

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. No. 16779 of 2019

S. Manikandan

... Petitioner

-VS-

1. The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and Khadi Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Chairman and Managing Director,
Tamil Nadu Handicrafts Development Corporation Limited,
759, Anna Salai, (opp. TVS)
Chennai - 600 002.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the Respondents to pay a sum of Rs. 10,00,000/- as compensation to the Petitioner for having inflicted mental pain and agony for breaking the Sculpture "Lord Shiva Dancing" submitted by Petitioner before the Second Respondent for "Poompuhar State Awards 2018-2019" negligently by the Second Respondent.

For Petitioner : Mr. J. Prithivi

For Respondents: Mr. M. Karthikeyan,
Additional Government Pleader

O R D E R

Heard Mr. J. Prithivi, Learned Counsel for the Petitioner and Mr. M. Karthikeyan, Learned Counsel for the Respondents and perused the materials placed on record, apart from pleadings of the parties.

2. The Petitioner, who is an artisan participated in the Poompuhar State Award 2018-2019 and on 06.09.2018, he handed over a wooden carving of Lord Shiva in dancing form, which was valued at a price of Rs.45,000/- to the Second Respondent, Tamil

Nadu Handicrafts Development Corporation Limited, Chennai, under written acknowledgment. The Petitioner had come to know that the said wood carving submitted by him was not considered for the said award inasmuch as the same was broken in the custody of the Second Respondent. Aggrieved thereby, he has filed this Writ Petition claiming a sum of Rs.10,00,000/- as compensation towards for inflicting mental pain and agony on him by the aforesaid negligent act of the Second Respondent.

3. When a specific query has been raised to the Learned Counsel for the Petitioner as to whether the Petitioner is willing to receive the value of the Wood Carving, which has been offered by the Respondents, he refused to accept the value of the Wood Carving as fixed by him, and it is informed that the Petitioner is not satisfied with the same and that he wants to pursue the claim for compensation towards the mental pain and agony inflicted upon him by the negligent act of the Second Respondent.

4. The aforesaid relief claimed by the Petitioner in the Writ Petition for compensation is apparently for vindication of a right of private character and does not involve any element of public law for invoking the remedy under Article 226 of the Constitution. Suffice here to refer to the decision of the Hon'ble Supreme Court of India in Joshi Technologies International Inc. -vs- Union of India [(2015) 7 SCC 728], in which it has been held as follows:-

"69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions

of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances."

The claim for compensation for mental pain and agony is a disputed question of fact, which requires recording of evidence of parties and the cross examination of witnesses for effectual and complete adjudication of the matter and cannot be resorted in the summary procedure followed by this Court in proceedings under Article 226 of the Constitution and there is no explanation from the Petitioner for not having availed the common law remedy available by instituting suit before the jurisdictional Civil Court.

5. In the aforesaid circumstances, this Court does not find any justification to entertain the Writ Petition for the relief as sought by the Petitioner. However, it is made clear that such refusal would not preclude the right of the Petitioner to agitate his claims before the competent forum uninhibited and uninfluenced by any of the observations made in this order, which does not touch upon the merits of the contentious issues between the parties.

6. Accordingly, the Writ Petition is dismissed with the aforesaid observations. No costs.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to the Government of Tamil Nadu,
Handlooms, Handicrafts, Textiles and Khadi Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Chairman and Managing Director,
Tamil Nadu Handicrafts Development Corporation Limited,
759, Anna Salai,
Chennai - 600 002.

+1 CC to Govt. Pleader sr 50601.

+1 CC to Mr.S. Kaithamalai Kumaran, Advocate sr 49629.

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RJI (CO)
SP(13/09/2019)