IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P.Nos.11263 to 11265 of 2016
and W.M.P.Nos.9768 to 9770 of 2016

P.Bharathidasan .. Petitioner in W.P.11263/16.
M.Kumar .. Petitioner in W.P.11264/16.
K.Malathy .. Petitioner in W.P.11265/16.

Vs.

1. The Registrar,
Debts Recovery Tribunal - III,
V Floor, Spencers Towers,
770-A, Anna Salai,
Chennai - 600 002.

2. The Recovery Officer,
Debts Recovery Tribunal - III,
V Floor, Spencers Towers,
770-A, Anna Salai,
Chennai - 600 002.

3. Punjab National Bank,
Raja Annamalai Road,
Purasawalkam,
Chennai - 600 084.

4. Mr.G.Singaravel .. Respondents in all W.Ps.

Prayer in W.P.No.11263 of 2016: Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus calling for the records of the 1st respondent pertaining to the order dated 19.11.2015, made in MA Nos.119 of 2015, MA No.120 of 2015 and MA No.121 of 2015 in IA No.599 of 2015 in RP No.204 of 2008 (DRC No.180 of 2008) in OA No.244 of 2008 and quash the same and consequentially forbear the respondents herein, their subordinates or delegates from interfering with the petitioners possession of the property morefully described in the Schedule hereto.

Prayer in W.P.No.11264 of 2016: Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified

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Mandamus calling for the records of the 1st respondent pertaining to the order dated 19.11.2015, made in MA Nos.116 of 2015, MA No.117 of 2015 and MA No.118 of 2015 in IA No.599 of 2015 in RP No.204 of 2008 (DRC No.180 of 2008) in OA No.244 of 2008 and quash the same and consequentially forbear the respondents herein, their subordinates or delegates from interfering with the petitioners possession of the property morefully described in the Schedule hereto.

Prayer in W.P.No.11265 of 2016: Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus calling for the records of the 1st respondent pertaining to the order dated 19.11.2015, made in MA Nos.113 of 2015, MA No.114 of 2015 and MA No.115 of 2015 in IA No.599 of 2015 in RP No.204 of 2008 (DRC No.180 of 2008) in OA No.244 of 2008 and quash the same and consequentially forbear the respondents herein, their subordinates or delegates from interfering with the petitioners possession of the property morefully described in the Schedule hereto.

For Petitioners : Mr.Srinath Sridevan
For Respondent 3 : No appearance
For Respondent 4 : Mr.G.Ethirajulu,

C O M M O N O R D E R
(Order of the Court was made by S.MANIKUMAR, J.)

Instant writ petitions have been filed by the petitioners seeking to quash the common orders dated 19.11.2015, passed by the Debts Recovery Tribunal - III, made in MA No.119 of 2015, MA No.120 of 2015 & MA No.121 of 2015; MA No.116 of 2015, MA No.117 of 2015 & MA No.118 of 2015 and MA No.113 of 2015, MA No.114 of 2015 & MA No.115 of 2015 in IA No.599 of 2015 in RP No.204 of 2008 (DRC No.180 of 2008) in OA No.244 of 2008 respectively and consequentially forbear the respondents herein, their subordinates or delegates from interfering with petitioners' possession of property morefully described in the Schedule hereto.

2. As instant writ petitions have been preferred on the same set of facts, submissions being common, they are taken up together and disposed of by means of this common order.

3. Supporting affidavits read that there was no Presiding Officer in the Appellate Forum to challenge the common order dated 19.22.2015, made in MA No.119 of 2015, MA No.120 of 2015 & MA No.121 of 2015; MA No.116 of 2015, MA No.117 of 2015 & MA No.118 of 2015 and MA No.113 of 2015, MA No.114 of 2015 & MA No.115 of 2015 in IA No.599 of 2015 in RP No.204 of 2008 (DRC

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No.180 of 2008) in OA No.244 of 2008 and hence instant writ petitions have been filed.

4. It is informed that Presiding Officer has been now appointed and that Appellate Tribunal is functioning.

5. Though Mr.Srinath Sridevan, learned counsel for the petitioners, urged this Court to entertain the writ petitions, we are not inclined to do so for the reason that, on more than one occasion, the Hon'ble Supreme Court, as well as this Court, held that, ordinarily, writ petition should not be entertained when the Statutes provide for an effective and alternative remedy. Reference can be made to few decisions, in this regard.

5.1. In Union of India v. T.R.Verma, AIR 1957 SC 882, the Hon'ble Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution, unless there are good grounds to do, otherwise.

