

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 523 of 2015**

Primary Marketing Cooperative Society Limited, Lundra, District Surguja Chhattisgarh, through Its President, Triloki Singh S/o Late Parshu Ram Singh, aged about 45 yeears, R/o village Batwahi, Post Raghunathpur, Police Station and Tahsil Lundra, District Surguja, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary Department of Co-operative Mahanadi Bhawan, New Mantralay, Naya Raipur, District Raipur, Chhattisgarh.
2. Registrar, Cooperative Societies, Vivekanand Nagar, Pension Bada, Chowk Raipur, Chhattisgarh.
3. Joint Registrar, Cooperative Societies, Surguja Sitaram Bhawan, Maharani Laxmi Bai Ward No. 6, Jawahar Nagar, Ambedkar Nagar, Ambikapur, District Surguja, Chhattisgarh.
4. Deputy Registrar, Cooperative Societies, Surguja Sitaram Bhawan, Maharani Laxmi Bai Ward No. 6, Jawahar Nagar, Ambedkar Nagar, Ambikapur, District Surguja, Chhattisgarh.

---- Respondents

For Appellant	:	Shri R.S.Baghel, Advocate.
For Respondents/State	:	Shri Prafull N Bharat, Additional Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**30/10/2015**

1. The present appeal arises from order dated 7.8.2015 dismissing Writ Petition (C) No. 1378 of 2015 declining to interfere with the order dated 8.6.2015 passed by the Deputy Registrar, Cooperative Societies for winding up and liquidation of the Appellant-Society on the ground of availability of alternative statutory remedy of an appeal before the Joint Registrar under Section 78 (1)(a) of the Chhattisgarh Cooperative Societies Act, 1960 (hereinafter called 'the Act').

2. There is a delay of 4 days in filing the present appeal. Considering the duration, I.A. No. 1 of 2015 is allowed and the delay is condoned.

3. Learned Counsel for the Appellant submits that there is no absolute rule that mere existence of a statutory alternative remedy will per se bar maintainability of a writ petition. If the appeal is required to be filed before a person or authority who has himself decided the matter administratively or where action has been taken pursuant to the order of the superior authorities, remedy of an appeal is an illusion as the result is a foregone conclusion. No subordinate functionary of the Government will dare to oppose or not to implement any government directions of a superior officer irrespective of what submissions may be made before him. The directions in question, non violation of which is alleged, are stated to have been issued by the Registrar. It is the case of the Appellant that the directions do not apply to it. Furthermore, the Joint Registrar has himself ordered on 3.3.2015 for winding up on the grounds of non-compliance. Apparently, he will not go against his own decision. It was lastly submitted that the entire proceedings have originated pursuant to an order passed in a writ petition followed by a contempt application and the appellate authority will hardly dare to disobey the Court order.

4. Learned Additional Advocate General opposing the appeal submitted that availability of a statutory alternative remedy shall be a bar to writ application unless extraordinary and special circumstances are shown. There is no challenge to the vires of any rules or violation of principles of natural justice. The appellate authority exercises a statutory power and is bound to act in accordance with law and statutory provisions. All defences which are sought to be urged before this Court for maintainability of the writ application can well be examined by the Joint Registrar also. His powers and jurisdiction while sitting as an appellate authority may not be confused with his administrative status. There has been no violation of any orders of this Court as full opportunity of hearing has been provided.

5. We have heard Learned Counsel for the parties and are satisfied that order under appeal calls for no interference.

6. Extraordinary remedy under Article 226 of the Constitution is discretionary in nature and judicial precedents abound when discretion is not to be exercised. One of the grounds is the existence of statutory alternative remedy. It shall not be proper exercise of jurisdiction under Article 226 in the garb of judicial review to usurp the powers of appellate authority. There are well recognized exceptions to the rules, none of which apply presently.

7. In (2014) 1 SCC 603 (CIT v. Chhabil Dass Agarwal) it was observed at paragraphs 11 and 15 as follows:

"11. Before discussing the fact proposition, we would notice the principle of law as laid down by this court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exists sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See AIR 1958 SC 86 (*State of U.P. v. Mohd. Nooh*), (1983) 2 SCC 433 (*Titaghur Paper Mills Co. Ltd. v. State of Orissa*), (2003) 2 SCC 107 (*Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*) and (2005) 6 SCC 499 (*State of H.P. v. Gujarat Ambuja Cement Ltd.*)).

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* (AIR 1964 SC 1419), *Titaghur Paper Mills case* (1983) 2 SCC 433) and other

similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory form is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

8. The submission on behalf of the Appellant that the directions issued by the Registrar were not applicable to it for justifying winding up, in our opinion, is a question which can well be decided by the Joint Registrar. There is no lack of jurisdiction in him to decide. The decision by the appellate authority has to be based on the background facts, submissions made before him followed by his own independent conclusion supported by reasoning and law whether it was applicable or it was not applicable.

9. The apprehension arising from letter dated 3.3.2015 of the Joint Registrar is completely misconceived. It only communicates the decision of the Government to take action in accordance with law with regard to such societies which were not complying with the provisions of the Act seeking information specifically, inter alia, with regard to the Appellant. It does not contain any conclusive finding by which it could be urged that the appellate authority would be required to sit in judgment over a decision taken by it on the administrative side.

10. The apprehension that the entire proceedings are in pursuance of a Court order and therefore the authorities would be left with very little discretion in the matter, is completely misconceived. The writ petition filed before this Court was general in nature with regard to non-compliance of certain provisions of the Act by registered cooperative societies. Only directions were given to dispose the representation. No Court can order and neither was there any order to pass orders for winding up and liquidation of a society without granting it a hearing. The Court never expressed any conclusive opinion about

the present Appellant which was not before it as party respondent, much less heard in the matter.

11. In conclusion, for the reasons discussed, the appeal is dismissed. The Appellant is well advised to pursue alternative statutory remedy which is required to be decided on its own merits in accordance with law, as discussed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE