

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 3094 OF 2019**

Atharv Jagannath Kulkarni
Minor Thru. Sou. Sunetra J.
Kulkarni & Ors.

.....Petitioners.

Vs.

The State Of Maharashtra

.....Respondent.

Dr. Uday P. Warunjikar for the Petitioners.
Mr.A.P. Vanarse, AGP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 21st APRIL, 2022.

PC.:-

At the outset, learned AGP submitted that, against the impugned Order dated 28th February, 2017, a substantive alternate statutory remedy under Article 32B of the Maharashtra Stamps Act is available and without availing the said statutory alternate remedy, the Petitioners have directly approached this Court by invoking its jurisdiction under Article 227 of Constitution of India.

2 2 It is the settled position of law and as has been decided in a catena of decisions by Hon'ble Supreme Court, ordinarily the Court will not entertain a Petition under Article 226/227 of the Constitution of India,

where the Petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well-recognized principle which gained judicial recognition that, the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy.

Reliance is placed on the following decisions-

- i) *Thansingh Nathmal Vs. The Superintendent of Taxes, Dhubri & Ors. reported in AIR 1964 SC 1419 .*
- ii) *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors. reported in (2000) 7 SCC 695.*
- iii) *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329.*
- iv) *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors. reported in (2015) 5 SCC 423.*
- v) *Genpact India Private Limited Vs. Deputy Commissioner of Income-Tax & Anr. Reported in (2019) 419 ITR 440 (SC).*
- vi) *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors. reported in (2019) 9 SCC 538.*

3 In view thereof, Dr. Warunjikar, learned counsel for the Petitioners, seeks leave to withdraw the present Petition with liberty to file a

substantive statutory Appeal as contemplated under Article 32B of the Maharashtra Stamps Act before the concerned Competent Authority.

Leave and liberty granted.

Writ Petition is disposed off as withdrawn, with aforesaid liberty.

(A.S. GADKARI, J.)