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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 7<sup>TH</sup> DAY OF MARCH 2022 / 16TH PHALGUNA, 1943

WP(C) NO. 3801 OF 2014

**PETITIONER/S:**

UNION BANK OF INDIA  
THODUPUZHA BRANCH, SEMI SQUARE BUILDINGS, AMBALAM BYE PASS  
THODUPUZHA, 685 584 REPRESENTED BY ITS SENIOR MANAGER.  
BY ADVS.SRI.A.S.P.KURUP, SC, UBI  
SRI.SADCHITH.P.KURUP

**RESPONDENT/S:**

- 1 K.J.JOSE  
KUMBALANKAL HOUSE, PANNIMATTOM P.O,  
THODUPUZHA, IDUKKI 685 588.
- 2 MOLLYJOSE, W/O.JOSE,  
KUMBALANKAL HOUSE, PANNIMATTOM P.O, THODUPUZHA IDUKKI 685 588.
- 3 THE DISTRICT COLLECTOR,  
IDUKKI, PAINAVU P.O, KUYILIMALA, IDUKKI.
- 4 THE TAHSILDAR RR,  
TALUK OFFICE, THODUPUZHA P.O, IDUKKI.
- 5 THE VILLAGE OFFICER  
VELLIYAMATTOM VILLAGE, VELLIYAMATTOM P.O, THODUPUZHA IDUKKI.

**OTHER PRESENT:**

SMT.VIDYA KURIAKOSE, GP, SRI.RAHUL SURENDRAN FOR RESPONDENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.02.2022, ALONG WITH WP(C).36086/2015, THE COURT ON 07.03.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 7<sup>TH</sup> DAY OF MARCH 2022 / 16TH PHALGUNA, 1943

WP(C) NO. 36086 OF 2015

**PETITIONER/S:**

HEDGE COMMODITIES LTD.(A COMPANY INCORPORATED UNDER THE COMPANIES ACT WITH REGISTERED OFFICE AT 1205 DALAMAL TOWER, NARIMAN POINT MUMBAI 400021 AND WITH CORPORATE OFFICE AT HEDGE HOUSE, MAMANGALAM, KOCHI 682025 REPRESENTED THROUGH ITS DIRECTOR SRI. BOBBY JOSE, ARAYAKUNNEL, MUTHALAKKODAM P.O., THODUPUZZHA

BY ADVS.

SMT.T.MANASY

SRI.SAJEEVAN KURUKKUTTIYULLATHIL

**RESPONDENT/S:**

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF CIVIL SUPPLIES & CONSUMER AFFAIRS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
- 2 THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, WAYANAD CIVIL STATION, KALPETTA.
- 3 MR.THANKACHAN, MOONJANADU HOUSE, NOOLPUZZHA P.O., SULTHAN BATHERI, WAYANAD DISTRICT.

BY ADVS.

SMT.K.P.AMRUTHA

SRI.A.JAYASANKAR

SRI.MANU GOVIND

SRI.C.V.MANUVILSAN

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.02.2022, ALONG WITH WP(C).3801/2014, THE COURT ON 07.03.2022 DELIVERED THE FOLLOWING:

**'CR'****P.V.KUNHIKRISHNAN, J****-----  
W.P.(C.) Nos. 3801 of 2014 & 36086 of 2015  
-----****Dated this the 7<sup>th</sup> day of March, 2022****JUDGMENT**

A common question was raised in these two writ petitions. Once a writ petition is admitted by this Court and thereafter when the writ petition came up for final hearing after a long period, whether the writ court can decide the question of maintainability of the writ petition itself on the ground that there is an alternative remedy is the question raised in these two writ petitions. Since a common question was raised in both cases, I am disposing of these two writ petitions by a common judgment.

