

4th April, 2024
(D/L No.39)
(SKB)

WPA 12302 of 2021

Martin Dipak Biswas
Versus
State Bank of India,
Life Insurance Company Limited and others

Mr. Samrat Banerjee
... for the petitioner.

Mr. Arijit Dey,
Mr. D. R. Mukherjee
... for respondent nos.1 to 5.

1. Heard.
2. By filing the instant writ petition, the writ petitioner has prayed for cancellation and/or revocation of the letter dated 27.3.2021 as well as the subsequent letter dated 05.5.2021 as issued by the respondent no.1/State Bank of India, Life Insurance Company Limited.
3. It is the case of the petitioner that one Hira Mondal Biswas, since deceased, wife of the writ petitioner, during her lifetime purchased SBI Smart Platina Assure Policy from the respondent no.1 wherein she made Binoy Mondal/private respondent no.6 as the nominee.
4. After untimely death of the said policy holder, the writ petitioner being her husband and also being the legal heir of the deceased made a claim with the respondent no.1 for disbursement of the insured

amount as secured by the said policy in the name of the deceased wife.

5. However, the respondent no.1 by issuing letters dated March 27, 2021 and May 5, 2021 declined to disburse the said insured amount in favour of the petitioner contending that the writ petitioner is not the nominee in respect of the said policy and, therefore, it would not be possible for them to pay the claimed amount to the writ petitioner. However, they are agreeable to pay the said insured amount to the respondent no.6 who is the nominee of the said policy.
6. Whether the writ petitioner being the husband of the deceased policy holder is entitled to the insured amount covered under said policy or the private respondent no.6 being the nominee of the said policy has the right to get the insured amount is the subject matter of lis in this writ petition.
7. In considered view of this court the subject matter of dispute falls under the domain of common law forum which may decide the issue by appreciation of evidence, both oral and documentary. The mechanism for recording of evidence both oral and documentary and the appreciation thereof are not available before the writ court. In this regard, reliance can be placed upon the reported decision of

Radha Krishan Industries vs. State of Himachal

Pradesh reported in **(2021) 6 SCC 771** wherein the

Apex Court held the following:-

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where:

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the

exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad* reported in (2003) 5 SCC 399, *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* reported in (1974) 2SCC 706 and *Rajasthan SEB v. Union of India* reported in (2008) 5 SCC 632 among other decisions."

8. The proposition of law as discussed in the case of ***Radha Krishan Industries (supra)*** if applied to this case, it appears to this Court that the facts and circumstances of the instant case do not come within the purview of the exception as decided in the aforesaid reported decision.
9. In view of the aforesaid discussions and in view of the availability of the alternative remedy, this Court is of the considered view that the instant *lis* cannot be adjudicated by a writ court.
10. With the aforesaid observations, the instant writ petition is dismissed. It is, however, made clear that while disposing the instant writ petition, this court has not gone into the merits of the instant case and has not made any observation with regard to the right of the petitioner and/or respondent no.6 in respect of the insured amount covered under the said policy.
11. It is, however, further made clear that the time consumed during the continuation of the instant writ

petition will be excluded in calculating the period of limitation if a suit or proceeding is filed in a common law forum or in an appropriate forum by the petitioner on the selfsame cause of action.

(Partha Sarathi Sen, J.)