

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2019

CORAM

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

W.P. No. 15254 of 2019
and
W.M.P. No. 15243 of 2019

1. M. Jayabharathi
2. G. Meenakshipriya
... Petitioners

-vs-

1. Andhra Bank,
Rep. by its Branch Manager,
Sekarrajapuram Branch,
No. 264, R.B.K. Complex,
Thendral Nagar,
Sekarrajapuram,
Ranipet - 632 406.

2. Andhra Bank,
Rep. by its Zonal Manager,
Zonal Office,
No. 168, Linghi Chetty Street,
Parrys,
Chennai - 600 001.

3. S. Gunasundari ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the First and second Respondents to settle the two-thirds share of the fixed deposit amounts of Rs.60 Lakhs in respect of 12 fixed deposits referred below:

Name	Deposit Receipt Number	Amount in Rs.	Maturity Date	Account No.
K. Nagabushanam	033025	5,00,00 0/-	31.08.2018	247120100000964
K. Nagabushanam	033026	5,00,00 0/-	31.08.2018	247120100000973
K. Nagabushanam	033027	5,00,00 0/-	31.08.2018	247120100000982
K. Nagabushanam	033028	5,00,00 0/-	31.08.2018	247120100001006
K. Nagabushanam	033029	5,00,00 0/-	31.08.2018	247120100001033
K. Nagabushanam	033030	5,00,00 0/-	31.08.2018	247120100001042
N. Lakshmi	033031	5,00,00 0/-	31.08.2018	247120100000991
N. Lakshmi	033032	5,00,00 0/-	31.08.2018	247120100001015
N. Lakshmi	033033	5,00,00 0/-	31.08.2018	247120100001024
N. Lakshmi	033034	5,00,00 0/-	31.08.2018	247120100001051
N. Lakshmi	033035	5,00,00 0/-	31.08.2018	247120100001060
N. Lakshmi	033036	5,00,00 0/-	31.08.2018	247120100001079

together with proportionate accrued monthly interest in the S.B. Account (ERS) No. 247110100034642 lying in the First Respondent bank till the date of settlement to the Petitioners.

For Petitioners : Mr. P.C. Harikumar

ORDER

The Petitioners and the Third Respondent are the daughters of the couple, viz., K. Nagabushanam and N. Lakshmi, who died in a road accident on 29.05.2016. The said K. Nagabushanam and N. Lakshmi had invested amounts aggregating to Rs.30,00,000/- each in fixed deposits with the First Respondent, viz., Andhra Bank, Sekarrajapuram Branch, Ranipet, which attained maturity on 31.08.2018. The Petitioners, as legal heirs succeeding to the estate of the deceased, made a claim for their two-thirds share in those

fixed deposits from the First Respondent by legal notice dated 03.01.2019 through their Advocate with a copy sent to the Third Respondent. In response to that notice, the Third Respondent through her Advocate by Reply dated 04.02.2019 disputed the entitlement of the Petitioners to claim two-thirds share in those fixed deposits by complaining that the husband of the First Petitioner had misappropriated family funds to the tune of several lakhs by misusing ATM card of the deceased parents of the Petitioners and the Third Respondent, apart from contending that other joint family owned properties would also have to be taken into account for a comprehensive partition between the parties and informed that she was contemplating to institute a suit for partition before the jurisdictional Civil Court and in those circumstances, the authorities of the First Respondent were required to record the objection of the Third Respondent in releasing the amounts in the matured fixed deposits claimed by the Petitioners. The First Respondents was further warned that non-compliance of that instruction would be at the risk of facing action for damages.

2. Taking into consideration the rival claims of the Petitioners and the Third Respondent, the First Respondent through its Advocate, by Reply Notice dated 02.03.2019 conveyed that in view of the dispute between the parties and the statement made by the Third Respondent that she would be approaching the competent Court for necessary relief, either the Third Respondent or the Petitioners may get necessary direction from the appropriate Court as to the manner of dealing with the amounts under the matured fixed deposits and that the First Respondent was ready to obey the orders of the Court at any time. The Petitioners claim to have sent a rejoinder dated 14.03.2019 through their Advocate denying the allegations made against the husband of the First Respondent as well as the existence of other joint family properties and have filed this Writ Petition for a direction to the First and Second Respondents to settle the two-thirds share of the amounts under the matured fixed deposits together with the proportionate accrued monthly interest.

3. In response to the observations made by this Court that the nature of the dispute between the Petitioners and the Third Respondent, which is absolutely private in character and does not have any element of public law involved, could not be decided in proceedings under Article 226 of the Constitution, the Learned Counsel for the Petitioners cited the decision of the Hon'ble Supreme Court of India in ABL International Limited -vs- Export Credit Guarantee Corporation of India Limited [(2004) 3 SCC 553], in which

it has been held that a Writ Petition involving serious disputed facts which requires consideration of evidence which is not on record, cannot be normally entertained by a Writ Court, but there is no absolute rule that in all cases involving disputed question of fact, the parties should be relegated to a civil suit. It is further contended by him that inasmuch as the First Respondent has only required a Court order for disbursing two-thirds share of the Petitioners in the matured fixed deposits, this Court has ample powers to issue necessary directions in this regard to the First Respondent notwithstanding the objections raised by the Third Respondent.

4. The Hon'ble Supreme Court of India in *Joshi Technologies International Inc. -vs- Union of India* [(2015) 7 SCC 728] after considering all the earlier binding decisions on the subject including the aforementioned case, has 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."

