



GAHC010072102021

Page No.# 1/17



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4149/2021

NAZRUL ISLAM
S/O LATE AMIR ALI
VILLAGE BUNDASHIL (NEAR ST. JOSEPH'S SCHOOL) PO BADARPUR, DIST
KARIMGANJ, ASSAM

VERSUS

THE STATE BANK OF INDIA AND 4 ORS
REPRESENTED BY THE ZONAL MANAGER, ZONAL OFFICE, 6TH FLOOR,
SWAGOTA SQUARE, ABC POINT, BHANGAGARH, GUWAHATI 781005,
KAMRUP, ASSAM

2:THE ZONAL MANAGER

STATE BANK OF INDIA

ZONAL OFFICE
6TH FLOOR
SWAGOTA SQUARE
ABC POINT
BHANGAGARH
GUWAHATI 781005
KAMRUP
ASSAM

3:THE REGIONAL MANAGER

STATE BANK OF INDIA

REGIONAL OFFICE
UKILPATTY ROAD
TARAPUR
SILCHAR
ASSAM



788801

4:THE BRANCH MANAGER

STATE BANK OF INDIA

INDUSTRIAL ESTATE
BADARPUR
ST ROAD
BADARPUR
DIST KARIMGANJ
ASSAM
788806

5:THE CHIEF MANAGER

STATE BANK OF INDIA

INDUSTRIAL ESTATE
BADARPUR
ST ROAD
BADARPUR
DIST KARIMGANJ
ASSAM
78880

For the Petitioner(s) : Mr. P. K. Roy, Sr. Advocate
: Mr. S. K. Chakraborty, Advocate

For the Respondent(s) : Mr. L. Talukdar, Standing Counsel

Date of hearing : 25.01.2024

Date of Judgment : 25.01.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

1. The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondent Nos. 3 and 4 to return back the Petitioner's gold ornament (gold necklace) weighing 28 grams by debiting an amount that

may be due towards the loan from the Petitioner's Saving Bank Account or by accepting cash deposit of an amount of Rs.18,556/- as claimed by the Respondents through their letter dated 16.07.2020 and in the alternative if the gold ornament is transferred to anybody by way of sale or otherwise, pay compensation of an amount of Rs.2,00,000/- towards the cost of the gold ornament and Rs.1,00,000/- towards solatium totaling to Rs.3,00,000/-. Further to that, the Petitioner has also sought for a direction upon the Respondent Nos. 1 and 2 to make a proper enquiry into the matter.

2. The facts involved in the instant case as would be apparent from a perusal of the pleadings and the materials on record are that the Petitioner had a Savings Bank Account with the State Bank of India, Badarpur IE Branch bearing Account No.31480503313. Sometime in the month of June, 2017 the Chief Manager of the Badarpur Branch of the State Bank of India i.e. the Respondent No.5 informed the Petitioner on a query being made that an easy loan from the Bank can be availed under the existing gold loan scheme. The Petitioner at that point of time being in need of money agreed to take a loan by depositing a gold necklace. The Petitioner duly deposited a gold necklace weighing 28 grams. The Respondent No.5 got the said gold necklace weighed through an authorized agent and after having found that the said gold necklace weighed 28 grams and was of a value of Rs.61,600/-, offered the Petitioner an amount of Rs.25,000/- to be recovered @Rs.1,000/- per month from the Petitioner's Savings Bank Account. The expenses incurred by the Bank towards weighing of the gold necklace and the value thereof assessed, was also charged from the Petitioner. Thereupon a Memorandum was prepared which was duly signed against the said gold loan bearing (MC-DL Gold Loan Agri) Account No.36952039358 on 15.06.2017.



3. This Court finds it very pertinent to take note of Annexure-A to the writ petition which shows that the Respondent No.5 under his signature has certified about the details of the necklace of 18 carat gold weighing 28 grams which was kept as a security against the loan of Rs.25,000/-. It was further mentioned by the Petitioner that periodically an amount of Rs.1,000/- was debited from the Petitioner's Bank Account against the said gold loan and was credited to the Loan Account No.36952039358.

