

Misc(J) Case No 54/2012
O R D E R

PRESENT-
Mrs A. Rahman
AJS,Munsiff No – 1
Jorhat.

05.04.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 2352/12.

This order arises out of a petition filed U/O 39 Rule 1&2 R/W Section 151 of CPC, which was registered as Misc (J) Case No 54/12, wherein petitioner/plaintiff has prayed to pass an order of temporary injunction to restrain the opposite party from stopping the salary bill money and also to release the salary bill money with effect from September 2010.

Petitioner's case in brief is that petitioner availed three loans from the defendant/bank in three different occasions for amount of Rs 4,00,000/-, 50,000/- and 2,50,000/ respectively. It is stated that he has been paying monthly installments at the rate of Rs 6650,1202 and 3231 per month, i.e. in total Rs 11,083/- per month. It is further stated that the bank has been deducting the monthly installments from the salary bill of the plaintiff, which is deposited in the accounts of employees maintained in the defendant bank. Petitioner further stated that after deduction of the three monthly installments he withdraws the remaining amount but since September, 2010, the bank has totally stopped payment by seizing his amount whereby violating his right given by the constitution.

O.P. filed written objection denying and challenging inter alia the claims of the petitioner and further stated that petitioner gets low amount of salary than the installment which he is liable to pay. It is further stated that he obtained the third loan by concealing about his previous loans. It is stated that as nothing remains after deduction of the loan installments hence Bank had to stop the release of his salary.

Perused the plaint, petition U/O 39 Rule 1 & 2 R/W Section 151 C.P.C., written objection of the opposite party, the copies of documents submitted by the plaintiff/petitioner.

On perusal of the available materials on record, including the copies of documents submitted by plaintiff/petitioner, it prima facie appears that plaintiff had obtained the loans after complying the procedure of bank and it also appears that he had disclosed all the necessary information in his loan application including his amount of net and gross salary and had issued irrevocable letter of authority to his employer to deduct the loan installment from his salary and to remit the amount to the Bank.

Under the aforesaid fact situation it submitted by the O.P. that the salary is not sufficient to recover the installments and as such the whole salary was withheld by the bank. It also appears from the last loan application of the plaintiff to the Bank that net salary of the

plaintiff as on 03.06.10 was 14,938 and it is pleaded that the installment that the plaintiff is liable to pay monthly is 11,083/-. The amount of installment is not denied by the O.P in its written objection rather pleaded that loan installments are not covered by the salary of the plaintiff/petitioner.

Right to life and as enshrined in our constitution is a basic human right. If the entire salary of an employee of a Government institution is withhold for recovery of installments it would definitely cause hardship to him even it may make his survival quite impossible. Moreover it is not the fact that plaintiff had not disclosed his amount of salary. Being a Public institution duty was cast upon the Bank which is dealing with the public money and is constituted for the welfare of the public at large, to ensure the source & capability of repayment of the person seeking loan. It is also to be kept in mind that for the fulfillment of agreement or on the behest that there was an authority given to deduct the money one can't be deprived from his basic right to live with dignity. In view of the above I am of the considered opinion that there is a prima facie case to go for trail.

So far as balance of convenience is concerned, withholding the entire money would definitely place the petitioner in more inconvenient stage as it would deprive him from enjoying the basic amenities of life than that of the O.P which is an public institution and may also cause irreparable loss and injury which can't be compensated in terms of money.

In view of the above discussion, ad-interim injunction is issued restraining the opposite party from stopping to withdraw the salary bills of the plaintiff to the amount of one third of his present salary till disposal of the suit. So far as the prayer of the petitioner in respect of releasing the salary bill money with effect from September ,2010 is concerned it would be decided later on.

The Misc. (j) case is, accordingly, disposed off on contest. Parties will bear their own cost.

(Achma Rahman)

Munsiff No 1, Jorhat.