

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 119 of 2016**

1. Punjab National Bank Through Chief Manager, Punjab National Bank, Gurudwara Road, P.S. Mohan Nagar, Durg 491001, Revenue And Tahsil And District Durg Chhattisgarh
2. Authorised Officer, Punjab National Bank, Branch Office Durg, Gurudwara Road, Durg, City 491001, Tahsil And District Durg Chhattisgarh (Originally Respondent No.1 & 2)

---- Appellants**Versus**

1. Holistic Foundation Bhilai (Regd. No. 13053 Dated 25-08-2007) Regd. Office Block No. 6/2, F -3, Nehru Nagar, Parisar, Nehru Nagar, Bhilai 490020, Tahsil And District Durg Chhattisgarh Through Secretary
2. Mohd. Usman S/o Shri Mohd. Hatim, Aged About 64 Years R/o 46 B/6, Transport Nagar, Hathkhoj, Bhilai, 490001 Tahsil And District Durg Chhattisgarh
3. Saif Usman S/o Shri Mohd. Usman, Aged About 39 Years R/o 19/14, Uttar Gangotri, G.E. Road, Supela, 49001, Bhilai, Tahsil And District Durg Chhattisgarh
4. Kaif Usman S/o Shri Mohd. Usman, Aged About 34 Years R/o H 22, R.K.C. Complex, G.E. Road, Raipur, Chhattisgarh 492001 Mobile No. 09752591111
5. Smt. Rukshana Bano W/o Shri Mohd. Usman, Aged About 57 Years R/o House No. 43, A/3, Nehru Nagar, West, 490020 Bhilai, Tahsil And District Durg Chhattisgarh
6. Smt. Kamla Bhandari W/o Late Shri K.K. Bhandari, Aged About 80 Years R/o House No. 176, Santara Badi, Durg 491001, Tahsil And District Durg Chhattisgarh
7. Mushtaq Ahmed, S/o Late Shri Shaukat Ali, Aged About 50 Years R/o House No. 43, A/3, Nehru Nagar, 490020 Bhilai, Tahsil And District Durg Chhattisgarh
8. City Supdt. Of Police, Office At Collectorate, Durg, 491001, Tahsil And District Durg Chhattisgarh

-----Respondents

For Appellants:	Shri SS. Rajput, Advocate.
For Respondents No.1 to 7:	Ms. Meha Kumar, Advocate.
For Respondent No.8/State:	Shri JK. Gilda, Advocate General along with Shri UNS Deo, Government Advocate.

Hon'ble The Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

15/03/2016

1. The present appeal arises from order dated 4.1.2016 in W.P.(C) No.1867 of 2015. The Learned Single Judge declined to entertain the Writ Petition in view of the alternative statutory remedy available before the Debts Recovery Tribunal under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 read along with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, holding that statutory authority had ample power to grant interim relief also. Simultaneously, the Learned Single Judge has granted interim relief from dispossession for a period of forty five days.

2. Learned Counsel for the Appellants has raised a very short question of law for our consideration. He submits that if the Learned Single Judge declined to assume jurisdiction under Article 226 of the Constitution, the order was absolute in all respects. The Court could not have declined jurisdiction on merits and yet simultaneously assumed jurisdiction by passing an interim order which would continue to operate even after disposal of the Writ Petition. He next submits that the appeal has not become academic as it raises a pure question of law which is likely to arise in other matters also and it is therefore

necessary that the Court should lay down the law in this regard.

3. Learned Counsel for Respondents No.1 to 7 submits that the appeal has become infructuous as the period of 45 days mentioned in the order of the Learned Single Judge has since expired. The Court does not decide academic matters and therefore the question may be left open for consideration in another appropriate case.

4. We have considered the submissions on behalf of the parties and propose to address the only solitary question of law raised before us. We are not satisfied that the appeal has become academic in view of the submission for laying down of the law in this regard.