4. On 02.05.2020 during the period of national lockdown declared by the Government, a letter dated 05.03.2020 was received intimating that the interest along with the principal towards the gold loan of Rs.25,000/- were not paid to the account as per the terms and condition as promised and hence the amount of loan account was overdue. The Petitioner was informed to immediately arrange to deposit a sum of Rs.20,611/- in the loan account towards the overdue installments in order to regularize the loan account within 15 days from the date of the said letter. It is categorically mentioned in the writ petition that though the letter was dated 05.03.2020 yet from the postal envelope, it is seen that it was posted 28.04.2020 at 12:16 PM and there is also an endorsement dated 02.05.2020 of the postal department.

5. Another letter dated 28.06.2020 was received by the Petitioner wherein the Petitioner was asked to deposit a sum of Rs.32,031/- in the loan account towards overdue of installments in order regularize the loan account. The envelope as well as the postal receipt in respect to the said letter however showed that the said letter was posted on 03.07.2020 and there is also an endorsement of the postal department dated 20.07.2020. It is however relevant to take note of that at that relevant point of time when the Petitioner

received these documents, the entire country was under national lockdown on account of COVID pandemic.

6. It is further relevant to take note that another communication was issued on 16.07.2020 by the Respondent No.5 making reference to the communications dated 05.03.2020 and 28.06.2020 but surprisingly, it was mentioned that the amount which the Petitioner was liable to pay was Rs.18,556/- which was almost half of what was demanded vide notice dated 28.06.2020. The Petitioner was directed to close the loan account within a period of 7 days from the receipt of the said letter. It was also mentioned that if the loan account is not closed within 7 days from the date thereof, the ornament held as security would be sold by the public auction and the Petitioner would be liable on his Promissory Note for any shortfall that may accrue. The said communication though was dated 16.07.2020, but was posted on 20.07.2020 as it is apparent from the postal receipt and from the track consignment report of the Indian Post that the said communication was delivered to the Petitioner on 04.08.2020 (Annexure-E to the writ petition).

7. Thereupon the Petitioner, on coming to learn about the said communication, approached the Respondent No.5 to close the Loan Account by offering to pay the amount of Rs.18,556/-. The Petitioner also requested that he be returned the ornament held as security and issued the clearance certificate. However, the Office of the Respondent No.5 did not give any response. It is under such circumstances, the Petitioner issued a communication dated 10.08.2020 to the Respondent No.5 and marking a copy to the Regional Manager, State Bank of India, Silchar. The said communication was received on 10.08.2020 by the Office of the Respondent No.5 which was



well within the period of the notice dated 16.07.2020 inasmuch as from the delivery report referred to hereinabove, it revealed that the Petitioner received the notice on 04.08.2020. The Respondent Authorities however did not take any steps pursuant to the said communication dated 10.08.2020. Under such circumstances, the Petitioner has approached the Respondent Authorities on various occasions. An RTI application was filed by the Petitioner seeking various information on 05.10.2020. However, the Respondent Authorities did not care to reply to the said RTI application. It is under such circumstances, the Petitioner has approached this Court seeking the relief(s) as aforementioned.

8. This Court has also perused the enclosures to the writ petition which includes the bank statements in respect to the Petitioner's Bank Account bearing No.31480503313 for the period from 01.01.2017 to 31.12.2020. From the said bank statement, it reveals that on 16.06.2017 an amount of Rs.25,000/- was deposited on the Petitioner's account. The record further reveals that from time to time, installments @ Rs.1,000/- have been deducted from the Petitioner's Savings Bank Account and the last of such transaction could be seen on 05.04.2020. This Court has also perused the bank statement of the loan account bearing No.36952039358 and from a perusal of the said, it reveals that Rs.1,000/- have been credited on 13 occasions and on 29.07.2020, balance was shown as Rs.18,618/- on which date, the loan was closed on the basis of closure proceeds.

