

14th July,
2023
(AK)
08-09

W.P.A 15689 of 2023

Dipak Maiti
Vs.
HDFC (Housing Development Finance Corporation
Limited) Life Insurance Company Limited and others

With

W.P.A 15694 of 2023

Doli Maiti
Vs.
HDFC (Housing Development Finance Corporation
Limited) Life Insurance Company Limited and others

Mr. Pappu Adhikari
...for the petitioners.

Ms. Soni Ojha
Ms. Sonia Nandy
...for the respondent nos. 1, 2, 3 & 7.

Mr. Ayan Kumar Boral
...for the respondent nos. 4 & 6.

Learned counsel for the Insurance Company, at the
outset, objects to the maintainability of the writ petition.

Learned counsel cites a judgment of the Supreme
Court in the case of *Commissioner of Income Tax and
others vs. Chhabil Dass Agarwal*, reported at (2014) 1 SCC
603, as well as a coordinate Bench unreported judgment
of this court delivered in *W.P. 2525(W) of 2016*.

The premise of both the judgments is that in view of
availability of an alternative remedy, unless the said

remedies are exhausted, the writ jurisdiction cannot be invoked.

It was further observed by the Supreme Court that the scope of invocation of the writ jurisdiction is limited to certain cases only, being, where the remedy available under the statute is not effective but only a mere formality with no substantial relief, where the statutory authority did not act in accordance with provisions of the enactment-in-question, where the statutory authority acted in defiance of fundamental principles of judicial procedure, the statutory authority resorted to invoke provisions which are repealed or where an order was passed in total violation of principles of natural justice.

It is submitted that in the present case, none of the said yardsticks are satisfied.

Learned counsel for the petitioners contends that the remedy-in-question, that is, an approach before the Insurance Ombudsman, was duly exhausted by the petitioners but the petitioners are aggrieved by the said adjudication as well.

It is submitted that in view of the lop-sided clauses of the contract of Insurance Companies, in particular, the respondent-Insurance Company in the present case, the petitioners seek to invoke Article 14 of the Constitution of India.

It is submitted that the clauses in the insurance contract, a copy of which was sent to the petitioners' letter after entering into the contract, are clearly suited to favour the insurer.

It is further contended that there was a patent miss-selling to the petitioners on the part of the insurance agent.

Certain employees of the Insurance Company also coaxed the petitioners into opening such policies.

That apart, the petitioners patently come below the income slab which is the minimum requirement for opening the policy-in-question.

It is submitted that such arguments will be substantiated on a bare perusal of the materials annexed to the writ petition.

It is seen, upon hearing learned counsel for the parties, that the Ombudsman entered into the question as to whether there was miss-selling.

However, the petitioners could not establish the details to substantiate their allegations before the Ombudsman.

The question, however, still remains as to the veracity of the allegations regarding miss-selling as well as the factual premise of the petitioners not being competent to open the policies-in-question.

It cannot be said at this juncture that the petitioners would not be able to establish their cases or that the Insurance Company would not be able to rebut the same on factual premise, if opportunity was given to the parties to adduce full-fledged evidence.

However, unfortunately, it is beyond the domain of the writ court to decide disputed questions of fact, where evidence is required to be adduced and appreciated.

Such being the case, there is no scope of interference in the present writ petition.

Accordingly, the objection as to maintainability is upheld.

WPA 15689 of 2023 and WPA 15694 of 2023 are, thus, dismissed on the ground of maintainability, with liberty to the petitioners to approach the competent civil court with the issues as raised in the present writ petition.

This court has not gone into the merits of the allegations and counter-allegations of the parties and it will be open to the civil court, if so approached, to decide all issues in accordance with law, independently and without being influenced in any manner by any of the observations made herein.

Since no affidavits have been invited, it is deemed that the allegations made in the writ petition are not admitted by any of the respondents.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)