5. The jurisdiction under Article 226 of the Constitution being equitable in nature is also discretionary. One of the principles evolved by the Writ Court is that if an alternative statutory remedy is available, the Writ jurisdiction should not be invoked and the parties should be left to approach the alternate statutory forum. The writ jurisdiction cannot be exercised to usurp the jurisdiction of a statutory forum. The Supreme Court in more than one judgment has expressed anguish and anxiety that in the matters like the present, if there is a complete code of law provided and issue relates to public money, the Writ Court should not entertain such Writ Petitions and should leave the aggrieved for approaching the Tribunal. The Learned Single Judge therefore rightly declined to entertain the Writ Petition.

6. The only question for our consideration is that if the Learned Single Judge dismissed the Writ Petition declining to exercise discretionary jurisdiction in view of the alternative statutory remedy available, could an order have been passed which would continue to operate after the Writ Petition had been dismissed. In other words, could the Learned Single Judge

simultaneously decline and yet assume jurisdiction for certain purposes. The question is no more res integra. It has to be held that the Court having declined jurisdiction under Article 226 of the Constitution, could not have simultaneously assumed jurisdiction and passed an order which would continue to operate even after the Writ Petition had been dismissed as not maintainable.

7. In A.I.R. (39) 1952 Supreme Court 12 (The State of Orissa vs. Madan Gopal Rungta), it was observed as follows:-

“5.....The result therefore is that while the Judges declined to investigate and pronounce on the rights of the parties and expressly kept the determination thereof in abeyance in the suit proposed to be filed by the present respondents, they gave directions for interim relief till such suit was filed. It must be noted that with the passing of the order of 2-8-1951 containing directions in the nature of interim relief the petitions were completely disposed of and have not been kept pending for disposal.....”

“6.....But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action.....”

8. Yet again in (2005) 11 Supreme Court Cases 509 (G.E. Power Controls India vs. S. Lakshmi pathy), it was observed in paragraph-7 as follows:-

“7. The reasoning of the High Court is contradictory to say the least. If the High Court had held that it was unable to grant relief in respect of orders of transfer under Article 226 of the Constitution, it certainly was not in a position to adjudicate upon or grant relief in respect of orders of termination of service or abandonment of the service as the case may be. This is settled law and has been clearly laid down in State of Orissa v. Madan Gopal Rungta. In this case, the Court declined to decide on the rights of the parties under Article 226 of the Constitution relating to

removal of assets from mining areas. The High Court, however, granted interim relief by injuncting the State of Orissa from disturbing the possession of the writ petitioners over the mining areas for a period of one week after the institution of the suit which, according to the High Court, was the more appropriate remedy.”

9. The issue again fell for consideration in (2011) 14 Supreme Court Cases 140 (Bharat Coking Coal Limited vs. Indian Newspaper Society And Others) observing as follows:-

“7. We are of the view that since the writ petition itself was not maintainable, no interim order for deposit or payments, etc. could have been made and while dismissing the writ petition as not maintainable, the High Court ought to have restored the parties to their original position.”

10. Madan Gopal Rungta was relied upon in (2014) 4 Supreme Court Cases 453 (Hema Mishra vs. State of Uttar Pradesh And Others) observing as follows:-

“22. I am also faced with the situation that on dismissal of the writ by the High Court under Article 226 of the Constitution of India, while examining the challenge for quashing the FIR or a charge-sheet, whether the High Court could grant further relief against arrest for a specific period or till the completion of the trial. This Court in State of Orissa v. Madan Gopal Rungta reported in AIR 1952 SC 12, while dealing with the scope of Article 226 of the Constitution, held as follows :-

“6.....Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions had been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and.... that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of the opinion that there was no other convenient

or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution.....the language of Article 226 does not permit such an action.”

The language of Article 226 does not permit such an action and once the Court finds no merits in the challenge, writ petition will have to be dismissed and the question of granting further relief after dismissal of the writ, does not arise. Consequently, once a writ is dismissed, all the interim reliefs granted would also go.”

11. Resultantly, the appeal has to be allowed and that part of the order granting interim protection for 45 days to the Respondents even after declining to entertain the Writ Petition on merits is held to be unsustainable and is set aside.

12. The appeal is allowed to the extent indicated.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE