

(2011) 07 MAD CK 0334

Madras High Court

Case No: Writ Petition No. 12432 of 2011

R. Sahana

APPELLANT

Vs

The Manager, Oriental Bank of
Commerce, The Regional
Manager, Oriental Bank of
Commerce and The Principal,
Rajalakshmi Engineering College

RESPONDENT

Date of Decision: July 25, 2011

Citation: (2012) 3 MLJ 1085 : (2011) WritLR 765

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: J. Shanmugasundarababu, for the Appellant; M.V. Moorthy Vasan, for Respondents 1 and 2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner, a student in the 3rd Respondent Engineering College, has filed the present writ petition praying to issue a Writ of Mandamus directing the 1st Respondent Bank to disburse the Educational loan for the 4th/final year B. Tech-Bio Technology Course.

2. The Petitioner joined B. Tech - Bio Technology course in the 3rd Respondent College in the year 2008 09. The duration of the course is four years with eight semesters .The Petitioner applied for educational loan from the Respondent Bank. The Respondent Bank sanctioned Rs. 2,20,000/-towards educational loan and out of the said loan, Rs. 55,000/-has to be disbursed for each year directly to the 3rd Respondent college bythe Bank. It is stated that the 3rd Respondent prescribes a fee of Rs. 98,000/-for every year and the balance amount has to be paid by the student. Both the father and mother of the Petitioner were coapplicants in the educational loan. The father and mother also availed loans in their individual capacity from the

Respondent Bank for business purposes. They became defaulters and the accounts became NPA and the Bank is said to have filed suits for recovery of the amounts. In these circumstances, the Bank did not pay the sanctioned amount towards educational loan for the 3rd year of the Petitioner. With great difficulty, the Petitioner paid the entire fee for the 3rd year as the Bank refused to disburse the loan amount for the 3rd year.

3. It is further stated that the father of the Petitioner deserted the family and had gone away and also FIR has been lodged by the mother and the daughter, the Petitioner herein with the Thirumullaivoyal Police Station. In these circumstances, the Petitioner has filed the present writ petition seeking for a direction to pay the educational loan for the final year B. Tech Course.

4. According to the Respondent Bank, since the coapplicants became defaulters and their loan accounts became NPA, the disbursal of the loan was stopped from the 3rd year and therefore, the Petitioner cannot be given loan for the final year. On the other hand, the Petitioner states that the students are entitled to loan upto Rs. 4,00,000/-(Rupees four lakhs) without any security. Though the parents are co-applicants, the Petitioner is liable to pay the loan after twelvemonths on completion of the course or six months after getting a job, whichever is earlier. Hence, the Respondents Bank is not justified in refusing loan to the Petitioner on the ground that her parents became defaulters.

5. I have considered the submissions made on both the sides.

6. The facts are not in dispute. The Petitioner joined B. Tech - Bio Technology Course in the 3rd Respondent College in the year 2008-09. The Respondent Bank sanctioned Rs. 2,20,000/- towards educational loan and Rs. 55,000/- has to be disbursed for each year directly to the College by the Bank. However, the Bank stopped the disbursal of the loan for the 3rd year. The Petitioner was able to continue the studies in 3rd year by mobilizing funds for that year. The Petitioner finds it too difficult to continue her 4th year studies. It is also stated that the father of the Petitioner ran away from the family. In these circumstances, the Petitioner has approached this Court seeking for a direction to the Respondents Bank to disburse the loan amount for the final year to the 3rd Respondent college, as the loan was sanctioned already.

7. The scheme relating to the educational loan is produced by the Respondents Bank. As per the scheme, the students are entitled upto Rs. 4,00,000/- without any security. Only if the loan is more than Rs. 4,00,000/- security is insisted. The relevant clause relating to "Security" is extracted in this regard:

Security

Loan upto Rs. 4.00 lac

◆ No collateral security

◆ Co-obligation of parents
/guardian (irrespective of
their means) is must
irrespective of age of
student.

Co-obligation of husband/ in-laws in case of married women.

Note: In case of the student is an orphan, the Regional Head shall forward the case to Head Office after obtaining two references about the conduct/integrity of the student for payment of the condition of Coobligants.

8. However, it is true that the parents are made as co-applicants even in the case of loan for less than Rs. 4,00,000/-. According to the Bank, the defaulters could not get further facility for disbursal of loan, particularly when the defaulters became NPA.

9. Learned Counsel for the Bank produced a copy of Loan Policy Review and Modification (2009-10). He relied on Clause 4.4 d, f, j, l, m which are extracted hereunder :

4.4 Other categories of borrowers not permitted for finance by the Bank unless otherwise specified.

d. All fresh exposure from borrowers whose group concerns have been classified as NPA with other Banks/ Financial Institutions shall be placed before the Management Committee of the Board for consideration and sanction. Renewal/enhancement/ additional exposure in such accounts shall be considered by the respective sanctioning authority as per delegated discretionary powers.

j. Granting credit facilities to borrowers classified as NPA with other Banks/Institutions.

l. Borrowers/ Guarantors who have defrauded our Bank/ other Banks/ Institutions.

m. Guarantors against whom suit (s) are/were filed by the Bank.

10. According to the Bank, since the Petitioner's parents became defaulters and their loan accounts became NPA, the Bank could not disburse the educational loan to the Petitioner.

11. In my view, the educational loan could not come within the purview of the loan that is mentioned in the Loan Policy Review and Modification (2009-10) produced by the Respondents Bank. If the Petitioner's parents want the disbursal of any loan amount even after they became defaulters, the Bank could refuse to disburse the amount. In this case, it is not the request of the Petitioner to disburse the loan to her parents. On the other hand, it is her case that the sanctioned educational loan should be disbursed to her and the same cannot be stopped citing that her parents became defaulters. In my view, the submissions made by the learned Counsel for

the Petitioner is well founded and the Respondents Bank could not stop the educational loan that too for the final year. If the arguments of the Bank is accepted, the same could not advance the object of the scheme providing assistance by way of educational loan. If the Bank refuses to disburse the loan for the 4th year, that would frustrate the very purpose of the scheme and if the Petitioner discontinues her studies at the final year, the loan amount so far paid without security could become sticky .Even for the interest of the Bank, they should see that the loanee student completes education so that the Bank could get back the loan advanced. Though the parents are to be made as co-applicants, it is stated in the scheme that irrespective of their means, loan upto Rs. 4,00,000/-should be sanctioned without any security .Further, as per the scheme, repayment has to be made by the Petitioner student. Repayment clause states that repayment has to be made twelve months after completion of the course or six months after getting job, whichever is earlier. The clause relevant to the repayment is extracted hereunder :

Repayment

In 84 months in Equated Monthly Installments Moratorium Period

12 months after completion of the course or 6 months after getting the job, whichever is earlier.

Regional Heads are empowered to permit extension in study period upto a maximum of two years, incases where the student is notable to complete the course/study for reasons beyond his/ her control after examining the facts and genuineness of the case.

Note: In the cases where loan has been sanctioned for the two/ dual courses, moratorium period may be considered after completion of the studies as per the extant guidelines .

12. Therefore, the Bank is not justified in refusing to disburse loan to the Petitioner for the final year on the ground that her parents became defaulters. Hence, I am inclined to direct the Respondent Bank, to forthwith disburse of the loan to the 3rd Respondent college payable for the final year B. Tech Course of the Petitioner The writ petition is disposed of in the above terms. No costs.