



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 15601/2023 & CM APPL. 62452/2023**

SHRI BALAJI ENTERPRISES & ORS.

..... Petitioners

Through: Mr. Samman Vardhan Gautam and
Mr. Anshul Jain, Advocates.

versus

RESERVE BANK OF INDIA & ANR.

..... Respondents

Through: Mr. Satyakam, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners have approached this Court challenging the orders dated 14.10.2023, 21.10.2023, 01.11.2023, 04.11.2023, 06.11.2023 & 16.11.2023 passed by the learned Additional District Judge, North, Rohini Court, Delhi, in various Arbitration petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "the Arbitration Act"*).

2. The Orders challenged in the present Writ Petition are as under:

"i. Order dated 21.10.2023 passed in Arbitration Petition No. 2336/2023 by Ld. ADJ Sh. Kishore Kumar, North, Rohini Court, Delhi;

ii. Order dated 21.10.2023 passed in Arbitration Petition No. 2337/2023 by Ld. ADJ Sh. Kishore Kumar, North, Rohini Court, Delhi;



iii. Order dated 21.10.2023 passed in Arbitration Petition No. 2338/2023 by Ld. ADJ Sh. Kishore Kumar, North, Rohini Court, Delhi;

iv. Order dated 21.10.2023 passed in Arbitration Petition No. 2339/2023 by Ld. ADJ Sh. Kishore Kumar, North, Rohini Court, Delhi;

v. Order dated 21.10.2023 passed in Arbitration Petition No. 2340/2023 by Ld. ADJ Sh. Kishore Kumar, North, Rohini Court, Delhi;

vi. Order dated 16.11.2023 passed in Arbitration Petition No. 2452/2023 passed by Ld. ADJ Sh. Deepak Dabas, North, Rohini Court, Delhi;

vii. Order dated 14.10.2023 passed in Arbitration Petition No. 2133/2023 passed by Ld. ADJ Sh. Deepak Dabas, North, Rohini Court, Delhi;

viii. Order dated 04.11.2023 passed in Arbitration Petition No. 2054/2023 passed by Ld. ADJ Sh. Deepak Dabas, North, Rohini Court, Delhi;

ix. Order dated 06.11.2023 in Arbitration Petition no. 2445/2023 passed by Ld. ADJ Sh. Vikram Bali, North, Rohini Court, Delhi;

x. Order dated 01.11.2023 passed against Petitioner No.11, Mohd. Amjad in Arbitration Petition No. 2444/2023 passed by Ld. ADJ Ms. Shivali Bansal, Rohini Court, Delhi."

3. Petitioner No.1 is a dealer of E-rickshaws and Petitioners No.2 to 10 are the purchasers of E-rickshaws from the Petitioner No.1. Respondent



No.2 herein which is a finance company. It is stated that Respondent No.2 filed Arbitration Petitions bearing No. 999/2023 and 1002/2023 under section 9 of Arbitration Act seeking interim relief in nature of ex-parte appointment of receiver for repossession of vehicles on the ground that a hire purchase agreement was entered into between Petitioners No.2 to 10 and Respondents No.2 & 3 and a further loan and hypothecation agreement was entered into between the parties and the said agreement provides for arbitration as a remedy for resolution of disputes arising from non-discharge of obligations by either of the parties. By the Orders impugned herein, the learned ADJ has allowed the applications filed by the Respondent No.2.

4. The Writ Petition listed on 04.12.2023 and on a pointed query by this Court as to why the Petitioners have not filed an appeal under Section 37 of the Arbitration Act, it was stated by the learned Counsel for the Petitioner that he has not received the certified copies of the application under Section 9 of the Arbitration Act with all the annexures and the order, which would have enabled him to file an appeal. This Court, therefore, requested Mr. Satyakam, learned ASC for the GNCTD, to look into the matter and take instructions from the District Judge to assist this Court. Thereafter, the matter was listed on 11.12.2023 when Mr. Satyakam informed this Court that there is no difficulty in Petitioners getting the application under Section 9 and all annexures by filing the application in this Court for filing an appeal under Section 37 of the Arbitration Act. Faced with the submission made by the learned Counsel for the GNCTD, the learned Counsel for the Petitioners drew the attention of this Court to the Order dated 03.08.2023, passed by this Court in CM(M) 1234/2023 which was filed under Article



227 of the Constitution of India against the similar orders, as has been passed in the present case by the Trial Court. This Court vide Order dated 03.08.2023 has granted an interim relief to the Petitioner therein. In the said case, this Court while disposing of the application for interim relief held that since the petition under Section 9 of the Arbitration Act has not been disposed of the Trial Court was directed to treat CM(M) 1234/2023 as a reply of the Petitioner and deal with the contentions raised therein including the prayer for restitution of the vehicles. CM(M) 1234/2023 is still pending before this Court. In the present case, the application under Section 9 of the Arbitration Act has been disposed of.