9. The record reveals that the Respondent State Bank of India had filed an affidavit-in-opposition on 29.07.2022. In the said affidavit, it was mentioned that by the time, the Petitioner submitted his letter on 10.08.2020, in view of

the non-response by the petitioner to the Bank's letters dated 05.03.2020, 28.06.2020 and 16.07.2020, the pledged gold was put to auction towards recovery of the Petitioner's gold loan. It was also mentioned that the Petitioner's gold loan had become substandard on 20.03.2020. At this stage, this Court finds it very pertinent to take note that the said statements made in the affidavit are not a correct reflection to the bank statements of the loan account inasmuch as from a perusal of the loan account statement, it transpires that on 28.03.2020, an amount of Rs.1,000/- was duly credited and as well as on 05.04.2020, two further amounts of Rs.1,000/- were duly credited and therefore it is not known under what circumstances, the Respondent Authorities had stated that the Petitioner's loan account had become substandard on 20.03.2020. This Court also finds it pertinent to mention that perusal of communications dated 05.03.2020 and 16.07.2020 are apparently contrary to the communication dated 16.07.2020 inasmuch as in the communication dated 05.03.2020, an amount of Rs.20,611/- was shown as the amount to be paid for closure and thereupon on 28.06.2020, the said amount abruptly increased to 32,031/- and in terms with the communication dated 16.07.2020, the amount was 18,556/-.

10. Be that as it may, this Court also finds it relevant that an affidavit-in-reply was filed by the Petitioner to the affidavit-in-opposition filed by the Respondents stating inter alia that the Petitioner received the communication dated 16.07.2020 on 04.08.2020 and thereupon, immediately, the Petitioner went to the Office of the Respondent No.5 to deposit the amount of Rs.18,556/- but the Respondent Authorities did not permit the Petitioner to do so. It is under such circumstances, on 10.08.2020, a communication was issued and on the very date itself, the said communication was received by the

Respondent No.5. It was also stated that the Petitioner had sought for various information under the RTI Act as to whether there was any public auction for sale of the gold ornament and how many bidders have participated in the auction and how much the successful bidder had paid towards the sale of the gold ornament and what was the bid amount in which the gold ornament of the Petitioner was sold. It was mentioned that in spite of the filing of the said application, there was no response to the same. It was also mentioned that the gold ornaments is not subject to attachment under Section 31(G) of Chapter-VI of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act of 2002") read with Section 60(1)(a) of the Code of Civil Procedure, 1908.

11. In the backdrop of the above pleadings, this Court had also heard the learned counsels appearing on behalf of the parties. This Court further finds it pertinent to take note of that on the earlier occasions when the matter was listed before this Court i.e. on 09.10.2023, the learned Standing counsel appearing on behalf of the State Bank of India sought for an accommodation for obtaining instructions as to whether without resorting to Section 13(2) the Act of 2002, could the State Bank of India have resorted to take any action under Section 13(4) of the said Act of 2002. On 17.11.2023, the learned Standing counsel appearing on behalf of the State Bank of India submitted that the State Bank of India did not resort to the action under the provisions of the Act of 2002 but the Respondent Bank had taken steps for auction under the loan agreement and some master circular. He however submitted that he would like to place the said aspect by way of an affidavit. This Court had granted due time to the Respondent State Bank of India to file their affidavit however till date, neither the affidavit has been filed nor the Master Circular

placed before this Court which said to be the basis for selling the gold necklace.

12. Today, when the matter was taken up, the learned counsel appearing on behalf of the Respondent Bank had submitted that the Respondent Bank had no records and as such the affidavit could not be filed. This Court finds it very pertinent to take note the submission of the learned Standing counsel for the Respondent Bank that the Respondent Bank took action in terms with Section 176 of the Indian Contract Act, 1872 which permits that after due notice given, the security pledged could be sold and in the instant case, as the Petitioner was given notice and the Petitioner failed to make the payment, the Respondent Authorities were entitled as per law to sell the said gold ornament in question.

