



W.P. No. 12171 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

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

W.P. No. 12171 of 2019

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... Petitioner

-VS-

1. The Registrar,
Cooperative Societies,
No. 170, E.V.R. Road,
Dr. Radhakrishna Nagar,
Razaak Garden,
SBI Officers Colony,
Arumbakkam,
Chennai – 600 106.
2. The Deputy Registrar (Cooperative Urban Bank),
No. 16, Kamarajar Street,
Mahalingapuram,
Pollachi,
Coimbatore District.
3. The Joint Registrar (Cooperative Societies),
Krishnasami Salai,
K.K.Pudur,
Coimbatore,
Coimbatore District.
4. The Cooperative Sub-Registrar/Managing Director,
No. 16, Kamarajar Street,
Mahalingapuram,
Pollachi,
Coimbatore District.
5. The President,
Valparai Cooperative Urban Bank Limited, No. K1312,
Valparai,
Coimbatore District.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India,

1950, praying to issue a Writ of Mandamus, directing the Second Respondent to consider the Petitioner's representation dated 07.03.2019 issued for the restoration of pledge jewelery on accept of payment by the Petitioner which is said to have been auction conducted without intimation or notice to the Petitioner as contemplated under the rules and the said alleged auction was conducted before the expiry of notice period.

For Petitioner : Mr. P.Pandiyaraj

For Respondents : Mr. P.Sathish,
Additional Government Pleader
(for R1 to R3)
Mr. L.P.Shanmugasundaram (for R5)

No appearance (for R4)

ORDER

Heard P.Pandiyaraj, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader appearing for the First to Third Respondents and Mr. L.P.Shanmugasundaram, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. It is the case of the Petitioner that he is a member of the co-operative society of the Fifth Respondent, from whom he had availed agricultural loan for which he had pledged jewels as security and was ready to make payment of the due. Though he had made representation dated 07.03.2019 to the Second Respondent in that regard, it had not evoked any response, necessitating the filing of this Writ Petition.

3. The Petitioner is entitled to seek a reference under Section 90(1)(b) of the Tamil Nadu Co-operative Societies Act, 1983, to determine any dispute touching the business of a co-operative society arising between it and its member, as in this case, before the jurisdictional Registrar of Co-operative Societies, who 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 must, at once, be emphasized 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,



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in the following words:-

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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 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,



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the Hon'ble Supreme Court of India has emphasized 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] as extracted below:-

“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*



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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.”*

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.



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5. When the said legal position was pointed out to Learned Counsel for the Petitioner, she 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 view of the same, the Writ Petition is dismissed as withdrawn granting such liberty. It is made clear that for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petition, viz., 12.04.2019, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 23.04.2024.

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To

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P.D. AUDIKESAVALU, J.

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