

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 9TH DAY OF JANUARY 2023 / 19TH POUSHA, 1944

WP(C) NO. 8325 OF 2021

PETITIONER/S:

SUTHAN.N

AGED 60 YEARS S/O. NEELAKANDAN, PUTHENPURAYIL,
THEVALAPURAM, KAYAMKULAM, ALAPPUZHA - 690502.

BY ADVS.

K.P.PRADEEP

SHRI.HAREESH M.R.

SRI.T.T.BIJU

SMT.T.THASMI

SMT.M.J.ANOOPA

RESPONDENT/S:

- 1 RESERVE BANK OF INDIA
CENTRAL OFFICE BUILDING, 18TH FLOOR, SHAHID BHAGAT SINGH
ROAD, MUMBAI - 400001, REPRESENTED BY ITS GOVERNOR.
- 2 CHIEF GENERAL MANAGER - IN - CHARGE
DEPARTMENT OF REGULATION, RESERVE BANK OF INDIA, 12TH
FLOOR, CENTRAL OFFICE BUILDING, SHAHID BHAGAT SINGH ROAD,
MUMBAI - 400001.
- 3 CHIEF GENERAL MANAGER AND CHIEF VIGILANCE OFFICER
CENTRAL VIGILANCE CELL, RESERVE BANK OF INDIA, CENTRAL
OFFICE BUILDING, 18TH FLOOR, SHAHID BHAGAT SINGH ROAD,
MUMBAI - 400001.
- 4 OMBUDSMAN FOR NON-BANKING FINANCIAL INSTITUTIONS,
RESERVE BANK OF INDIA, FORT GLACIS, CHENNAI - 6000001.
- 5 CHIEF GENERAL MANAGER
RESERVE BANK OF INDIA, REGIONAL OFFICE, KERALA, ERNAKULAM
NORTH, POST BOX NO. 3065, KOCHI - 682018.
- 6 ICL FINCORP LIMITED
REGISTERED OFFICE, NO.61/ 1, VGP COMPLEX, FIRST AVENUE,

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ASHOK NAGAR, CHENNAI - 6000083.
REPRESENTED BY ITS CHAIRMAN/MANAGING DIRECTOR.

7 CHIEF EXECUTIVE OFFICER
ICL FINCORP LIMITED, ADMINISTRATIVE OFFICE, MAIN ROAD,
IRINJALAKUDA, THRISSUR - 680121.

8 SECURITIES AND EXCHANGE BOARD OF INDIA
HEAD OFFICE, PLOT NO. C4-A, 'G' BLOCK, BANDRA-KURLA
COMPLEX, BANDRA (EAST), MUMBAI - MAHARASHTRA - 400051,
REPRESENTED BY ITS CHAIRMAN.

BY ADVS.
M.GOPIKRISHNAN NAMBIAR
M.P.SHAMEEM AHAMED
SRI.K.M.JAMALUDHEEN
KURRYAN THOMAS
K.JOHN MATHAI
JOSON MANAVALAN
PAULOSE C. ABRAHAM
RAJA KANNAN
CYRIAC TOM

ADV SEENA C-PP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09.01.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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JUDGMENT

This writ petition is filed by the petitioner mainly seeking a direction to respondents 1 to 5 to investigate and take actions against the 6th respondent based on Ext P5 complaint. The petitioner is aggrieved by the failure on the part of the 6th respondent to return the amount invested with the 6th respondent in the form of debentures. The petitioner's grievance is that, the petitioner subscribed debentures worth Rs.10,00,000/- from the Kayamkulam branch of the 6th respondent on 15.04.2017.

2. The specific case of the petitioner is that the said subscription was made by the petitioner, believing the words of the promoters appointed by the 6th respondent, who offered good returns compared to the regular savings deposits. However, after the period of its expiry, when the petitioner approached the 6th respondent, they refused to refund the amount. Ext.P2 lawyer notice was issued to the 6th respondent in such circumstances to which the 6th respondent responded in the form of Ext.P3. In Ext.P3, the contention taken by the 6th respondent is that the

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petitioner's wife was working with the 6th respondent for some time and later when the 6th respondent conducted an audit, certain malpractices were found. Therefore, the said amount cannot be returned to the petitioner. Ext P5 complaint, in such circumstances, was submitted before the 1st respondent, highlighting the grievances of the petitioner. In response to the same, a communication was issued by the 1st respondent relegating the petitioner to the Ombudsman and accordingly, the petitioner approached the Ombudsman. However, as per Ext.P7, the Ombudsman informed that the Ombudsman Scheme for Non-Banking Finance Companies is not extended to Non-Banking Financial Company-Infrastructure Finance Company (NBFC-IFC), Core Investment Company (CIC), Infrastructure Debt Fund-Non Banking Financial Company (IDF-NBFC), and a Company under Liquidation. It was stated that the 6th respondent company is not an entity covered under the Ombudsman scheme. Therefore, it was informed that they could not entertain the complaint submitted by the petitioner and accordingly, it was returned. This writ petition was submitted in such circumstances by the

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petitioner, seeking a direction to the respondents 1 to 5 to investigate and take action against the 6th respondent on the basis of Ext.P5 complaint.

