IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 21ST DAY OF DECEMBER 2020 / 30TH AGRAHAYANA, 1942

WP(C).No.27120 OF 2020(L)

PETITIONERS:

1 SREEDEVI G.
AGED 40 YEARS
W/O. GIREESH H., VARADAYAM HOUSE,
DISTRICT COURT WARD, THATHAMPALLY P.O.,
ALAPPUZHA DISTRICT-688013.

2 GIRESSH H.
AGED 48 YEARS
S/O. HARIHARAN, VARADAYAM HOUSE, DISTRICT COURT WARD,
THATHAMPALLY P.O., ALAPPUZHA DISTRICT-688013.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS:

1 AUTHORIZED OFFICER,
CANARA BANK, MULLACKAL BRANCH,
V.S.V. BUILDINGS, IRON BRIDGE P.O.,
ALAPPUZHA-688011.

2 CHIEF MANAGER,
CANARA BANK, MULLACKAL BRANCH,
IRON BRIDGE P.O., ALAPPUZHA-688011.

R1-R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1-R2 BY ADV. SRI.K.JOHN MATHAI
R1-R2 BY ADV. SRI.JOSON MANAVALAN
R1-R2 BY ADV. SRI.KURYAN THOMAS
R1-R2 BY ADV. SRI.PAULOSE C. ABRAHAM
R1-R2 BY ADV. SMT.PARVATHY KOTTOL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners, who availed overdraft facility from the respondent Bank, have filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the respondents to keep in abeyance of all further proceedings pursuant to Ext.P3 notice dated 22.10.2020 issued by the respondent Bank under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by providing a breathing time to clear the overdues. The petitioners have also sought for a writ of mandamus commanding the respondents to provide installment facility for clearing the admitted dues towards the respondents.

2. On 07.12.2020, when this writ petition came up for admission, learned Standing Counsel for the respondent Bank sought time to get instructions.

3. A statement has been filed on behalf of the respondents, opposing the reliefs sought for in this writ petition.

4. In **Commissioner of Income Tax v. Chhabil Das Agarwal [(2014) 1 SCC 603]**, the Apex Court held that non-

entertainment of a writ petition under Article 226 of the Constitution of India when an efficacious alternative remedy is available is a rule and self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India, despite the existence of alternative remedy. However, High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same, unless he has made out an exceptional case warranting such interference or there exists sufficient ground to invoke the extraordinary jurisdiction under Article 226.

5. In **Authorised Officer, State Bank of Travancore v. Mathew K.C. [(2018) 3 SCC 85]**, the Apex Court reiterated that the discretionary jurisdiction under Article 226 of the Constitution of India is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution of India ought not to be entertained if alternative statutory remedies are available, except in cases falling within the well-defined exceptions

as observed in **Chaabil Das Agarwal**, 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. After referring to the law laid down in **Thansingh Nathmal v. Superintendent of Taxes [AIR 1964 SC 1419]** and **Titaghur Paper Mills Company Ltd. v. State of Orissa [(1983) 2 SCC 433]** the Apex Court held that 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 contains a mechanism for redressal of grievance. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

6. In **Thansingh Nathmal** a Constitution Bench of the Apex Court held that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the

exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce for which the writ is claimed. The High Court does not, therefore, act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created

under the statute to be bypassed and will leave the party applying to it to seek resort to the machinery so set up.

7. In **Titaghur Paper Mill** a Three-Judge Bench of the Apex Court held that the Orissa Sales Tax Act, 1947 provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in **Wolverhampton New Water Works Co. v. Hawkesford [(1859) 6 CBNS 336]** at page 356 in the following passage:

> "There are three classes of cases in which a liability may be established founded upon statute ..... But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ..... the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in that passage was approved by the House of

Lords in **Neville v. London Express Newspaper Ltd. [1919 AC 368]** and has been reaffirmed by the Privy Council in **Attorney General of Trinidad and Tobago v. Gordon Grant and Co. [1935 AC 532]** and **Secretary of State v. Mask and Co. [AIR 1940 PC 105]**. It has also been held to be equally applicable to enforcement of rights and has been followed by the Apex Court throughout.

8. In **Balkrishna Ram v. Union of India [(2020) 2 SCC 442]** one of the issues raised before the Apex Court was whether an appeal against an order of a single judge of a High Court deciding a case related to an Armed Forces personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court. The Apex Court held that sub-section (1) of Section 14 of the Armed Forces Tribunal Act, 2007 clearly provides that the Armed Forces Tribunal will exercise powers of all courts except the Supreme Court or High Court exercising jurisdiction under Article 226 and Article 227 of the Constitution of India. Section 34 is very carefully worded. It states that 'every suit', or 'other proceedings' pending before any court including a High Court immediately before the establishment

of the Tribunal shall stand transferred on that day to the Tribunal. The Legislature has clearly not vested the Armed Forces Tribunal with the power and jurisdiction of the High Court to be exercised under Article 226 of the Constitution. There can be no manner of doubt that the High Court can exercise its writ jurisdiction even in respect of orders passed by the Armed Forces Tribunal. Since an appeal lies to the Supreme Court against an order of the Armed Forces Tribunal, the High Court may not exercise their extraordinary writ jurisdiction because there is an efficacious alternative remedy available but that does not mean that the jurisdiction of the High Court is taken away. In a given circumstance, the High Court may and can exercise its extraordinary writ jurisdiction even against the orders of the High Court [sic: Armed Forces Tribunal].

9. In **Balkrishna Ram** the Apex Court held that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The writ courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such

remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available **[Union of India v. T.R. Varma, AIR 1957 SC 882]**. The rule of alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction. There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed by the Armed Forces Tribunal. One must also remember that the alternative remedy must be efficacious and in case of a Non-Commissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the writ court

is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in **L. Chandra Kumar v. Union of India [(1997) 3 SCC 262]**.

10. The learned counsel for the petitioners seeks permission to withdraw the writ petition without prejudice to the right of the petitioners to avail statutory remedy against Ext.P3 notice issued under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by approaching the appropriate forum.

Recording the aforesaid submission made by the learned counsel for the petitioner, this writ petition is dismissed as withdrawn, without prejudice to the aforesaid right of the petitioners.

Sd/-

ANIL K.NARENDRAN

JV

JUDGE