



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1st DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION No.11940/2023(GM-RES)

BETWEEN:

RAJESH KUMAR SHETTY,
S/O GOPAL SHETTY,
AGED ABOUT 56 YEARS,
RESIDING AT NO.4-154
GOLLARA BETTU, KAVOOR POST,
MANGALORE 575015

...PETITIONER

(BY SRI PAVANA CHANDRA SHETTY H., ADVOCATE)

AND:

1 . T. SUBBAYA SHETTY
S/O LATE KRISHNA SHETTY,
AGED ABOUT 74 YEARS,
R/AT 1505, PLANET,
SKS, KADRI HILLS,
MANGALORE-575004.

2 . THE SENIOR MANAGER,
KARNATAKA BANK LTD.,
MANNAGUDDE,
MANGALORE 575003.

...RESPONDENTS

(BY SRI NATARAJA BALLAL, ADVOCATE FOR R1;
SRI A. GANESH, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED OFFICIAL LETTERS ISSUED BY R-2 BANK LETTER DATED 28.11.2022 OFFICIAL REFERENCE BEARING NO. PF:OR.NO./495/2022-23 AND DATED 24.04.2023 THROUGH OFFICIAL LETTER BEARING NO.KBL:479/GF30/2023-24 WHEREIN R-2 AUTHORITY REFUSED TO WITHDRAW THE FIXED DEPOSITS MADE BY THE PETITIONER IN TOTAL OF Rs.1,34,37,826/- DEPOSITED ON DIFFERENT DATES PRODUCED AT ANNEXURES-A AND B.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.11.2023, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This writ petition has been preferred challenging the letters dated 28.11.2022 bearing No.PF:OR.No.495/2022-23 and dated 24.04.2023 bearing No.KBL:479/GF30/2023-24 by the second respondent in refusing to permit the petitioner withdrawing the fixed deposits of Rs.1,34,37,826/-.

2. It is the case of the petitioner that the first respondent - Sri T Subbaya Shetty filed O.S.No.302/2022 before the Court of Senior Civil Judge, Mangaluru, seeking the following prayers;

- a) *For Decree of Declaration to the effect that Plaintiff is sole Executor of the Wills of Mrs. Geetha T. Punja and Dr.P.Thimappa Punja.*
- b) *For permanent prohibitory injunction against the defendants from allowing any operation of the Bank Accounts, Release of Fixed Deposits, Government Bond or any other Securities, Locker by anybody claiming as Legal heirs of Mrs. Geetha T. Punja and Dr. P. Thimappa Punja.*
- c) *Such other and further reliefs, as this Court deems fit to grant.*
- d) *Costs of the suit.*

3. In the said suit, petitioner was not made as a party. The first respondent filed an application under Order XXXIX, Rule 1 and 2 of CPC seeking temporary injunction against the defendants/banks prohibiting defendants from allowing any person to withdraw the amounts standing to the credit of Smt. Geetha T. Punja and Dr. P. Thimappa Punja, until disposal of the suit and grant such other

reliefs. The Trial Court passed an order of temporary injunction on 19.11.2022 and the same was extended till 20.04.2023.

4. The temporary injunction granted by the Trial Court was affecting the rights of the petitioner. As the fixed deposits were standing in the name of the petitioner, petitioner filed an application under Order I Rule 10(2) read with Section 151 of CPC to implead himself as defendant No.13. The Trial Court allowed the application and permitted the petitioner to be arrayed as defendant No.13. The petitioner being defendant No.13 filed an application under Order XXXIX Rule 4 of CPC to vacate the interim order. The Trial Court proceeded to record a finding that the entire amount standing in the account of Smt. Geetha T. Punja has been transferred during the lifetime of Dr. P. Thimappa Punja based on the nomination made by Smt. Geetha T. Punja. The plaintiff claiming under the Will of Smt. Geetha T. Punja has no authority to seek any relief in respect of the account of Dr. P.Thimappa

Punja. Hence, the Trial Court vacated the temporary injunction.

5. The petitioner in view of vacation of temporary injunction made representations to the second respondent-Bank on 17.04.2023 and 21.04.2023 to release the fixed deposit amounts for personal necessities. The second respondent-Bank proceeded to issue letter dated 24.04.2023 to the petitioner stating that in view of the fixed deposits being involved in a claim suit in O.S.No.302/2022 pending before the Senior Civil Judge, Mangaluru, though temporary injunction order is vacated by order dated 20.04.2023, the Bank is unable to allow the petitioner to withdraw the amounts without specific order of the Court and suggested the petitioner to get clarification from the Court to the effect that they can pay the amount during pendency of the suit.

6. Sri H Pavana Chandra Shetty, learned counsel for the petitioner would submit that the fixed deposits were transferred in favour of the petitioner standing in the

account of Smt. Geetha T Punja during the lifetime of Dr. P. Thimappa Punja based on the nomination made by Smt. Geetha T. Punja. Hence, the deposits in the second respondent-Bank are self-earned money of the petitioner. In view of temporary injunction being vacated by the Trial Court, the respondent-Bank is not justified in refusing to allow the petitioner to encash the fixed deposits and insisting a specific order from the Trial Court.