2. The impugned orders in these two writ petitions are the orders passed by the Consumer Dispute Redressal Forum. This Court in ***Controller of Examinations and anr. v. Sreya N.*** [2021 (5) KLT 560] held that the writ court need not

entertain the writ petition challenging orders passed by the consumer forums because the Consumer Protection Act is a complete code in which there is a hierarchy of forums mentioned to challenge the orders passed by the Consumer Dispute Redressal Forums. It will be better to extract paragraph No.5 of the judgment in ***the Controller of Examinations'*** case (supra)

*"5. Even though the Apex Court observed that in certain contingencies, this Court can entertain a writ petition under Article 226 of the Constitution of India, the High Court can use its discretion either to entertain such writ petition or to reject it. Specific averments are necessary in the writ petition for not availing the statutory remedy of appeal when an appealable order is challenged by filing a writ petition under Article 226 of the constitution of India. Simply stating that the authority who passed the order has no jurisdiction alone is not sufficient to invoke the jurisdiction under Art.226 of the constitution, especially when the appellate authority also can consider the question of jurisdiction. This court need not entertain writ petitions to interfere with orders passed by authorities without jurisdiction in all situations when a statutory remedy is available. This court can use discretion while entertaining such writ petitions considering the facts and circumstances of each case."*

3. In W.P.(C.) No.36086/2015, the impugned order is Ext.P9, which is an order passed by the Consumer Dispute Redressal Forum, Wayanad, Kalpetta (for short 'District Forum'). The above writ petition was admitted by this Court on

27.11.2015 and this court was pleased to stay all further proceedings to enforce Ext.P9 order for six weeks. Subsequently, the interim order was extended regularly, and subsequently, it was extended until further orders on 30.05.2016. W.P.(C.) No.3801/2014 is filed against Ext.P2 interim order passed by the Consumer Dispute Redressal Forum, Idukki on 20.12.2013 in IA No.143/2013 in CC No.409/2013. When that writ petition was filed, the Registry of this Court noted a defect about the maintainability, and the writ petition was placed before the court. This Court as per order dated 5.2.2014 directed the Registry to number the writ petition leaving open the issue regarding the maintainability to be decided if raised by the respondents. Thereafter, the writ petition came up for admission on 5.2.2014 and the writ petition was admitted and all further proceedings in CC No.409/2013 on the file of the Consumer Dispute Redressal Forum, Idukki stayed. These two writ petitions came up for final hearing now.

4. Heard the learned counsel appearing for the

petitioners in these two writ petitions. I also heard the learned counsel appearing for respondent No.3 in W.P.(C.) No.36086/2015. Even though notice was issued to respondents Nos.1 and 2 in W.P.(C.) No.3801/2014, there is no appearance for them.

5. The learned counsel for the petitioners in these cases reiterated their contentions in the writ petitions. The counsel for the petitioner in W.P.(C.) No.36086/2015 submitted that Ext.P9 is an order passed by the District Forum without considering the contentions raised by the petitioner. The counsel takes me through Ground Nos. A to K in the writ petition and submitted that the District Forum has no jurisdiction to entertain the complaint and therefore, the order passed by the District Forum is without jurisdiction. The counsel also submitted that as per Ext.P10 order passed by the District Forum of Alappuzha, a similar point was considered and the same was dismissed. Therefore, the counsel submitted that since the District Forum has no jurisdiction to entertain this complaint, Ext.P9 is unsustainable.

6. The petitioner in W.P.(C.) No.3801/2014 submitted that the petitioner, in that case, is a nationalised bank and in connection with the recovery proceedings initiated when there was default from the side of respondent Nos. 1 and 2, the District Forum passed Ext.P2 order staying the recovery proceedings. The counsel for the petitioner relied on the judgment of this Court in ***Punjab National Bank v.Consumer Disputes Redressal Forum, Alappuzha*** [2011 (3) KHC 511], ***Reghu B and anr. v.State Bank of Travancore, Tvm and anr.*** [2015 (4) KHC 270] and also relying on several other decisions of this court and apex court submitted that the Consumer Forum has no jurisdiction to entertain a complaint against the recovery proceedings initiated by a bank in connection with the default committed in repaying a loan availed by a customer.

7. The counsel appearing for the 3<sup>rd</sup> respondent in W.P.(C.) No.36086/2015 raised a contention that this writ petition is not maintainable, in the light of the judgment of this Court in ***Controller of Examination's*** case (supra). The

counsel submitted that the petitioner has got an efficacious and alternative remedy against Ext.P9 order and therefore, this Court may not entertain the writ petition. The counsel also submitted that if the petitioner has got any grievance against the maintainability of the complaint before the District Forum that contentions ought to have been taken before the District Forum properly and after inviting Ext.P9 order, the remedy of the petitioner is to challenge Ext.P9 before the State Consumer Dispute Redressal Commission.

