance on his 6th CPC basic pension for the period 01.11.2009 to 31.01.2017 as such the excess payment of Rs.8,07,550/- was paid. It is further stated that the petitioner further was paid pension of Rs.18,873/- and as per the RBI directives 1/3rd of the pension is equal to Rs.6291/- rounded to Rs.6300/- was to be deducted per month and on revision of DA the deduction amount was increased from Rs.6300/- to Rs.6598/- and the mistake came into the knowledge that due to wrong fixation of DA on his basic pay excess payment of Rs.8,07,550/- was paid.

5. Perused the document. Along with the petition certified copy of the order of another writ petition bearing WPS No.3151 of 2018 dated 19.04.2018 is filed, which prima facie shows that the recovery notice so issued was subject of challenge and the co-ordinate Bench of this Court by such order has stayed the recovery as recovery was delayed by 8 years from the date of retirement. In any case that issue of recovery is subjudice and stay is operating for recovery by order of this Court. The petitioner appears to be the senior citizen as of now. The letter dated 27.11.2017 (Annexure P-1) is also perused, wherein no specific direction is on record to withhold the savings or R.D. accounts. It is contended in the Annexure P-4 that both the accounts of the petitioner were blocked and the petitioner was orally informed that he was not allowed to operate the saving bank account and the recurring deposit account including the operation of ATM was stopped. Under what authority such power was exercised, it is not clear. The Banking institutions are are not expected to act in anarchy without following the due process of law. If the account of a person is withheld, he is to be informed about the reason of doing so, it cannot be at the whims and fancies of a Branch Manager or an employee of a Bank, who is required to act following due process of law.

6. Section 171 of the Indian Contract Act, 1872 (for short the Act, 1872) gives bank to exercise the power of general lien. However, in order to invoke the Section 171 specific condition must prevail and in absence of any contract to the contrary it cannot be used as a tool to arm twist a particular depositor to arrest the operation of savings account and the recurring deposit account. For the sake of brevity Section 171 of the Act, 1872 is reproduced hereunder:-

"171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.--Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

7. The letter dated 27.11.2017 (Annexure P-1), which is subject of adjudication in another writ petition do not explicitly say so that power of general lien is exercised. The recovery which is being made is subject of dispute in another writ petition bearing WPS No.3151/2018, in the meanwhile by stopping operation or withholding the account, the bank cannot by pass such order of stay passed by the co-ordinate Bench and the conduct of the officer sounds in contempt. The circular which is been placed on record Annexure R-2 do not allow the freezing of account at the whims of a particular officer. If it has been done by the particular officer, he would be personally liable because he would be acting against the circulars of the Bank.

8. Under the circumstances, it is directed that the saving bank account and the recurring deposit account of the petitioner shall be reopened forthwith which has been put on hold by the Bank and the petitioner shall be allowed to withdraw the amount from his account and/or operate the same according to his own wish and will.

9. Accordingly, the petition is allowed.

