



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 30TH DAY OF APRIL, 2024

PRESENT

THE HON'BLE MR JUSTICE E.S.INDIRESH

AND

THE HON'BLE MR JUSTICE RAVI V.HOSMANI

WRIT APPEAL NO.100150 OF 2024 (CS-DAS)

BETWEEN:

SHRI. UMAPATHI S/O. PANCHAKSHARAYYA SALIMATH,
AGE: 59 YEARS, OCC: AGRICULTURIST,
R/O: CHALAGERA VILLAGE,
TQ: KUSHTAGI, DIST: KOPPAL-583231.

...APPELLANT

(BY SRI.SHIVRAJ S.BALLOLI, ADVOCATE)

AND:

1. THE JOINT REGISTRAR
OF CO-OPERATIVE SOCIETIES,
(R441) THE KARNATAKA STATE
CO-OP. URBAN BANKS,
FEDERATION LIMITED REGIONAL OFFICE,
NO.I, 9/10, DOLLORS COLONY,
GOKUL ROAD, HUBBALLI-580030.
2. THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES AND
RECOVERY OFFICER, KOPPAL-583231.
3. CHIEF EXECUTIVE OFFICER
HANUMASAGAR URBAN CO-OPERATIVE
BANK LIMITED, HANUMASAGAR,
TQ: KUSHTAGI, DIST: KOPPAL-583231.

...RESPONDENTS

(BY SRI.MADANMOHAN M.KHANNUR,
ADDL. GOVT. ADVOCATE FOR R1 AND R2;
SRI.SHIVARAJ P.MUDHOL, ADVOCATE FOR
CAVEAT RESPONDENT NO.3)



THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON'BLE COURT TO, SET ASIDE THE IMPUGNED ORDER DATED 03/04/2024 PASSED BY THE HON'BLE SINGLE JUDGE IN WP NO.101119/2024, AND CONSEQUENTLY, ALLOW THE WRIT PETITION IN WP NO.101119/2024 FILED BY THE PETITIONER.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY,
E.S.INDIRESH, J., DELIVERED THE FOLLOWING:

JUDGMENT

1. In this intra court appeal, the appellant/petitioner is assailing the order dated 3.04.2024 in WP.No.101119/2024, whereby the writ petition came to be dismissed, reserving liberty to the petitioner to avail alternative remedy, if so advised.
2. Heard, the learned counsel for the appellant and the learned counsel for the respondents.
3. It is submitted by learned counsel appearing for the appellant that the impugned order passed by learned Single Judge is illegal as the appellant/petitioner alleging fraud against the respondent/Bank and despite the same, the impugned order is passed, which requires to be interfered in this appeal.



4. Per contra, Sri. Shivaraj P Mudhol, learned counsel appearing for the caveator/respondent No.3 and learned AGA Sri. Madan Mohan M Khannur appearing for the respondent Nos. 1 and 2 submitted that the appellant/petitioner is having an alternative remedy to approach the Competent Authority under Section 105 (C) of the Karnataka Co-Operative Societies Act, 1959 (for short the 'Act') and accordingly, supported the impugned order passed by the learned Single Judge.

5. Having heard the learned counsel appearing for the parties, we have carefully examined the writ papers particularly with reference to award dated 16.03.2013, passed in Award No. 3370/2012-2013 (Annexure-C).

6. The appellant/petitioner herein has not challenged the award produced at Annexure-C to the writ petition before the Competent Court and therefore, the learned Single Judge is justified in dismissing the writ petition on the ground that the petitioner/appellant is having an alternative remedy to approach the Competent Authority under Section 105 (C) of the Act. It is also to be noted that, nothing is stated in the writ petition with regard to not challenging the award dated 16.03.2013, knowing fully well that, the appellant recourse to



lunching criminal proceedings against the contesting respondent/Society.

7. In that view of the matter, taking into consideration the law declared by the Hon'ble Supreme Court in the case of ***M/s. Godrej Sara Lee Ltd. V. Excise and Taxation Officer-cum-Assessing Authority and others***, reported in ***AIR 2023 SC 781***, at paragraph Nos. 4 and 8 it is held as follows:

"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner



*before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the *lis* for adjudication. On the other*



hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

8. *That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 : (AIROnline 1998 SC 137) (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the High Court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the High Court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a*



purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available."

8. Referring to paragraph Nos. 4 and 8 of the above judgment rendered by the Hon'ble Supreme Court, we are of the view that the appellant/petitioner has not made out a case for interference in this appeal. Accordingly, the writ appeal is dismissed.

9. Dismissal of the appeal does not preclude the appellant/petitioner to approach the Competent Authority, if so advised, as observed by the learned Single Judge in the impugned order.

**Sd/-
JUDGE**

**Sd/-
JUDGE**