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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 4996/2012 & C.M. 3932/2014

MRS. SREEDEVI SREEKUMAR ..... Petitioner

Through: Mr. A.P. Vinod, Advocate.

versus

STATE BANK OF INDIA AND ANR ..... Respondents

Through: Mr. N.K. Kaul, Senior Advocate with Ms. Hansa Kaul, Advocate for R-1/SBI. Mr. Rajiv Kapur, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

<u>O R D E R</u>

% **01.02.2017**

1. The present petition has been filed by the petitioner against the respondent No.1/SBI and respondent No.2/SBI Fund Management Private Limited praying *inter alia* for quashing the incorporation of the respondent No.2 by the respondent No.1, for directing the CBI to investigate the respondents and to award compensation of Rs.50 lacs in her favour.

2. The petitioner states that in December, 2007, she had applied to the respondent No.2 for investing in 'Magnum Tax Gain Scheme', an Equity Linked Savings Scheme. On investing a sum of Rs.25 lacs on 11.12.2007 in the said Scheme, the petitioner was allotted 3631.35 units. The said Scheme was closed on 30.4.2012 and on redemption, the petitioner had received a sum of Rs. 2,09,294.46 on an investment of Rs.25 lacs. The grievance of the petitioner is that she had suffered wrongful loss due to failure on the part of

the respondents in declaring dividend from time to time under the Scheme.

3. Mr. N.K. Kaul, learned Senior Advocate appearing for the respondent No.1/SBI questions the maintainability of the present petition and states that the dispute raised here is a purely contractual dispute between the petitioner and the respondent No.2 and the respondent No.1/SBI has been unnecessarily dragged in the case.

4. Mr. Kapur, learned counsel for respondent No.2 takes the same plea and states on merits that petitioner had opted for the "growth" option in the Form submitted by her for purchase of units under the Scheme and not for "dividend" option, which is apparent from a perusal of the photocopy of the Form enclosed with the counter affidavit (Annexure R-3).

5. The Court is also informed that the parents of the petitioner had also raised a similar grievance in two independent petitions filed by them before the Consumer Redressal Forum, which were subsequently disposed of.

6. Mr. Vinod, learned counsel for the petitioner states that assuming that the petitioner had ticked the option of "growth" in the Form, she is still entitled to claim dividend, which is a more profitable option under the Scheme and he is in a position to demonstrate the same from certain calculations.

7. This Court is of the opinion that writ proceedings cannot be used by the petitioner as a forum for claiming damages against the respondents, particularly, when the subject matter of the dispute is based on a contract between the parties. The other relief prayed for by the petitioner for directing an enquiry against the respondent No.1/SBI, appears to be completely extraneous.

8. At this stage, learned counsel for the petitioner states that he may be

permitted to withdraw the present petition with liberty to approach the appropriate forum for relief against the respondents. He submits that the only apprehension is that the respondents may take the plea of limitation to oppose the said petition.

9. Leave, as prayed for, is granted. The petition is dismissed as withdrawn along with pending application. It is made clear that if the petitioner approaches the appropriate forum as per law for relief within eight weeks, then the respondents shall not oppose the said petition by raising a plea of limitation.

HIMA KOHLI, J

FEBRUARY 01, 2017
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