Inasmuch as the dispute in this Writ Petition relates to a

private dispute between the Petitioners and the Third Respondent and does not involve any element of public law character attached to it, the aforesaid principles requiring this Court to exercise restraint to entertain such monetary claims squarely applies to the facts of the present case.

5. Though it is true that there is no legal bar for this Court to entertain the Writ Petition against the First Respondent in respect of the claim for disbursement of the share of the Petitioners in the matured fixed deposits of their deceased parents, whose estate they claim to have succeeded, it cannot be lost sight of the fact that the Third Respondent, who is also a co-sharer, has raised a dispute in that regard, which the First Respondent has duly taken note of and has required the contesting parties to obtain appropriate orders from the competent Court, which the First Respondent has agreed to abide. In other words, the dispute between the parties, which is essentially private in character, has to be decided only before the Civil Court and it would be an abuse of judicial process to invoke the public law remedy provided under Article 226 of the Constitution for adjudicating the same. Moreover, when the Third Respondents has already expressed her intention to resort to legal proceedings for necessary relief, in which the Petitioners are entitled to contest and also file counter-claim, if necessary, it would be inappropriate at this stage to entertain the Writ Petition at the instance of the Petitioners to circumvent the same and which would eventually lead to unwarranted multiplicity of litigation. Even if the Third Respondent does not institute any suit for partition within a reasonable time, it is certainly open to the Petitioners to institute such suit for partition and make their claim by impleading the First and Third Respondents as parties therein.

6. That apart, from the pleadings and materials placed on record by the Petitioners, this Court does not find any infirmity in the prudent and unbiased decision of the First Respondent for warranting interference in the exercise of the discretionary powers under Article 226 of the Constitution. This Court is fortified in taking that view by the ruling of the Hon'ble Supreme Court of India in GRIDCO Limited -vs- Sadananda Doloi [(2011) 15 SCC 16], in which it has been aptly held as follows:-

"39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm

of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge."

In the absence of this Court finding any reason to interfere with the impugned decision of the First Respondent complained by the Petitioners, there does not appear to be any justification to entertain the Writ Petition, where the subject matter essentially relates to a private dispute between the Petitioners and the Third Respondent. It is also clarified that the refusal of this Court to entertain the Writ Petition does not preclude the right of the Petitioners to agitate their 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 Petitioners and the Third Respondent.

7. Resultantly, the Writ Petition is dismissed at the stage of admission. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vjt
To

1. The Branch Manager,
Andhra Bank,
Sekarrajapuram Branch,
No. 264, R.B.K. Complex,
Thendral Nagar,
Sekarrajapuram,
Ranipet - 632 406.

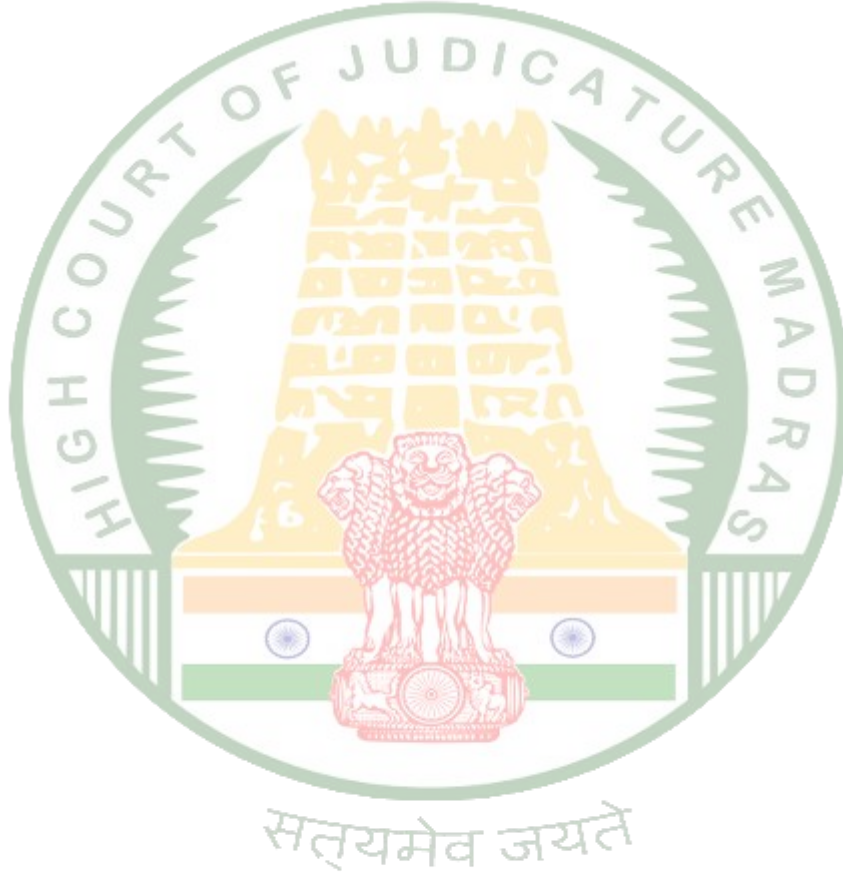
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2. The Zonal Manager,
Andhra Bank,
Zonal Office,
No. 168, Linghi Chetty Street,
Parrys,
Chennai - 600 001.

+1cc to Mr. P.C. Harikumar, Advocate SR.No. 45083

W.P. No. 15254 of 2019

A.SK(10/06/2019)



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