5. The remedy for the Petitioners lies in filing an appeal under Section 37 of the Arbitration Act. Section 37 of the Arbitration Act provides for an appeal against an order granting or refusing to grant any measure under Section 9 of the Arbitration Act.

6. It is well settled that High Courts do not entertain writs in cases where an equally efficacious alternate remedy is available to the aggrieved party and the aggrieved person has approached the High Court without availing off the said remedy. The Apex Court in Commissioner of Income Tax and Ors vs. Chhabil Dass Agarwal, (2014) 1 SCC 603, has observed as under:

"11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High



*Court to grant relief under Article 226 despite the existence of an alternative remedy. **However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226.** (See *State of U.P. v. Mohd. Nooh* [AIR 1958 SC 86] , *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] and *State of H.P. v. Gujarat Ambuja Cement Ltd.* [(2005) 6 SCC 499])*

*12. The Constitution Benches of this Court in *K.S. Rashid and Son v. Income Tax Investigation Commission* [AIR 1954 SC 207] , *Sangram Singh v. Election Tribunal* [AIR 1955 SC 425] , *Union of India v. T.R. Varma* [AIR 1957 SC 882] , *State of U.P. v. Mohd. Nooh* [AIR 1958 SC 86] and *K.S. Venkataraman and Co. (P) Ltd. v. State of Madras* [AIR 1966 SC 1089] have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. **If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction.** The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [See *N.T. Veluswami Thevar v. G. Raja Nainar* [AIR 1959 SC 422] , *Municipal Council, Khurai v. Kamal Kumar**



[AIR 1965 SC 1321 : (1965) 2 SCR 653] , Siliguri Municipality v. Amalendu Das [(1984) 2 SCC 436 : 1984 SCC (Tax) 133] , S.T. Muthusami v. K. Natarajan [(1988) 1 SCC 572] , Rajasthan SRTC v. Krishna Kant [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] , Kerala SEB v. Kurien E. Kalathil [(2000) 6 SCC 293] , A. Venkatasubbiah Naidu v. S. Chellappan [(2000) 7 SCC 695] , L.L. Sudhakar Reddy v. State of A.P. [(2001) 6 SCC 634] , Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra [(2001) 8 SCC 509] , Pratap Singh v. State of Haryana [(2002) 7 SCC 484 : 2002 SCC (L&S) 1075] and GKN Driveshafts (India) Ltd. v. ITO [(2003) 1 SCC 72] .]

13. In Nivedita Sharma v. Cellular Operators Assn. of India [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp. 343-45, paras 12-14)

“12. In Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)

‘7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved



petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11)

'11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

"... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute



must be adopted and adhered to.”

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd. [1935 AC 532 (PC)] and Secy. of State v. Mask and Co. [(1939-40) 67 IA 222 : (1940) 52 LW 1 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.’

14. In Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

‘77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.’”



(See G. Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : AIR 1952 SC 192] , CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , Ramendra Kishore Biswas v. State of Tripura [(1999) 1 SCC 472 : 1999 SCC (L&S) 295] , Shivgonda Anna Patil v. State of Maharashtra [(1999) 3 SCC 5] , C.A. Abraham v. ITO [AIR 1961 SC 609 : (1961) 2 SCR 765] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons [1992 Supp (2) SCC 312] , Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] , Tin Plate Co. of India Ltd. v. State of Bihar [(1998) 8 SCC 272] , Sheela Devi v. Jaspal Singh [(1999) 1 SCC 209] and Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569] .)

14. *In Union of India v. Guwahati Carbon Ltd. [(2012) 11 SCC 651] this Court has reiterated the aforesaid principle and observed: (SCC p. 653, para 8)*

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta [(1979) 3 SCC 83 : 1979 SCC (Tax) 205] . In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23)



'23. ... [when] a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.'"

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

7. Applying the said principles to the facts of the present case, it was for the Petitioners to file an appeal seeking setting aside the ex-parte order passed against them. There is no reason as to why the Petitioner has not availed off the remedy provided for under the Arbitration Act and has



chosen to file the present Writ Petition. No exceptional circumstances have been stated as to why appeal has not been filed. All the contentions raised in the Writ Petition can be argued before the Appellate Court.

8. The Writ Petition is dismissed. Pending applications, if any, also stand dismissed.

9. Liberty is granted to the Petitioners to approach the authorities under the Arbitration Act and file an appropriate appeal challenging the Orders impugned in the present Writ Petition.

10. It is made clear that this Court has not made any observations on the merits of the case and the Appellate Authority is requested to consider the case on its merits uninfluenced by the fact that the present Writ Petition has been dismissed only on the ground of availability of an equally efficacious alternate remedy to the Petitioner.

SUBRAMONIUM PRASAD, J

JANUARY 30, 2024

Rahul