

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9177 OF 2016

Duryodhan D. Rananaware and anr. .. Petitioners
vs.
Shrimant Malojiraje Sahakari Gruhtaran
Sanstha and ors. .. Respondents

Mr. D.S. Patil for the Petitioners.
None for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 06 SEPTEMBER 2016.

P.C. :-

- 1] Heard learned counsel for the petitioner.
- 2] The challenge in this petition is to the order dated 4 September 2015 made by the District Consumer Redressal Forum (Forum) directing the execution of its order dated 9 July 2014.
- 3] Mr. Patil, learned counsel for the petitioners, by placing reliance upon the decision of this Court in *Sau. Varsha Ravindra Isai Vs. Sau. Rajashree Rajkumar Chaudhari and ors. - 2011 (3) ALL M.R. 88*, has submitted that the petitioners who are the Directors of the Cooperative Society cannot be made personally liable, assuming that there has been deficiency in service on the part of Cooperative Society. He submits that since this is the matter,

which relates to jurisdiction, the petitioner is entitled to question the order dated 4 September 2015 made by the Forum by instituting the present petition and in such a situation the bar of alternate remedy will not apply.

4] By the impugned order dated 4 September 2015, the Forum has merely directed the execution of its earlier order dated 9 July 2014. The order dated 9 July 2014 directs, *inter alia*, the petitioners to refund to the respondents (complainants before the Forum) the amounts kept by them in Fixed Deposit alongwith some marginal amounts by way of compensation for harassment and mental agony, which they were required to suffer. The Forum, before it made the order dated 9 July 2014, had afforded every possible opportunity of hearing to the petitioners. In fact, there is and there can be no complaint of any violation of principles of natural justice and fair play. The order dated 9 July 2014 made by the Forum has in fact attained the finality for want of appeal by the petitioners. There is no explanation in the entire petition as to why no appeal was instituted against the order dated 9 July 2014, whether within the period of limitation or otherwise, if indeed, the petitioners were aggrieved by the order dated 9 July 2014. The impugned order

dated 4 September 2015, merely seeks to execute the order dated 9 July 2014, which has already attained the finality. In such circumstances, it can hardly be said that there is any jurisdictional error in making the order dated 4 September 2015.

5] The existence of alternate remedy under the Statute is never a bar to exercise of extraordinary jurisdiction under Article 226 or 227 of the Constitution of India. However, ordinarily, whenever a statutory remedy by way of appeal is available and the same is equally efficacious, there is no reason to entertain a petition under Article 226 or 227 of the Constitution of India. In this case, in particular, considering that the petitioners have not even challenged the Forum's order dated 9 July 2014, which is the basis for subsequent consequential order of execution, there is no case made out to depart from the ordinary rule that parties be relegated to avail alternate remedies. The mere circumstance that alternate remedy, on account of negligence on the part of the petitioners may have been barred by law of limitation, is certainly not a good ground to entertain a writ petition to challenge only the consequential orders. If this is permitted, then the petitioners will possibly achieve indirectly, what, they were not successful to achieve directly.

6] The decision in *Sau. Varsha R. Isai (supra)*, is distinguishable. In fact, in paragraph 24, the learned Single Judge has stated that extraordinary jurisdiction was being “*in the peculiar facts and circumstances of the this case*”. That apart, in *Sau. Varsha R. Isai (supra)* the challenge was to the order of Consumer Forum holding the Directors liable. In this case, the order of the Forum holding the petitioners liable, has not even been challenged by the petitioners. In fact, the petitioners have permitted such order to attain finality. What is impugned in the present petition is the mere consequential order directing execution. In such circumstances, the decision in *Sau. Varsha R. Isai (supra)*, affords no assistance to the petitioners.

7] Mr. Patil, learned counsel for the petitioners, also placed reliance upon the interim order dated 9 November 2015 made in Writ Petition (St) No. 30464 of 2015 in support of his case. The interim orders, by themselves, are not precedents. Perusal of interim order dated 9 November 2015 indicates that limited interim relief was granted during vacation to restrain the sale of property or to restrain confirmation of auction sale, in case, the auction had taken place. The interim order was made without hearing the contesting respondents. Therefore, on the basis of such interim order, the

petitioners cannot claim any reliefs in the present petition.

8] The jurisdiction under Article 226 or 227 of the Constitution of India is equitable and is required to be exercised in order to promote the justice. In this case, the petitioners did not even dispute that the respondents had indeed deposited amounts with the society by way of Fixed Deposit. The petitioners did not even dispute that such amounts were never returned to the complainants either with or without any interest. The complainants are thus being made to run from pillar to post in order to secure refund of their own amounts, which they placed in Fixed Deposit with the society on the basis of trust which they placed in the petitioners. The petitioners, apart from not disputing such facts have not even bothered to challenge the Forum's order dated 9 July 2014 by instituting any appeal within the limitation period prescribed or even otherwise. In such circumstances, the petitioners cannot be permitted to frustrate recovery proceedings by resort to extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India. Such equitable jurisdiction is required to be exercised in order to promote honesty and justice. Such jurisdiction is certainly not a tool to frustrate legitimate claim of parties, particular where such parties

are small depositors and are being made to run from pillar to post in order to secure the return of their own deposits. If according to the petitioners, primary responsibility for payment of such amounts lies with the society, nothing prevents the petitioners from instituting appropriate proceedings against the society for recovery of such amounts, in case, the same are recovered from the petitioners. However, in the facts and circumstances of the present case, it is impermissible for the petitioners to deny liability and question only the order made in execution proceedings.

9] In *Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and ors. - (2013) 5 SCC 427*, the Hon'ble Supreme Court has held that the primary purpose of writ jurisdiction is to promote justice (*ex debito justitiae*) and its grant or refusal is at the discretion of the Court. While dealing with a writ petition the Court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants such exercise of discretion, consequences of grant or refusal of the writ, and nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be exercised

by the Court on grounds of public policy, public interests and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief, must be for reasons which would lead to injustice. The prime consideration for issuance of writ is, whether or not substantial justice will be promoted. Further, the petitioner is required to establish good faith before he seeks invocation of writ jurisdiction. Thus, it is evident that writ is not issued merely as it is legal to do so, the Court must exercise its discretion after examining pros and cons of the case.

10] For the aforesaid reasons, this petition is dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)

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