8. Regarding the maintainability of this writ petition, the counsel appearing for the petitioners in these two writ petitions raised a common argument. The counsel for the petitioners submitted that the decision of this Court in the ***Controller of Examination's*** case (supra) is not applicable in the facts and circumstances of this case. The counsel for the petitioners submitted that these writ petitions were filed before this Court in 2014 and 2015. This Court admitted the writ petitions and granted stay and the same was pending before this Court for the last several years. In such

circumstances, the petitioners may not be relegated to avail of the alternative remedy is the submission. The submission of the petitioners is that the exercise of discretion to entertain a writ petition in a case where an alternative remedy is available will not have any relevance after the admission of the case and especially when the matter is pending before this Court for several years. The counsel relied on the judgment of this Court in ***Tahasildar, Pathanapuram v. The Canara Bank and others*** [2009 (2) KLJ 923], ***Mar Athanasius College v. Director of Collegiate Education*** [2008 (1) KLT 769], ***Agricultural Income Tax & Sales Tax Officer v. Tata Tea Ltd.*** [2002 (2) KLT 433] and ***Thressiamma v. Union of India*** [1999 (2) KLT 683]. The counsel submitted that in the light of the above decisions, once the writ petition is admitted, the question of alternative remedy is not relevant. The counsel also relied on the judgment of Alahabad High Court in ***Suresh Chandra Tewari v. District Supply Officer*** [AIR 1992 (All) 331] and ***M/s.Raza Textiles Ltd. Rampur v. The Income Tax Officer, Rampur*** [AIR 1973 (SC) 1362]. The counsel also

relied upon several Apex Court judgments to canvass his contention that even if there is an alternative remedy, this Court has jurisdiction to entertain the writ petition (***State of HP & others v. Gujarat Ambuja Cements Ltd. & Ors.*** [AIR 2005 (SC) 3936], ***Whirlpool Corporation v. Registrar of Trade*** [AIR 1999 (SC) 22], ***Harbansla Isahnia & anr. v. Indian Corporation Ltd. & Others*** [AIR 2003 (SC) 2120], the judgment in Civil Appeal No.5122/2021 by the Supreme Court and ***Radhakrishnan & others v. State of Himachal Pradesh & others*** [AIR 2021 (SC) 2114]). The counsel also submitted that if the prayer in the writ petition is to issue a writ of certiorari, the question of alternative remedy is not available in the light of the Apex Court judgment in the ***State of Uttar Pradesh v. Mohammed Nooh*** [1958 SCR 595].

9. The counsel for the 3<sup>rd</sup> respondent in W.P.(C.) No.36086/2015 submitted that the Apex Court in ***Genpact Pvt.Ltd. v. Deputy Commissioner of Income Tax and anr.*** [2019 KHC 7167] considered this point in detail and observed that admission of writ petition cannot estop the court from

examining the maintainability of the petitioner on the ground of availability of alternative remedy. The counsel also relied on the judgment of the Apex Court in ***State of UP & anr. v. UP Rajya Khanij Vikas Nigam SS & others*** [2008 (12) SCC 675] and the decision of this Court in ***Kunhikandan v. State of Kerala*** [1984 KHC 86]. The counsel for the 3<sup>rd</sup> respondent in W.P.(C.) No.36086/2015 also relied on a Division Bench judgment of this Court in ***Georgekutty v. State of Kerala*** [AIR 1994 KER 19] and argued that question whether the complainant is a “Consumer” also can be decided by the District Forum itself and writ petition raising the question of jurisdiction of the forum need not be entertained.

10. This court considered the judgments relied by the petitioners to strengthen the argument raised to the effect that, this court can entertain a writ petition even if there is an alternative remedy available as per the Consumer Protection Act. There is no dispute with that proposition. In almost all cases cited by the petitioners, it is stated that it is the discretion of this Court to decide whether or not to entertain

such petition and the normal rule is not to entertain because the Consumer Protection Act is a complete code in which there is a hierarchy of forums to challenge orders.

