

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**O.O.C.J.**

WRIT PETITION (ST) NO.985 OF 2018

...

Manish Malhotra

...Petitioner

v/s.

Reliance Home Finance Limited & Anr.

...Respondents

...

Ms.Jennifer Michael a/w Mr.Dharmesh Shah for the Petitioner.

Mr.Rohit Gupta i/b Mr.R.L.Motwani for the Respondent No.1.

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CORAM : A.A. SAYED &**V.L.ACHLIYA, JJ.****DATED : 26 MARCH 2018****P.C.:**

The Petitioner has impugned the order dated 21 March 2018 of the DRT, Mumbai. Learned Counsel for the Petitioner has placed reliance on the judgment of the Supreme Court in the case of **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai & ors.**, (1998) 8 SCC 1 and in particular paragraphs 14 and 15, which read as under:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 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 or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but 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.”

2. The sole contention of the learned Counsel for the Petitioner is that the impugned order does not contain any reasons and therefore there is violation of principles of natural justice and this Court ought to entertain the Writ Petition despite the availability of the alternate remedy before DRAT. Firstly, we do not find that the impugned order is unreasoned. Secondly and even otherwise, it is well settled that the exercise of writ jurisdiction is the discretion of the Court and in a given case the Court may refuse to exercise writ jurisdiction even in the three circumstances mentioned in paragraph 15 of the judgment of the Apex Court quoted above, if there is an alternate remedy available to the petitioner. In the present case it appears that the Petitioner wants to somehow avoid the statutory payment of pre-

deposit for entertaining the Appeal. Learned Counsel for the Respondent No.1 informs the Court that the outstanding dues of the Petitioner is in excess of Rs.22 crores. The Petitioner has not shown willingness to deposit any amount to show his bonafides. In any event, since the Petitioner has an alternate remedy of approaching the DRAT, we are not inclined to exercise the writ jurisdiction of this Court to entertain the Petition. The Petition is dismissed. No order as to costs.

(V.L.ACHLIYA,J.)

(A.A.SAYED, J.)