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W.P. Nos. 30606 and 30608 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

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

W.P. Nos. 30606 and 30608 of 2023

and

W.M.P. Nos. 30248, 30249, 30253 and 30254 of 2023

W.P. No. 30606 of 2023

J.Yesuraj

... Petitioner

-VS-

1. The Registrar of Cooperative Societies,
No. 170, EVR Periyar High Road,
Kilpauk, Chennai - 10.01.2024

2. The Administrator,
MES (Defence) Employees' Cooperative
Thrift and Credit Society Limited,
Regd. No. XC-176,
Garrison Engineer,
Fort St.George,
Chennai - 9.

3. The Assistant Garrison Engineer E/M,
Water Supply Section,
Fort St.George,
Chennai - 9.
(R3 impleaded as per the order dated 20.10.2023 in W.M.P.
No. 30489 of 2023 in W.P. No. 30606 of 2023)

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in No. Nil Dated 11.09.2023 and quash the



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same and consequently direct the Respondents to reschedule the Petitioner's loan amounts after joint sitting with the Petitioner and not to effect recovery over and above the sum of Rs. 18,715/- per month from the Petitioner's monthly salary.

W.P. No. 30608 of 2023

P.Rajesh Babu

... Petitioner

-VS-

1. The Registrar of Cooperative Societies,
No. 170, EVR Periyar High Road,
Kilpauk, Chennai - 10.01.2024

2. The Administrator,
MES (Defence) Employees' Cooperative
Thrift and Credit Society Limited,
Regd. No. XC-176,
Garrison Engineer,
Fort St.George,
Chennai - 9.

3. The Assistant Garrison Engineer E/M,
Water Supply Section,
Fort St.George,
Chennai - 9.

(R3 impleaded as per the order dated 20.10.2023 in W.M.P.
No. 30491 of 2023 in W.P. No. 30608 of 2023)

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in No. Nil Dated 11.09.2023 and quash the same and consequently direct the Respondents to reschedule the Petitioner's loan amounts after joint sitting with the Petitioner and not to effect recovery over and above the sum of Rs. 21,375/- per month towards EMI from the



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Petitioner's monthly salary.

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For Petitioner
in both W.Ps

: Mr. S.Mahesh

For Respondents
in both W.Ps

: Mr. P.Sathish,
Additional Government Pleader (for R1)

Mr. K.Sivasubramanian (for R2)

Mr. A.R.Sakthivel (for R3)

COMMON ORDER

Heard Mr. S.Mahesh, Learned Counsel for the Petitioners, Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent, Mr. K.Sivasubramanian, Learned Counsel for the Second Respondent and Mr. A.R.Sakthivel, 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 Petitioners that they are members of the co-operative society of the Second Respondent, from whom they had availed person loans. When the co-operative society of the Second Respondent demanded payment of monthly installments during the moratorium period announced by the Reserve



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Bank of India, the Petitioners had filed the Writ Petitions in W.P. Nos. 7729

and 7731 of 2020 respectively and this Court by order dated 24.08.2023 held that the installments payable by the Petitioners has to be paid by them and the co-operative society of the Second Respondent is not entitled to collect any penal interest for the delayed payment. However, the Second Respondent by orders dated 11.09.2023 re-scheduled the loan by curtailing the number of installments of the Petitioners by enhancing the monthly installment amount, which are assailed in these Writ Petitions.

3. Learned Counsel for the Petitioners submits that insofar as the re-scheduling of the repayment of the loan is concerned, the parties have been able to enter into an agreement after the filing of the Writ Petition, but ventilates that the Second Respondent is not willing to treat that the Petitioners have not committed any default in the repayment of the loans.

4. In this context, it must be noticed that a reference under Section 90(1)(b) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) could be made to determine any dispute touching the business of a co-operative society arising between it and its members before the jurisdictional Registrar of Co-operative Societies, who has also been



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empowered to condone delay in filing the same after the prescribed period of limitation has expired, if sufficient cause is made out. That apart, Section 153 of the TNCS Act empowers the jurisdictional Registrar of Co-operative Societies, on application, to call for an examine the record of any officer subordinate to him or of the Board or any officer of a co-operative society. Further, the matter evidently fall under the realm of disputed questions of fact, which cannot be effectively determined in the summary procedure followed under Article 226 of the Constitution.

5. 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, 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



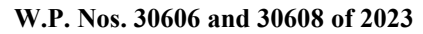
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justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies 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], 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.*

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*



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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 Petitioners have not been impeded from canvassing what is sought to be agitated in these Writ Petitions in the aforesaid remedies and there is no acceptable explanation from the Petitioners for not having availed the same.

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

In the result, these Writ Petitions are dismissed as withdrawn granting



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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., 16.10.2023, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. Consequently, connected Miscellaneous Petitions are closed. No costs.

14.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 23.04.2024.

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To

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No. 170, EVR Periyar High Road,
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2. The Administrator,
MES (Defence) Employees' Cooperative
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P.D. AUDIKESAVALU, J.

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