3. In response to the averments contained in the writ petition, counter affidavits have been filed by the 6th respondent and 8th respondent. The 8th respondent, The Securities and Exchange Board of India, stated that the subject matter is not coming within their jurisdiction and the proper authority to act upon the grievances highlighted by the petitioner is the Reserve Bank of India. The stand taken by the 6th respondent in their counter affidavit is that, since the issuance of debenture is a matter that comes under the provisions of the Companies Act, none of the authorities shown as the respondents have any jurisdiction to entertain the said complaint. In addition to that, the 6th respondent also raised a contention that the complaint itself is not sustainable.

4. The learned Standing counsel appearing for the 1st respondent pointed out that, since debenture is a form of security,

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the complaints regarding the same are to be considered by the 8th respondent.

5. I have gone through the records and heard the contentions raised by all the parties. In support of the contentions raised by the 8th respondent, the learned counsel places reliance upon the decision rendered by the Hon'ble Supreme Court in **Nedumpilli Finance Company Limited v. State of Kerala** [2022 (7) SCC 394] wherein, in paragraph 41 of the judgment, after referring to the various provisions of Reserve Bank of India Act, it was observed that no NBFC could carry on business without being registered under the Act and NBFC which takes birth with the registration under the Act is liable to be wound up at the instance of the RBI. The entire life of an NBFC, from the womb to the tomb, is also regulated and monitored by RBI. By relying on the same, it is contended that the grievances highlighted by the petitioner are to be adjudicated by RBI. The counter affidavit submitted by the 6th respondent also refers to various circulars issued by the RBI dealing with and regulating the issuance of debentures by NBFCs. Even though the 6th respondent has raised

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a specific contention that the petitioner in his complaint did not point out any violation of the conditions imposed by the RBI in the circulation, I am of the view that, as it is evident from the records that, the registration and the affairs of the NBFC are governed by the 1st respondent/Reserve Bank of India, it is only proper that the grievances highlighted by the petitioner are taken into consideration by the 1st respondent.

6. It is also to be noted in this regard that, acting upon Ext.P5 complaint, the 1st respondent relegated the petitioner to the Ombudsman, and in the communication so issued by the 1st respondent, it was specifically mentioned that if the grievance of the petitioner is not covered under Ombudsman Schemes for NBFCs 2018, the complainant may approach the Consumer Education and Protection Cell, Reserve Bank of India. Consequent to Ext.P8 order, the petitioner approached the Ombudsman, and it was clarified that the complaint is beyond the jurisdiction of the Ombudsman Scheme for NBFC.

In such circumstances, it is only proper that a decision on the grievances highlighted by the petitioner as per Ext.P5 be

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considered by the 1st respondent and take an appropriate decision in this regard after giving a reasonable opportunity to the parties concerned. Thus, this writ petition is disposed of directing the 1st respondent to take up the Ext.P5 complaint and take a decision thereon as expeditiously as possible at any rate within a period of three months from the date production of a copy of this judgment.

Sd/-

ZIYAD RAHMAN A.A
JUDGE

rpk

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APPENDIX OF WP (C) 8325/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE DEBENTURE CERTIFICATE WORTH RS. 10,00,000/- VIDE CERTIFICATE NO.2082, SERIES NO.NCD 1104 DATED 15.04.2017 ISSUED BY THE 6TH RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE LAWYER NOTICE DATED 11.03.2020 ISSUED BY THE PETITIONER TO THE 6TH RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE REPLY DATED 27.05.2020 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER.
- EXHIBIT P4 TRUE COPY OF THE REPLY DATED 16.09.2020 SUBMITTED BY THE WIFE OF THE PETITIONER TO THE 6TH RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE COMPLAINT DATED 06.08.2020 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE REPLY VIA EMAIL RECEIVED FROM THE AGENCIES AND CO-ORDINATION GROUP, DEPARTMENT OF SUPERVISION, RESERVE BANK OF INDIA DATED 27.10.2020 TO THE PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE REPLY VIA EMAIL RECEIVED FROM THE 4TH RESPONDENT DATED 10.10.2020 TO THE PETITIONER.
- EXHIBIT P8 TRUE COPY OF THE REPLY VIA EMAIL RECEIVED FROM THE 5TH RESPONDENT DATED 11.09.2020 TO THE PETITIONER.

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PETITIONER EXHIBITS

Exhibit R6(a) A copy of undertaking dated 01.02.2018.

Exhibit R6(e) A copy of the board resolution dated 17.03.
2018

Exhibit R6(b) A copy of the letter dated 20th February
2018 executed by the Petitioner's wife.

Exhibit R6(f) A copy of the letter dated 11.01.2020 issued
by the 6th Respondent