

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO. 1345 OF 2022**

Cdr. G. V. K. Unnithan & Ors.

... Petitioners

V/s.

State Of Maharashtra & Ors.

... Respondents

Mr.Pradyumna M. Mokashi for Petitioners.

Mr.A.A. Kumbhakoni, Advocate General a/w. Mr.Akshay Shinde, 'B' Panel A.G.P and

Mrs.M.S. Bane, A.G.P for State.

Dr.Sanjay Sinvhal for Respondent No.6 in-person.

Mr.Subhash R. Gouniyal, Respondent No.7 in-person.

CORAM : A.S. GADKARI, J.**DATE : 1st April 2022.****PC. :**

1. At the outset Mr.Kumbhakoni, learned Advocate General raised a preliminary objection and submitted that, against the impugned Orders passed under Section 78A and 77A of the Maharashtra Cooperative Societies Act (*for short, "M.C.S. Act"*), an appeal is maintainable before the Competent Authority and without availing the said statutory remedy, the Petitioners have directly approached this Court by invoking its jurisdiction under Article 227 of the Constitution of India.

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, the learned counsel for the Petitioners, on instructions, seeks leave to withdraw present Petition with liberty to avail the said substantive alternate statutory remedy available at the disposal of the Petitioners under the M.C.S. Act.

Leave and liberty granted.

4. Petition is disposed off as withdrawn with aforesaid liberty.

5. It is needless to mention that, the Petitioners will be entitled for benefit under Section 14 of the Limitation Act, 1963 for pursuing said remedy.

It is further to be noted here that, the present Petition is disposed off on the basis of preliminary objection raised by the learned Advocate General and this Court has not dealt with the merits involved therein.

[A.S. GADKARI, J.]

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