13. From the contentions made by the learned counsels for the parties, as well as on the materials on record, two points for determination arises for consideration.

(i) Whether the Respondent State Bank of India was justified in auctioning/selling the gold necklace of the Petitioner and then appropriating the money towards the loan account?

(ii) If not, what is the relief to which the Petitioner herein would be entitled to ?

14. In the foregoing paragraphs of the instant judgment, this Court had duly taken note of the facts to the effect that the Petitioner had taken a loan of an amount of Rs.25,000/- and against the said loan, a security was pledged by way of a gold necklace with the Respondent State Bank of India. Annexure-A

to the writ petition apparently shows that against the Gold Loan No.36952039358, the gold necklace which was pledged was of 18 carat gold weighing 28 grams. The statement of the Savings Bank Account of the Petitioner bearing Account No.31480503313 clearly shows that the amount of Rs.25,000/- was credited to the Petitioner's account on 16.06.2017. The record categorically reveals that the installment to be paid by the Petitioner per month was Rs.1,000/-. Further to that, from the bank statement of the Savings Bank Account of the Petitioner bearing Account No. 31480503313, it reveals that till 05.04.2020, there were 13 entries of debiting of Rs.1,000/- from the Petitioner's Savings Bank Account. Correspondingly, if this Court further peruses the bank statement pertaining to the loan account of the Petitioner which has been enclosed as Annexure-I to the writ petition, it shows that there are 13 entries of Rs.1,000/- each. It is further seen from the bank statement of the loan account that as on 05.03.2020, the total amount payable against the loan account was Rs.20,611/-. Thereupon, on 28.03.2020, there was an amount of Rs.1,000/- was debited from the Savings Bank Account of the Petitioner. Further to that, on 05.04.2020, two amounts of Rs.1,000/- each were deducted from the Savings Bank Account of the Petitioner.

15. In the above perspective, if this Court takes note of the notice dated 05.03.2020, it would be seen that the Petitioner was asked to immediately pay the amount of Rs.20,611/-. The postal envelope as well as postal receipt which have been enclosed as a part of Annexure-B show that the said Notice dated 05.03.2020 was posted on 28.04.2020 and there is also an endorsement of the postal department dated 02.05.2020. It is however interesting to note that as on the date of posting of the said notice dated 05.03.2020 on 20.04.2020, the amount payable by the Petitioner was actually 17,611/- as it is apparent from

the bank statement of the loan account. The records reveals that thereupon, a notice dated 28.06.2020 was issued directing the Petitioner to pay an amount of Rs.32,031/- and close the loan account. The envelope as well as the postal receipt which are the part of Annexure-C show that the said communication was posted on 03.07.2020. At this stage, this Court finds it very pertinent to observe that at that relevant point of time, there was a national lockdown on account of the COVID pandemic coupled with various restrictions imposed by the Revenue and Disaster Management Department of the Government of Assam. It is also pertinent to take note that the Reserve Bank of India had also issued notification and circulars granting relaxation to the borrowers and the State Bank of India was bound to follow. Reference in that regard can be made to the notification of the Reserve Bank of India dated 27.03.2020, 23.05.2020 etc.