11. Moreover in ***Controller of Examination's*** case (supra), this Court already found that writ court need not entertain a challenge against the orders passed by the Consumer Forum in all situations. A different view is not at all necessary to that proposition. The question raised in these writ petitions by the petitioners is that, since these writ petitions were already admitted long back and are pending before this Court for the last several years, the writ petitions may not be dismissed for the reason that, there is an alternative remedy available to the petitioners. This proposition cannot be accepted as a universal principle in the light of the decision of the Apex Court in ***Genpact's India Pvt. Ltd.'s*** case (supra), in which the earlier decision of the apex court in ***Rajya Khanij Vikas Nigam's case*** (supra) is also relied. In ***Genpact India Pvt. Ltd.'s*** case (supra), the Apex Court considered this point in detail in paragraph No.16, which is extracted hereunder:

16. We do not, therefore, find any infirmity in the approach adopted by the High Court in refusing to entertain the Writ Petition. The submission that once the threshold was crossed despite the preliminary objection being raised, the High Court ought not to have considered the issue regarding alternate remedy, may not be correct. The first order dated 25.01.2017 passed by the High Court did record the preliminary objection but was *prima facie* of the view that the transactions defined in S.115QA were initially confined only to those covered by S.77A of the Companies Act. Therefore, without rejecting the preliminary objection, notice was issued in the matter. The subsequent order undoubtedly made the earlier interim order absolute. However, the preliminary objection having not been dealt with and disposed of, the matter was still at large.

*In State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and others, 2008 (12) SCC 675, this Court dealt with an issue whether after admission, the Writ Petition could not be dismissed on the ground of alternate remedy.*

*The submission was considered by this Court as under:*

*"38. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari, (AIR 1992 All 331 (Suresh Chandra Tewari vs. District Supply Officer)), that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the headnote of All India Reporter (p. 331), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court. The relevant para 2 of the decision reads thus: (Suresh Chandra Tewari case, AIR p. 331)*

*"2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed."(emphasis supplied)*

*Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by*

*a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Art.226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner."*

12. The Apex Court held that it is neither the legal position nor a proposition that once a petition is admitted, it cannot be dismissed on the ground of an alternative remedy. The Apex Court in an unambiguous manner observed that it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. The Apex Court observed that if such bald contention is upheld, even the Apex Court cannot order the dismissal of the writ petition, which ought not to have been entertained by the High Court under Article 226 of the Constitution of India in view of the availability of alternative and equally efficacious remedy to the aggrieved party once the High Court has entertained a writ petition, albeit wrongly and

granted the relief to the petitioner.

13. Similarly, this Court also considered this point in ***Kunhikandan's*** case (supra). The relevant paragraphs of the above decision is extracted hereunder:

*"6. I shall now consider the preliminary point regarding the maintainability of this O.P. There are a number of decisions of this Court and of the Supreme Court on the point. It is not necessary to refer to all those decisions in this case. It is well settled that ordinarily the existence of an adequate statutory remedy bars the exercise of jurisdiction under Art.226. It is also equally well settled that in cases where there have been violation of principles of natural justice or any statutory provision or rule or an error apparent on the face of the record, the jurisdiction under Art.226 can be exercised. The position in this regard is concluded by the authoritative pronouncement of the Supreme Court in Titaghur Paper Mills Company Ltd. v. State of Orissa (AIR 1983 SC 603). The Supreme Court has held in the above case:*

*"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."*

*That was a case where the party had a right of appeal under the Orissa Sales tax Act. The writ petition filed by the assessee was dismissed by the Supreme Court on the short ground of existence of adequate alternative remedy. This is what is observed by the Supreme Court:*

*"We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the prescribed authority under sub-s.(1) of S..23 of the Act x x x x."*

7. *I am unable to agree with the argument of the learned advocate for the petitioner that when once an O.P. has been admitted, it should not be dismissed on the ground of existence of efficacious alternative remedy. The decision of the Supreme Court referred to above is a complete answer to this*

*contention, The decision of this Court in Vijayan v. Board of Directors, S. T. Cooperative Bank (1983 KLT 705) relied on by the counsel for the petitioner was rendered on 13-6-1981 while the decision of the Supreme Court referred to above was reported only in July 1983, although the case was decided on 13-4-1983. In Vijayan's case referred to above the facts are different and distinguishable."*

