

WP(C) No. 621 of 2013

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. N. KOTISWAR SINGH
(ORAL)

31.10.2017

Heard Mr. RK Nokulsana, learned Sr. Counsel assisted by Mr. Y. Sanajaoba, learned counsel for the petitioner. Heard also Mr. L. Gunindro, learned counsel for the Respondent Bank.

[2] In this petition, the petitioner has sought for a direction to the Respondents to refund an amount of Rs.1,13,400/-(Rupees One lakh thirteen thousand four hundred) with admissible interest. This is the second time the petitioner has approached this Court. Prior to the filing of this petition, the petitioner had approached this Court by filing a writ petition being W.P.(C) No. 332 of 2013 which was allowed to be withdrawn by this Court vide order dated 20.05.2013 with liberty to the petitioner to approach the appropriate forum in accordance with law. Thereafter, the present petition has been filed again.

[3] It has been submitted by Mr. RK Nokulsana, learned Sr. Counsel for the petitioner that since there is no dispute, the petitioner cannot invoke any jurisdiction of any Civil Court and accordingly, has approached this Court again for a direction to the UBI as the UBI has refused payment of the amount on the ground that the petitioner has to produce a duplicate Challan as the original Challan had been lost in transit. Mr. Nokulsana submits that the petitioner is not able to produce the duplicate Challan as the original Challan was deposited to the Bank as mentioned in the letter dated 5th August, 2010. It has been stated therein by the UBI authorities that the said instrument was most probably lost in transit and accordingly, the Bank requested the petitioner to obtain a duplicate of the referred challan and submit the same again. It has been submitted by Mr. RK Nokulsana, learned Sr. Counsel for the petitioner that he cannot get a duplicate challan at this stage.

[4] This Court is not able to appreciate the submission of the learned Sr. Counsel appearing for the petitioner that there is no dispute to be agitated before the Civil Court. If the Bank had refused payment of the amount of Rs.1,13,400/-(Rupees One lakh thirteen thousand four hundred) only on the ground that the original challan submitted by the petitioner had been lost by the Bank, it certainly constitutes a cause of action against the Bank and it cannot be said that there is no dispute. This Court is of the view that that is a matter which can be properly dealt with by the appropriate civil court of competent jurisdiction or any other forum and not under Article 226 of the Constitution of India.

[5] Mr. RK Nokulsana, learned Sr. Counsel for the petitioner has tried to invoke the jurisdiction of this Court under Article 226 of the Constitution by referring to the decision of the Hon'ble Supreme Court in **State of Punjab Vs. Salil Sabhlok and others, (2013) 5 SCC 1** in which the Hon'ble Supreme Court held as follows :

"50. I have already held that besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute and the Constitution and the statutory or the constitutional authority cannot in breach of such implied restrictions exercise its discretionary power. Moreover, Article 226 of the Constitution vests in the High Court the power to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. The power of the High Court under Article 226 of the Constitution is, thus, not confined to only writ of quo warranto but to other directions, orders or writs."

[6] There is no dispute about the aforesaid observation made by the Hon'ble Supreme Court as the power of the High Court cannot be restricted in any manner but in the present case, it is observed that there is certainly a dispute between the petitioner and the Bank as mentioned above for which the petitioner can certainly approach the competent Court of civil jurisdiction/forum for redressing his grievances as alternative remedy exists.

[7] It is observed that since the petitioner has been pursuing for redressal of her grievances legitimately since 2009 and the Bank for various reasons have not complied with the claim of the petitioner, it is directed that the time taken by the petitioner in pursuing the writ

petition before this Court shall not be counted for the purpose of determining limitation by the competent forum/Civil Court of competent jurisdiction.

[8] Accordingly, the present petition is disposed of with the direction to the petitioner to invoke appropriate forum/Civil Court of competent jurisdiction for redressal of his grievances.

ACTING CHIEF JUSTICE

Sushil