

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.7.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.1994 of 2019

1. M.Jayabharathi

2. G.Meenakshipriya

Appellants

Versus

1. Andhra Bank
rep. by its Branch Manager,
Sekarrajapuram Branch,
No.264, RBK 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 Appeal filed under Clause 15 of Letters Patent against the order of this court dated 4.6.2019 in W.P.No.15254 of 2019.

W.P.No.15254 of 2019:

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	5,00,000/-	31.08.2018	247120100000964
K. Nagabushanam	033026	5,00,000/-	31.08.2018	247120100000973
K. Nagabushanam	033027	5,00,000/-	31.08.2018	247120100000982
K. Nagabushanam	033028	5,00,000/-	31.08.2018	247120100001006
K. Nagabushanam	033029	5,00,000/-	31.08.2018	247120100001033
K. Nagabushanam	033030	5,00,000/-	31.08.2018	247120100001042
N. Lakshmi	033031	5,00,000/-	31.08.2018	247120100000991
N. Lakshmi	033032	5,00,000/-	31.08.2018	247120100001015
N. Lakshmi	033033	5,00,000/-	31.08.2018	247120100001024
N. Lakshmi	033034	5,00,000/-	31.08.2018	247120100001051
N. Lakshmi	033035	5,00,000/-	31.08.2018	247120100001060
N. Lakshmi	033036	5,00,000/-	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 appellant : Mr.P.C.Harikumar Associates

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Appellants being sisters viz., M.Jayabharathi and G.Meenakshipriya, have filed this intra-court Appeal aggrieved by the order of the learned Single Judge dated 4.6.2019, by which the learned Single Judge dismissed the Writ Petition filed by them against the respondent-Andhra Bank and Respondent No.3, S.Gunasundari, another sister.

2. The claim made by the Appellants/Petitioners in the writ petition was that their parents viz., father K.Nagabushanam and mother N.Lakshmi unfortunately died in a road accident and therefore, the amount invested with the Respondent-Andhra Bank in the form of Fixed Deposit, upon its maturity, should have been released in favour of the legal heirs. On refusal by the Bank, the petitioners seem to have approached this court by way of Writ Petition which came to be dismissed by the learned Single Judge with the following observations:-

"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."

3. Learned counsel for the appellant Mr.P.C.Harikumar, urged before us that there is no dispute about the investment made by the parents of the Appellants/Petitioners in the Respondent-Bank and on account of unfortunate death of both the parents in a road accident, the payment of the maturity value of the Fixed Deposits ought to have been made by the Respondent-Bank to the legal heirs before it.

4. Having heard the learned counsel for the Appellant, we are satisfied with the view taken by the learned Single Judge that writ jurisdiction is not the appropriate remedy and the legal heirs of the parents in question should obtain a decree from the competent court determining their legal heirship and share in the property in question and such a finding cannot be faulted. Apparently, on account of some dispute raised by the third respondent S.Gunasundari, another sister, the Respondent-Bank withheld release of payment in question and that is why the present petitioners had approached this court seeking legal remedy in question.

5. The only question before us is that whether the writ jurisdiction is an appropriate remedy or not for the relief sought for.

6. The learned Single Judge, relying upon the decision of the Hon'ble Supreme Court in the case of GRIDCO Limited v. Sadananda Doloi ((2011) 15 SCC 16) has held that such questions do not fit within the writ jurisdiction under Article 226 of the Constitution of India.

7. We do not find any error in the same and in our opinion, in such cases of dispute of the share of the legal heir and very existence of such legal heirs, a civil suit and appropriate decree in such cases is the appropriate remedy to be availed by the parties in question. Therefore, we do not find any merit in the Writ Appeal and accordingly, it is dismissed. No costs.

s/d-
सतयमेव जयते
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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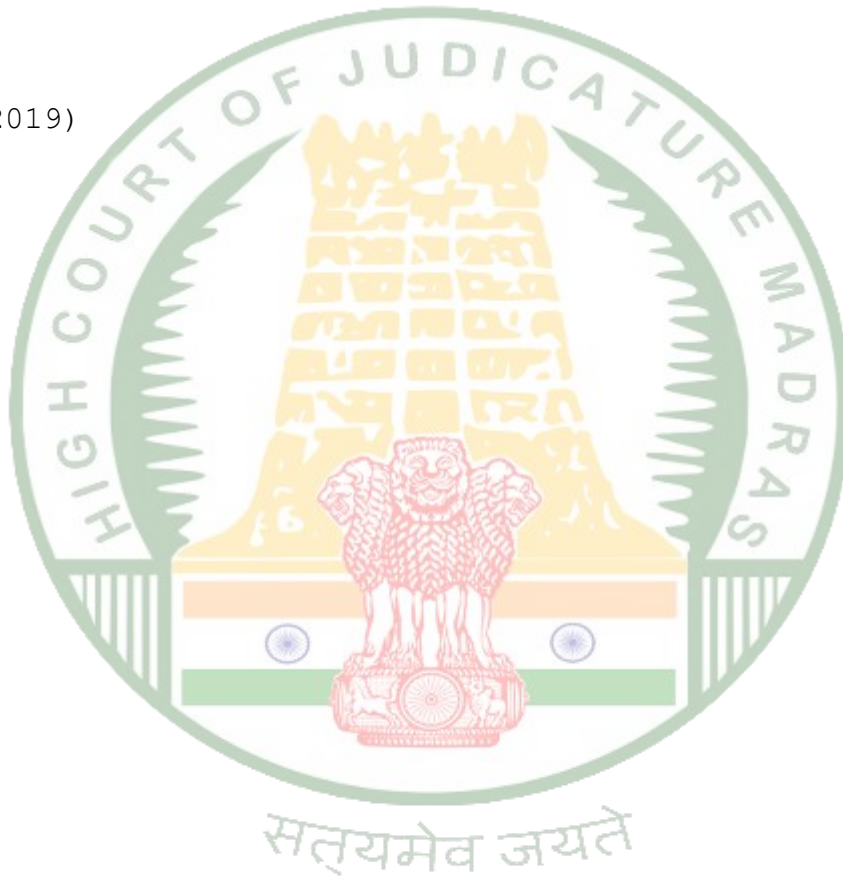
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2.The Zonal Manager,
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Parrys, Chennai 600 001.

+1 CC to Mr.P.C.Harikumar & associates sr 55686

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BR(CO)
SP(16/08/2019)



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