14. Therefore, in the light of the above authoritative decisions of the Apex Court and this Court, it cannot be held that once a writ petition is admitted and an interim order is passed, simply because several years elapsed after the admission of the writ petition, the question of maintainability cannot be raised or decided. Usually, in writ petitions, interim orders are passed at the admission stage. At that time, there may not be an appearance for the respondents in all the cases. This Court is admitting a writ petition based on *prima facie* finding. *Prima facie* finding regarding the maintainability of the writ petition cannot be taken advantage of by the petitioners at the time of the final hearing especially because it is a finding without hearing the other side. The respondents in the writ petitions are free to raise the question of maintainability based on the argument that there is an alternative remedy, even at the time of final hearing also. The

writ petition is pending before this Court for a long time after the admission is not at all a bar in raising that question or deciding that question at the time of final hearing. Of course, this is a matter to be decided by the court concerned considering the facts and circumstances of each case. There cannot be any straight jacket formula on this issue. Each case has to be decided on the basis of facts in that case. But it is to be declared that, simply because a writ petition is admitted and a stay is granted at the admission stage, there is no rule that the question of maintainability in the light of alternative remedy available cannot be raised at a later stage of hearing the writ petition, even if several years elapsed after the admission of the case.

15. The learned counsel for the petitioners relied on certain decisions of this Court to support their case. The 1<sup>st</sup> decision relied on by the counsel is ***Tahasildar, Pathanapuram's*** case (supra). A Single Judge of this Court in that decision observed in paragraph 22 relying on two Division Bench judgment of this court and observed that the question of alternative remedy is relevant only at the stage of exercising

the discretion of this Court as to whether the writ petitions to admit or not. Paragraph No.22 of **Tahsildar, Pathanapuram's** case (supra) is extracted hereunder:

*"22. With regard to the availability of the alternate remedy and the challenge raised against the maintainability of the present writ petition, the question of alternate remedy is relevant only at the stage of exercising the discretion of this Court as to whether the writ petition is to be admitted or not, as made clear by two Division Benches of this Court as reported in Thressiamma v. Union of India, 1999 KHC 404 : 1999 (2) KLT 683 : ILR 1999 (3) Ker. 164 and Agricultural Income Tax and Sales Tax Officer v. Tata Tea Ltd., 2002 KHC 458 : 2002 (2) KLT 433. The position of the law also stands clarified in Mar Athanasius College v. Director of Collegiate Education, 2008 (1) KHC 791 : 2008 (1) KLT 769 : ILR 2008 (1) Ker. 626 as well. This being the position the writ petition (WP (C) 13744/07) admitted on 24/04/2007, also granting an interim stay is not liable to be declared as not maintainable in view of the existence of other alternate remedy. More so, when the 3rd respondent has put up a case before this Court that the appeal filed by the petitioner before the DRT is not maintainable as observed by the DRT in Ext. P11 order."*

16. In that case, the Division Bench judgment in **Mar Athanasius College's** case (supra) is also relied. The relevant paragraph of **Mar Athanasius College's** case (supra) is extracted hereunder:

*12. The existence of an alternative remedy is not a bar in exercising the writ jurisdiction of this Court. It is only a rule of prudence to be followed by the High Court. If the writ petition had come up for admission before us, we may have turned away the writ petitioner to invoke the alternative remedy available to him. But, this is a case where the learned single*

*Judge has already exercised his discretion to entertain the writ petition. In such cases, unless the exercise of the discretion is shown to be perverse, the Appellate Court is not justified in interfering with the same. The writ petition was filed as early as in 2003. It was finally heard on merits and disposed of after four years. Therefore, the contention raised now at the appellate stage, to turn away the writ petitioner to invoke the statutory remedy, cannot be accepted. We are not inclined to hold that the exercise of the discretion by the learned single Judge to hear the writ petition on merits is perverse. Accordingly, the second contention of the learned senior counsel for the appellants is also repelled. The third contention raised based on certain observations concerning the validity of Ext. R3(a) is also of no consequence. Even assuming Ext. R3(a) is held to be valid, the same will not affect the final outcome of the case.*(underline supplied)

17. In ***Agricultural Income Tax and Sales Tax Officer's*** case's (supra) also, a Division Bench of this Court observed like this :

