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W.P. No. 1139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 1139 of 2023
and
W.M.P. No. 1159 of 2023**

M. Subramani

... Petitioner

-VS-

1. The Joint Registrar of Co-operative Societies,
Krishnagiri District,
Krishnagiri.
2. The Deputy Registrar of Co-operative Society,
Krishnagiri District,
Krishnagiri.
3. The President,
S-421, Chennasamuthiram Primary
Agricultural Co-operative Credit Society,
Krishnagiri District,
Krishnagiri.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 29.11.2022 in Na.Ka.No.6205/2022/Thova(1) passed by the 1st respondent confirming the impugned order dated 19-02-2021 in Na.Ka.No.289/2021/Tho.Va.20(09) passed by the 2nd respondent and quash the same consequently direct the 3rd respondent to return the jewel of the petitioner concerned in Loan Account No.82 forthwith.

For Petitioner : Mr. C. Prabakaran



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For Respondents : Mr. P. Sathish,
Additional Government Pleader
(for R1 and R2)

Mr. P.Gurunathan (for R3)

ORDER

Heard Mr. C.Prabakaran, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader for the First and Second Respondents, and Mr. P.Gurunathan, Learned Counsel for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he is a member of the co-operative society of the Third Respondent, from whom he had availed an agricultural loan for which he had pledged jewels as security and was entitled to the waiver of the outstanding amount in that loan relying on G.O. (Ms.) Nos. 15 & 16, Co-operation, Food and Consumer Protection Department dated 08.02.2021 issued by the Government of Tamil Nadu. The representation dated 14.11.2022 made by the Petitioner in that regard was rejected by the Second Respondent in Proceedings in Na. Ka. No. 289/2021/Tho.Va-20(6) dated 19.02.2021, which has been confirmed by the First Respondent by Proceedings in Na. Ka. No. 6205/2022/Tho.Va.(2) dated 29.11.2022, which are assailed in this Writ



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3. In this context, it must be noticed that aforesaid orders of the First and Second Respondents have to be treated as having been passed in the exercise of powers under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) against which the Petitioner is entitled to prefer appeal under Section 152 of the TNCS Act before the Special Tribunal for Co-operative Cases, which has also been empowered to condone delay in filing the same after the prescribed period of limitation has expired, if sufficient cause is made out.

4. It requires to be emphasized here that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, as extracted below:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and

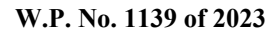


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the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], advertent to the the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has pointed out that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, the law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] in the following words:-



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*



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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.”*

In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

5. When the said legal position was pointed out to Learned Counsel for the Petitioner, he seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. He has also made an endorsement to that effect in the court record.

In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made that clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petitions, viz. 09.01.2023, till the date on which the certified copy of this order is made



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ready by the Registry, shall be excluded. No costs. Consequently, the connected

Miscellaneous Petition is closed.

12.02.2024

Index: Yes/No

NCC: Yes/No

Note: (i) Issue order copy by 28.03.2024.

(ii) Registry is directed to return the impugned order under written acknowledgment after retaining a copy of the same for record.

Gsa

To

1. The Joint Registrar of Co-operative Societies,
Krishnagiri District,
Krishnagiri.
2. The Deputy Registrar of Co-operative Society,
Krishnagiri District,
Krishnagiri.
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