5.2. In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17 (SC) : 2000 (10) SCC 13, the Hon'ble Supreme Court held that where there is a hierarchy of appeals provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

5.3. The general principles of law to be followed while entertaining a writ petition, when an alternative remedy is available, as per the decision of the Hon'ble Apex Court in U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Another (2005) 8 SCC 264, at para No.11 are as follows:

> "Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the

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case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the high Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

5.4. In United Bank of India Vs. Satyawati Tondon and Others {(2010) 8 SCC 110}, the Hon'ble Apex Court, at paragraph Nos.43 to 45, held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they do not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the high Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the

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enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc., and the particular legislation contains a detailed mechanism for redressal of his grievance."

5.5. In Nivedita Sharma Vs. Cellular Operators Association of India and Others {(2011) 14 Supreme Court Cases 337}, the Hon'ble Apex Court held that,

"An alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, 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 or grievance still holds the field."

5.6. The Hon'ble Apex Court, after considering a catena of cases, in Shauntlabai Derkar and Another Vs. Maroti Dewaji Wadaskar {(2014) 1 Supreme Court Cases 602}, at para Nos.15 to 18, held as follows:-

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"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 {Thansigh Nathmal Vs. Supt. of Taxes, AIR 1964 SC 1419}, Titaghur Paper Mills Case {Titaghur Paper Mills Co. Ltd Vs. State of Orissa (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 forum is crated by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. Vs. State of Haryana (1985) 3 SCC 267, this Court has noticed that if an appeal is from "Caesar to Caesar's wife", the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the

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available alternate remedy under the Act, as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ Court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Chhabil Dass Agarwal Vs. Union of India {W.P.(c) No.44 of 2009, decided on 5/10/2010}. We grant liberty to the respondent, if he so desires, to file an appropriate petition/appeal against the orders of reassessment passed under Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 5/10/2010."

5.7. After considering a plethora of judgments, in Union of India and Others Vs.Major General Shri Kant Sharma and Another {(2015) 6 SCC 773}, at para 36, the Hon'ble Apex Court held as follows:-

"The aforesaid decisions rendered by this Court can be summarised as follows:-

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail

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jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L.Chandrakumar Vs. Union of India (1997) 3 SCC 261 and S.N.Mukherjee Vs. Union of India (1990) 4 SCC 594.

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Refer: Mafatlal Industries Ltd., Vs. Union of India (1997) 5 SC 536.

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.

(iv) 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. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.)"

5.8. In Veerappa Pillai Vs. Raman & Raman Ltd {1952 SCR 583}, CCE Vs. Dunlop India Ltd {(1985) 1 SCC 260}, Ramendra Kishore Biswas Vs. State of Tripura {(1999) 1 SCC 472, Shivgonda Anna Patil Vs. State of Maharashtra {(1999) 3 SCC 5}, C.A.Abraham Vs. ITO {(1961) 2 SCR 765}, Titaghur Paper Mills Co Ltd., Vs. State of Orissa {(1983) 2 SCC 433}, H.B.Gandhi Vs. Gopi Nath & Sons {1992 Supp (2) SCC 312}, Whirlpool Corpn Vs. Registrar of Trade Marks {(1998) 8 SCC 1}, Tin Plate Co. of India Ltd., Vs. State of Bihar {(1998) 8 SCC 272}, Sheela Devi Vs. Jaspal Singh {(1999) 1 SCC 209} and Punjab National Bank Vs. O.C.Krishnan {(2001) 6 SCC 569}, the Hon'ble Court held that where hierarchy of appeals is provided by the Statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

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6. In the light of the subsequent event and decisions, instant writ petitions are dismissed with liberty to the petitioners to approach the Debt Recovery Appellate Tribunal, under Section 30, of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 within one month from today. Writ Petition Nos.11263 to 11265 of 2016 are pending since 2016 and therefore time consumed in prosecuting the writ petitions be excluded, if appeals are filed within one month, as directed by this Court. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Registrar,
   Debts Recovery Tribunal - III,
   V Floor, Spencers Towers,
   770-A, Anna Salai,
   Chennai - 600 002.

2. The Recovery Officer,
   Debts Recovery Tribunal - III,
   V Floor, Spencers Towers,
   770-A, Anna Salai,
   Chennai - 600 002.

3. Punjab National Bank,
   Raja Annamalai Road,
   Purasawalkam,
   Chennai - 600 084.

+3cc to Mr.Srinath Sridevan, Advocate SR.No.31016, 31017, 31015
+1cc to Mr.P.B.Sampath Kumar, Advocate SR.No.31079
+1cc to Mr.G.Ethirajulu, Advocate SR.No.31044

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