*"13. Mr. Roy Chacko, learned Senior Government Pleader, strenuously urged that the respondent had an alternate remedy of revision before the statutory authorities, and, therefore, the Original Petition ought not have been entertained. The learned Single Judge has rightly given short shrift to this contention by holding that alternate remedy is an attractive argument only when a Writ Petition comes up for admission; it is open for this Court to decline to exercise its plenary powers under Art.226 of the Constitution and relegate the petitioner to the statutory remedies, if they are equally efficacious alternate remedies. The learned Single Judge disposed of the contention by holding that, at the end of five years, the petition could not be summarily dismissed on the ground of availability of equally efficacious alternate remedy. Apart from this reasoning of the learned Single Judge, we have our own doubt as to whether a revision can be an equally efficacious alternative remedy.*"(underline supplied)

18. Moreover, in ***Thressiamma's*** case (supra), another

Division Bench of this Court observed like this :

*“12. Further, in this case, we find that the Original Petition came up for admission on 24.11.1993. Notice on the Original Petition was given to the Standing Counsel for the Central Government and an objection was filed on behalf of the Central Government in which the question of maintainability was taken. It was only after that this Original Petition was admitted on 3.2.1994. According to the counsel for the respondents, even though the question of maintainability was heard, no order was passed. Whatever that may be, once the petition has been admitted, normally the question of maintainability does not arise. Further in this case we find that even after the objection by the respondents, the Original Petition has been admitted without any reservations. Another thing we find is that the Original Petition has been lying in this Court for four years. To dismiss the Original Petition after the lapse of four years or after a long time, according to us, is not proper. This will ultimately put the party into difficulty because by the time when the Original Petition is disposed of, the alternate remedy would have been barred. Taking the same view, there are two decisions of the Madras High Court; one is Prasad Film Laboratories v. Cegat, 1993 (68) ELT 747 and another is Madura Coats Ltd. v. Assistant Collector of Central Excise, 1990 (48) ELT 321. In 1993 (68) ELT 747, Misra, J. (as he then was) held as follows:*

*“Availability of an alternate remedy cannot operate as a bar to such a constitutional remedy, though we exercise the refrain as a rule of prudence that a person should ordinarily first avail the internal remedy and invoke the writ jurisdiction as a last resort. In the instant case, in my view, the petitioner should not be asked to go in appeal at the final hearing stage of the case which had been admitted to hearing about six years ago.”*

*In 1990 (48) ELT 32 Kanakaraj, J. held as follows:*

*Secondly, the Writ Petition has been pending from the year 1981 and to direct the petitioner to file an appeal in the year 1990 will amount to a mockery of justice. It has been held that the existence of an alternative remedy is no ground for refusing the relief of writ of certiorari where it appears on the face of the proceedings or on disputed facts that the authority had acted without jurisdiction or in excess of jurisdiction.*

*The Bombay High Court, in a number of cases, has also taken the view that when a Writ Petition has been pending for a long*

time, it may not be proper to dismiss that Writ Petition on the ground of alternate remedy. We are in agreement with the above decisions.

13. According to us, after the Writ Petition is admitted, it has to be disposed of on merits. Of course while disposing of the case, the court may have to exercise its discretion when disputed question of facts arise. But to dismiss such a Writ Petition after a lapse of years on the ground of alternate remedy is not proper." (underline supplied)

19. The observations in the above judgments are based on the facts of each case. But the general finding if any in the above judgments to the effect that, the maintainability of the writ petition on the ground of alternative remedy is relevant only at the stage of exercising the discretion of this Court as to whether the writ petition is to be admitted or not, cannot be accepted in the light of the judgment of the Apex Court in **Genpact India Pvt.Ltd.'s** case (supra) and **UP Rajya Khanij Vikas Nigam SS's case** (supra). Such findings in those judgments are not good law in the light of the decision in **Genpact India Pvt.Ltd.'s** case (supra) and **UP Rajya Khanij Vikas Nigam SS's** case (supra). Moreover, a Single Judge of this Court also considered the same point in **Kunhikandan's** case (supra) in 1983, which is not considered in the above judgments by this court. Therefore, any dictum laid down by

this Court in ***Tahasildar, Pathanapuram's*** case (supra), ***Mar Athanasius College's*** case (supra), ***Agricultural Income Tax and Sales Tax Officer's*** case (supra), and in ***Thressiamma's*** case (supra) regarding the general proposition that the maintainability of the writ petition because of the alternative remedy is relevant only at the stage of exercising the discretion of the Court at the admission stage will not stand in the light of the judgment of the Apex Court, which is mentioned above. But each case is to be decided based on its facts.

