

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-8251-2019

Decided on: 28.03.2019

M/s. Doon Valley Rice Limited

.... Petitioner

Vs

Kotak Mahindra Bank Ltd. and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Narender Pal Bhardwaj, Advocate
for the petitioner.

AJAY KUMAR MITTAL, J (ORAL)

Prayer made in this writ petition under Articles 226/227 of the Constitution of India, is inter alia for issuance of a writ in the nature of certiorari to quash/set aside deed of assignment dated 23.03.2006 (Annexure P-4).

2. The writ petition is liable to be dismissed on more than one reason. Firstly, the challenge in the deed of assignment dated 23.03.2006 is hit by principles of delay and laches.

3. In view of the judgment of the Apex Court in **M/s Royal Orchid Hotels Ltd. and another vs. G.Jayarama Reddy and others., 2011(10) SCC 608** considering the question whether the High Court should entertain petition filed under Article 226 of the Constitution of India after long delay reiterated the view expressed in **Shankara Cooperative Housing Society Ltd. vs. M. Prabhakar and others, (2011) 5 SCC 607** wherein the following principles had been laid down:

“20. In *Shankara Cooperative Housing Society Limited v. M. Prabhakar and others* (2011) 5 SCC 607, this Court considered the question whether the High Court should entertain petition filed under Article 226 of the Constitution after long delay and laid down the following principles: "(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay."

4. It was further observed that where a litigant is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of

Constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. It was also noted that no hard and fast rule can be laid down and no straight jacket formula can be evolved for deciding the question of delay/laches and each case is required to be adjudicated keeping in view the factual matrix involved therein. The relevant observations read thus:

“Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no

cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.”

5. Moreover, the disputed questions of facts are involved, which cannot be conclusively determined in exercising the writ jurisdiction under Article 226 of the Constitution of India.

6. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in **N.C. Mahendra v. Haryana State Electricity Board and others, AIR 1984 Punjab 26** had laid down following guidelines:-

“ 12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is` discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from

the ordinary one by of a civil suit.” (Emphasis supplied). The Hon'ble Supreme Court in State Cadre Authority and another v. K.S.Bajpal and others, 1990(Sup) SCC 713, Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others, 2007(4) SCC 241 and Mukesh Kumar Agrawal v. State of UP and others, 2009(13) SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy.”

7. In view of the above, the present writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

28.03.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No