7. On the other hand, Sri Nataraja Ballal, learned counsel appearing for the first respondent and Sri A Ganesh, learned counsel for the second respondent would contend that the subject matter of dispute before the Civil Court is in relation to the Wills executed by Smt. Geetha T. Punja wherein, the first respondent is the sole executor. As a consequence of the said suit, temporary injunction in relation to the properties of the executors has been passed. The dispute involved is not between the petitioner and the Bank, but it is between the petitioner and the first respondent. The Bank has only

issued an advisory to the petitioner in view of the pendency of the civil suit involving the very same fixed deposits to seek clarification from the Trial Court. Hence, writ petition under Article 226 of the Constitution of India is not maintainable.

8. It is further submitted that in view of the second respondent-Bank not being a "State" in terms of Article 12 of the Constitution of India, writ is not maintainable.

9. Learned counsel for the petitioner places reliance on the judgment of the Hon'ble Supreme Court in ***M/s.Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and others***¹.

10. The respondents placed reliance on the following judgments to contend that writ petition against the second respondent Bank is not maintainable;

i) Karnataka Bank Ltd. Vs. Sri M.Suresh²;

¹ AIR 2023 SC 781.

² ILR 2016 Kar. 5125.

- ii) Karnataka Bank Ltd., vs. Smt. Rekha Rao and others³;**
- iii) The Prestige Monte Carlo Apartment Owner's Association and others vs. The Reserve Bank of India, Mumbai and others⁴;**
- iv) South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another⁵; and**
- v) Phoenix Arc Private Limited vs. Vishwa Bharati Vidya Mandir and others⁶.**

11. Heard learned counsels for the petitioner and the respondents. Perused the records.

12. Learned counsel for the respondents has raised jurisdictional issue of maintainability of the writ petition under Article 226 of the Constitution of India by contending that the second respondent-Bank is not a "State" in terms of Article 12 of the Constitution of India.

³ W.A.Nos.8541-8549/1996.

⁴ 2015 SCC OnLine Kar 5773.

⁵ 2023 SCC OnLine SC 435.

⁶ (2022) 5 SCC 345.

Hence, maintainability of the writ petition is considered as a preliminary issue.

13. It is the specific contention of the respondents that as no public duty or function is involved, the second respondent-bank not being a "State" under Article 12 of the Constitution of India, writ of *mandamus* cannot be issued to the respondent-Bank.

14. Though the respondent-Bank is engaged in public finance and regulated by Reserve Bank of India, it cannot be termed as an Institution or Company carrying on any statutory or public duty. A writ of *mandamus* cannot be issued to the authorities not contemplated under Article 12 of the Constitution of India.

15. Article 12 of the Constitution of India is as under;

"12. Definition.—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the

territory of India or under the control of the Government of India."

16. It is settled position of law that writ petition under Article 226 of the Constitution of India is maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

17. The Division Bench of this Hon'ble Court in W.A.Nos.8541-8549/1996, dated 29.11.2001, wherein the second respondent was appellant seeking remedy under Article 226 of the Constitution of India, has held as under;

"14. As no public duty or public function is involved, in regard to selection of persons by the appellant to its clerical cadre, and as the appellant is not a 'State' under Article 12 of the

Constitution, the only inescapable conclusion is that the writ petitions filed by the private respondents are not maintainable against the appellant bank."

18. In the case of ***The Prestige Monte Carlo Apartment Owner's Association*** (*supra*), this Hon'ble Court while considering the maintainability of writ petition under Article 226 of the Constitution of India against the communication of freezing of bank account by ICICI Bank has held as under;

"10. *A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt.); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.*

11. *In Federal Bank Ltd. v. Sagar Thomas [(2003) 10 SCC 733 : AIR 2003 SC 4325] , the Apex Court has held that a private company*

carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. Such conditions are not fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. A company carrying on the profession of banking cannot be said to be close to the Governmental functions. Hence, a writ petition against such banking company cannot be maintainable."

19. The Hon'ble Supreme Court in the case of **Phoenix Arc Private Limited** (*supra*), has held as under;

"18. ..., it is required to be noted that a writ petition against the private financial institution — ARC — the appellant herein under Article 226 of the Constitution of India against the proposed

action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. ..."

20. Learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of ***M/s. Godrej Sara Lee Ltd., (supra)*** to contend that mere existence of alternative remedy is no bar to maintain writ petition. The above judgment has no relevance or

application to the present case as maintainability of the writ petition under Article 226 of the Constitution of India is not due to availability of alternative remedy. However, the second respondent-Bank against which a writ of *mandamus* has been sought is not a "State" under Article 12 of the Constitution of India and also in view of the law laid down by the Division Bench of this Court in the case of ***Karnataka Bank Ltd., (supra)***.

21. The Hon'ble Supreme Court in the case of ***South Indian Bank Ltd. (supra)*** has reiterated the principles laid down in *Radha Krishan Industries v. State of H.P. (2021)6 SCC 771* for exercising writ jurisdiction under Article 226 of the Constitution of India, as under;

"16. xxx xxx xxx

27. *The principles of law which emerge are that:*

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 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."

22. In view of the above discussion and law laid down by the Hon'ble Supreme Court, writ petition is not maintainable under Article 226 of the Constitution of India and the same is liable to be rejected. In view of dismissal of writ petition on the ground of maintainability, other issues urged by the parties are kept open. Hence, the following:

Order

- i) Writ petition is rejected as the same is not maintainable under Article 226 of the Constitution of India as the second respondent-Bank is not a "State" under Article 12 of the Constitution of India.

- ii) The petitioner is at liberty to seek appropriate remedy before the appropriate forum, in accordance with law, if so advised.
- iii) No order as to costs.

**Sd/-
JUDGE**