20. As I mentioned earlier, there cannot be any dictum or general rule that once a writ petition is admitted and an interim order is granted, the question of maintainability cannot be raised subsequently, even though the writ petition came up for hearing after several years. Each case has to be decided based on its facts. Of course, the exercise of discretion by this court while exercising the powers under Article 226, when an alternative remedy is available, that also after the lapse of several years from the date of admission of the case is to be

fair to all parties. Some of the relevant factors to exercise the discretionary power of this Court when a writ petition is admitted, even though there is an alternative remedy is available are the change of circumstances, doubling of litigation, whether it would do justice to the parties, whether it is inevitable, the lapse of several years after admitting the writ petition, etc. The Consumer Protection Act is a complete code. If an order is passed by the District Forum, that order can be challenged before the State Commission. If an order is passed by the State Commission, that order can be challenged before the National Commission. If an order is passed by the National Commission, that order can be challenged even before the Apex Court directly. When such a hierarchy of courts is mentioned in Consumer protection Act, this Court need not entertain a writ petition filed challenging the orders passed by the District Forum or state Commission. But it is a settled position that even if there is alternative remedy, the High Court can entertain a writ petition under Article 226 of the Constitution of India, if the justice demands for the same.

When a writ petition came up for admission challenging the orders passed by the Consumer Forums constituted as per the Consumer Protection Act, normally this Court will not entertain the same, unless there is an extraordinary situation to entertain such a writ petition. This Court will not entertain a writ petition filed in a routine manner against the orders passed by the Consumer Forums. Therefore, each case has to be decided on its own merit. Now, I will consider the contention of the petitioners in these two writ petitions separately.

**W.P.(C.) No. 3801/2014**

21. This is a writ petition filed by the Union Bank of India, which is a nationalized Bank. Respondent Nos.1 and 2 availed an educational loan from the petitioner-Bank and when there was a default in repaying, revenue recovery proceedings were initiated. Challenging the same, Ext.P1 complaint was filed before the Consumer Dispute Redressal Forum, Idukki as evident by Ext.P1 complaint. The District Forum passed Ext.P2 order restraining further coercive steps against respondent

Nos. 1 and 2 for the recovery of the educational loan with a condition that they will pay the instalments of the principal amount of the loan. In **Punjab National Bank's** case (supra), this Court observed that the Consumer Forum has no power to injunct or restrain a Bank from enforcing a right under a loan agreement, which includes the sale of mortgage property for recovery of the loan advanced by the Bank. Similarly, in **Reghu. B's** case (supra), a Division Bench of this Court observed that the Consumer Dispute Redressal Commission has no jurisdiction to stay recovery proceedings under SARFAESI Act. The Division Bench also observed that in a case where the Commission has exceeded its jurisdiction in passing an order, the writ court can entertain a writ petition. It will be better to extract paragraph No.11 of **Reghu B's** case (supra).

*"11. It is well settled that availability of alternate remedy is not a bar in exercise of jurisdiction under Art.226 of the Constitution of India in a few exceptional case. Exceptions were clearly reiterated and laid down by the Apex Court in Whirlpool Corpn. v. Registrar of Trade Marks, 1998 KHC 1225 : 1998 (8) SCC 1 : AIR 1999 SC 22. The following was laid down in paragraphs 15, 20 and 21:*

*"15. Under Art.226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions*

*one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point put to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.*

*20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Art.226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.*

*21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL".*

*In the above view of the matter, we are of the view that no error was committed by the learned Single Judge while entertaining the Writ Petition under Art.226 of the Constitution of India against the order passed by the Commission on 25/11/2014 on the ground that jurisdiction of the Commission is barred under S.34 of the 2002 Act and the Commission has no jurisdiction to stay the recovery proceedings under the 2002 Act. The first submission of learned counsel for respondents 2 and 3 / appellants cannot be accepted."*

*22. It is true that Ext.P2 order passed by the District*

Forum is an interlocutory order and the petitioner can approach the Consumer Dispute Redressal Forum itself to vacate the order. But, this writ petition was admitted on 5.2.2014 and an interim order is also passed staying the recovery proceedings. There is no appearance before this court for the complainants in Ext.P1 complaint and P2 order. Probably they are also not interested in this case now. At this distance of time, it will be an injustice to relegate the petitioner, which is a nationalized Bank to approach the District Forum or State Commission to redress their grievance, especially when Ext.P1 complaint itself is not maintainable. Therefore, this writ petition is to be allowed quashing Exts.P1 and P2.