16. Moving forward, a notice dated 16.07.2020 was issued to the Petitioner asking the Petitioner to pay an amount of Rs.18,556/- and thereby to close the loan account. This notice dated 16.07.2020 is contrary to the notice dated 28.06.2020 in view of the fact that in the notice dated 28.06.2020, the Petitioner was asked to deposit an amount of Rs.32,031/- whereas in the notice dated 16.07.2020, the Petitioner was asked to pay an amount of Rs.18,556/-. This amount in the latter notice dated 16.07.2020 however tally with the bank statement of the loan account. It is also very pertinent to mention that the Petitioner was asked to pay the said amount of Rs.18,556/- within 7 (seven) days from the date of the receipt of the said notice dated 16.07.2020. The envelope as well as the postal receipts which forms a part of the Annexure-D show that the notice dated 16.07.2020 was posted on 20.07.2020 and the track consignment of the postal department in respect to

the said consignment categorically shows that on 04.08.2020, the item was delivered meaning thereby the notice was delivered to the Petitioner on 04.08.2020. Therefore, as per the notice dated 16.07.2020, the Petitioner had to pay the said amount within 11.08.2020. It is the specific case of the Petitioner that the Petitioner approached the Respondent No.5 to pay the said amount however, his request was turned down for which the Petitioner issued a communication on 10.08.2020 to the Respondent No.5 as well as the Respondent No.3. The endorsement to the communication dated 10.08.2020 clearly reveals that on 10.08.2020, the Office of the Respondent No.5 duly received the said communication. This aspect of receiving the communication dated 18.08.2020 is duly admitted in the affidavit filed by the Respondent Bank Authorities. The question therefore arises as to whether the Respondent Authorities were justified in auctioning or selling the said necklace which was kept as a security prior to the period mentioned in the notice dated 16.07.2020. The answer to the same has to be in the negative taking into account that period which was given having not elapsed, the Respondent Authorities could not have sold/auctioned the said necklace.

17. At this stage, this Court finds it very pertinent to take note that the records do not reflect when the necklace was sold. However, from the bank statement of the loan account, it reveals that an amount of Rs.18,618/- was adjusted on 29.07.2020. The records as well as the narration of the facts supra also reveal that the Respondent Bank Authorities are not in a position to explain as to under what provisions of law the necklace was sold/auctioned. First, it was mentioned that it was in terms with Section 13(4) of the Act of 2002. Thereupon, when this Court had enquired whether resorting to measures under Section 13(4) of the Act of 2002 was permissible without first

resorting to Section 13(2) of the Act of 2002, it was submitted that action was taken as per loan agreement and some Master Circular. This Court granted time to bring on record the said stand by way of an affidavit which the Respondent Bank failed to do. Even, the Master Circular was not placed before this Court. Today, when the matter was taken up, it was submitted that the Respondent Bank has no records and as such placed reliance on Section 176 of the Indian Contract Act, 1872 (for short "the Act of 1872"). The said submission in the opinion of this Court is totally misconceived on a reading of Section 176 of the Act of 1872. A perusal of Section 176 would show that the said provision would come into play after giving the pawnor a reasonable notice of the same. In the instant case, though a notice was issued on 16.07.2020 thereby intimating that the Petitioner had to close the loan account by making a payment of an amount of Rs,18,556/- within 7 days from the date of receipt of the notice, but admittedly, prior to the period having expired, the Respondent Bank Authorities sold the gold necklace of the Petitioner in question. Under such circumstances, Section 176 of the Act of 1872 cannot be applied to the present facts. Therefore, this Court is of the opinion that the Respondent State Bank of India was not justified in selling the gold necklace of the Petitioner prior to 11.08.2020. The decision in this point for determination leads this Court to take a decision on the second point for determination as to what relief(s) the Petitioner would be entitled to.

18. Before deciding the said aspect, this Court finds it very pertinent to mention that the Respondent Bank is an authority within the meaning of Article 12 of the Constitution. It is well settled that public law proceedings serves a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in a proceedings under Article 226 of

the Constitution by the High Court for established infringement of the indefeasible rights guaranteed under the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system which aims to protect the interest and preserve their rights. Therefore, in a proceedings under Article 226 of the Constitution, this Court can grant compensation by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the rights of the citizen.

