

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9216 OF 2017**

Shri. Suryakant Baburao Khaladkar

.....Petitioner

Vs.

The State of Maharashtra,
Through Principle Secretary & Ors.

.....Respondents

Mr. Arvind Tiwari a/w Shraddha Kadam i/by Mr. Santosh L. Patil for the
Petitioner.

Mr. A. B. Kadam, AGP for Respondent No.1 & 2-State.

Mr. V. P. Sawant, senior Advocate a/w Mr. P. M. Jadhav for Respondent No.3.

CORAM : A. S. GADKARI, J.

DATE : 18th APRIL, 2022.

PC:-

At the outset Mr. Sawant, learned senior counsel appearing for Respondent No.3 raised a preliminary objection and submitted that, against the Order impugned herein dated 20th May, 2017 passed by the Respondent No.2 i.e. Collector of Pune, a substantive appeal under Section 137(2) of the Maharashtra Prohibition Act, 1949 (for short "said Act") is maintainable and without availing the said statutory alternate remedy, the Petitioner has directly approached this Court by invoking its jurisdiction under Article 227 of 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 Petitioner seeks leave to withdraw the present Petition with liberty to file a substantive Appeal under Section 137(2) of the said Act before the Government.

Leave and liberty granted.

4. The Writ Petition is disposed off, as withdrawn with aforesaid terms.

5. It is needless to mention that, the Petitioners will get benefit as contemplated under Section 14 of the Limitation Act for the time spent in pursuing present Petition before this Court.

(A.S. GADKARI, J.)