**W.P.(C.) No. 36086/2015**

23. This writ petition is filed challenging Ext.P9 order passed by the Consumer Dispute Redressal Forum, Wayanad. Ext.P9 order can indeed be challenged before the State Commission by filing an appeal. This writ petition was admitted on 27.11.2015 and an interim order of stay is also

passed. The point raised by the petitioner is that Ext.P3 complaint is not maintainable before the District Forum because of the several grounds mentioned in the writ petition. From a perusal of the grounds mentioned in this writ petition, it is clear that these points were not raised before the District Forum. Therefore, this is a matter to be reconsidered by the District Forum. In such circumstances, again directing the petitioner to approach the State Commission and to file an appeal and then to raise these contentions will be an injustice. Therefore, in the peculiar facts and circumstances of this case, the impugned order in this writ petition can be set aside and the matter can be remanded to the District Forum for reconsideration.

Therefore, these writ petitions are disposed of in the following manner :

- 1) W.P.(C.) No. 3801/2014 is allowed and Exts.P1 and P2 in W.P.(C.) No. 3801/2014 are quashed.
- 2) W.P.(C.) No. 36086/2015 is allowed in part. Ext.P9 in W.P.(C.) No. 36086/2015 is set aside and the Consumer

Dispute Redressal Forum, Kalpetta is directed to reconsider the complaint after giving an opportunity of hearing to the petitioner and the 3<sup>rd</sup> respondent.

3) The petitioner in W.P.(C.) No. 36086/2015 is free to raise all the contentions raised in this writ petition before the Consumer Dispute Redressal Forum, Wayanad regarding the maintainability of the complaint and the District Forum will pass appropriate orders, as expeditiously as possible, taking into consideration the fact that this is a complaint filed in the year 2014.

sd/-

**P.V.KUNHIKRISHNAN**  
**JUDGE**

**APPENDIX OF WP(C) 36086/2015**

## PETITIONER EXHIBITS

EXT P1- TRUE COPY AGREEMENT DATED 02/01/2014 BETWEEN PETITIONER AND 3RD RESPONDENT.

EXT P2- TRUE COPY OF THE COMPLAINT DATED 30/05/2014 IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P3- TRUE COPY OF THE AMENDED COMPLAINT DATED 30/05/2014 IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P4- TRUE COPY OF THE VERSION DATED 10/11/2014 FILED BY THE PETITIONER IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P5- TRUE COPY OF THE AMENDMENT APPLICATION DATED 06/01/2015 TO THE VERSION FILED BY THE PETITIONER IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P6- TRUE COPY OF THE POOF AFFIDAVIT OF THE 3RD RESPONDENT IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P7- TRUE COY OF THE CROSS EXAMINATION OF 3RD RESPONDENT IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P8- TRUE COPY OF THE AMENDMENT APPLICATION DATED 06/01/2014 TO THE VERSION FILED BY THE PETITIONER IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P9- TRUE COPY OF THE ORDER DATED 30/09/2015 IN CCC NO.121/2014 ON THE FILES OF THE CONSUMER DISPUTES REDRESSAL FORUM, KALPETTA.

EXT P10- TRUE COPY OF THE ORDER DATED  
31/08/2015 IN CCC NO.296/2014 ON THE FILES  
OF THE CONSUMER DISPUTES REDRESSAL FORUM,  
ALAPPUZHA.

**APPENDIX OF WP(C) 3801/2014**

PETITIONER EXHIBITS

EXHIBIT P1. COPY OF THE CC NO.409/13 FILED BY RESPONDENTS 1 AND 2 BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM, IDUKKI.

EXHIBIT P2. COPY OF THE ORDER DATED 20.12.13 IN IA NO.143/11 IN CC NO.409/13 PASSED BY CONSUMER DISPUTES REDRESSAL FORUM, IDUKKI.