19. An ornament more particularly made of gold is kept in high reverence in the Indian society. On account of financial difficulties, a person may pledge the said ornament as security to secure a loan. The rights of the person over the ornament does not cease but is subject to the conditions on the basis of which the loan was taken. Therefore, the lender cannot appropriate the ornament or any pledged goods in violation to the terms of the loan. Doing so, would amount to violation of the rights under Article 300A of the Constitution more so when the lender is a State within the meaning of Article 12 of the constitution.

20. In the above perspective taking into account the facts involved, it is seen that the Respondent State Bank of India had illegally and without any proper authority have sold the gold necklace of the Petitioner. It is also seen that an amount of Rs.18,618/- was appropriated from the said sale and thereby the loan account of the Petitioner was closed. It is also surprising to note that the Respondent Bank have not placed on record as to what amount the gold necklace fetched pursuant to the sale/auction. This aspect was necessary to be

placed on record inasmuch as only so much of the due could have been appropriated but not any other amount. The Respondent State Bank of India being the largest retail Bank of India ought to have been more careful in their dealings. Under such circumstances, taking into account the illegality so committed and as the gold necklace has already been sold without authority of law, this Court is of the opinion that the Petitioner is entitled to the value of the gold necklace after deducting the amount of Rs.18,618/-. The value of the gold necklace has to be taken into account on the basis of the price of gold on 29.07.2020 which is the date when the amount of Rs.18,618/- was appropriated to the loan account of the Petitioner. The Respondent Authorities jointly and collectively are directed herein to pay the Petitioner the amount of the value of the gold necklace in question within a period of 3 (three) weeks from the date a certified copy of the instant judgment is served upon the Respondent No.5. In paying the said amount, it is clarified that the amount of Rs.18,618/- should be deducted.

21. This Court further is of the opinion that the Petitioner is entitled to compensation apart from the value of the gold necklace as directed above. Though, there cannot be a straight jacket formula to determine the amount of compensation to be paid, but it is well settled that while awarding the compensation, there are two aspects which requires consideration. First, the Court would have to take into consideration the actual loss/damage that might have caused to the person who have suffered on account of the violations of his/her rights by the authorities. This aspect have already been taken care of hereinabove whereby this Court had directed the Respondent Authorities to make the payment of the value of the gold chain – after deducting the amount of Rs.18,618/-.

22. The second aspect for consideration relates to general damages so that the concerned officials of the State Bank of India follow the applicable law in both letter and spirit and are put to notice that not following the applicable law would result in they being made liable to make payment of monetary compensation to the affected citizen. It is the opinion of this Court on the facts and circumstances of the instant case that an amount of Rs.50,000/- would be reasonable amount which can be directed to the Respondents jointly and severally to pay to the Petitioner as a deterrent to their illegal actions. This Court duly takes note of that it was on account of the illegal actions on the part of the concerned officials of the State Bank of India, this Court had directed payment of compensation. Under such circumstances, this Court grants the liberty to the State Bank of India to make necessary enquiry against the erring officials and recover the said compensation from the said erring officials, if deemed fit.

23. Accordingly, the instant writ petition therefore stands disposed of with the following directions:

- (i) The Respondents herein are jointly and severally directed to pay the value of the 18 carat gold necklace weighing 28 grams taking the value of the gold as on 29.07.2020 after deducting an amount of Rs.18,618/-.
- (ii) The Respondents jointly and severally are further directed to pay an amount of Rs.50,000/- in the form of a compensation.
- (iii) The State Bank of India would be at liberty to take appropriate steps for recovery of the said amount from the erring officials, if deemed fit after making necessary enquiry.



(iv) This Court has also taken note of that the Petitioner herein was compelled to approach this Court because of the unlawful actions of the Respondent State Bank of India and its officials. The Petitioner is entitled to the costs of the present litigation which this Court reasonably quantifies at Rs.15,000/-. The Respondents are directed to pay the said amount of Rs.15,000/- towards costs.

(v) The above amounts directed, be paid within 3 (three) weeks from the date a certified copy of the instant judgment is served upon the Respondent No.5.

JUDGE

Comparing Assistant