



W.P. No. 31770 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

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

W.P. No. 31770 of 2022

J.Regina Mary @ Noorjahan

... Petitioner

-VS-

1. The Branch Manager
The Tiruchirapalli District Central
Co-operative Bank
V.Kalathur Branch, V.Kalathur
Perambalur District – 621 117.
2. The Assistant General Manager (Head Quarters)
The Thiruchirapalli District Central
Co-operative Bank
No.1, Fort Station Road
Tiruchirapalli – 620 002.
3. The Chief General Manager (NABARD)
National Bank for Agriculture and Rural Development
No.48, Mahatma Gandhi Road
Post Box No.6074, Nungambakkam
Chennai – 600 034.
4. The Registrar
State Co-operative Societies
170, E.V.R. Periyar Salai
Kilpauk, Chennai – 600 010.
5. Deputy Superintendent of Police
Thuraimangalam, Perambalur District
Perambalur – 621 212.



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6. Inspector of Police
V.Kalathur Police Station
Jamiya Masjith Street, V.Kalathur
Perambalur 0 621 117.
(R5 and R6 impleaded vide order dated
11.09.2023 in W.M.P. No. 25396 of 2023)

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to release the matured amounts of the Listed 5 Cauvery Deposits Receipt Nos. 290667, 290668, 290669, 290670 and 290671 with accrued interest, within a stipulated time frame along with exemplary cost for the Petitioner's immense mental agony and expenses incurred in this regard.

For Petitioner : Mr. R.Kamala Priya
For M/s. A.Madhumathi

For Respondents : Mr. S.Balamurugan, GA (RR1 & 2)

Mr. M.Shobhan Padmanabhan (R3)

Mr. S.J.Mohamed Sathik, GA (RR4 to 6)

ORDER

Heard Ms. R.Kamala Priya, Learned Counsel for the Petitioner, Mr. S.Balamurugan, Learned Government Advocate appearing for the First and Second Respondents, Mr. M.Shobhan Padmanabhan, Learned Counsel appearing for the Third Respondent, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the Fourth to Sixth Respondents 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 she had along with her husband invested in fixed deposits (Cavery Deposits) in the Co-operative Society of the First and Second Respondents. After the death of her husband, when the Petitioner had sought for release of the matured amount in those fixed deposits from the First Respondent, it was informed to her by Letter No. 294/04-05 D4 dated 19.10.2022 to approach the Court for the relief. In that backdrop, she has filed this Writ Petition for directing the First Respondent to release the matured amounts in those fixed deposits with accrued interest, within a stipulated time frame.

3. The Second Respondent has filed Counter-Affidavit 07.03.2023 stating that there are rival claimants to the said fixed deposits, who are necessary parties, and that they have not been impleaded in this Writ Petition.

4. The Petitioner is entitled to seek 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



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after the prescribed period of limitation has expired, if sufficient cause is made out.

5. 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, in the following words:-

"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



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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], adverting 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 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.*



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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*



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the nature of the controversy requires the exercise of its writ

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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 the Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

6. In the light of the said legal position, this Court is not inclined to delve into the merits of the controversy involved touching upon disputed questions of fact for effectual and complete adjudication of the matter by entertaining the Writ Petition in the exercise of its discretionary powers following summary procedure under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 24.05.2024.

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To

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P.D. AUDIKESAVALU, J.

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