

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9203 OF 2021**

Shevanti Mahila Sahakari Dudh Utpadak MaryaditPetitioner

Vs.

State of Maharashtra and Ors.Respondents

Mr. A. Y. Sakhare, Senior Advocate i/b R. S. Mirpury, for the Petitioner.

Mr. C.D. Mali, AGP, for State-Respondent .

Ms. Shraddha Pawar i/b Dilip Bodake for Respondent No.3.

Smt. Manisha Jagtap with Mr. Mayuresh Ingale i/b J. Shekhar and Co. for Respondent No.4.

Mr. Umesh Mankapure, for Respondent No.5.

CORAM : A. S. GADKARI, J.

DATE : 16th MARCH, 2022.

P.C.:-

At the outset, Mr.Mankapure, learned counsel for Respondent No.5 raised a preliminary objection and submitted that, against the Order impugned herein dated 1st December, 2021, a substantive Appeal under section 152 Maharashtra Co-operative Societies Act, 1960 (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 As far as Order dated 20th February, 2020 is concerned, *prima-facie*, it appears that the said Order is the consequential Order of the impugned Order dated 30th January, 2020 and therefore challenge to it under Section 152 of the said Act is also maintainable.

4 In view thereof, Mr. Sakhare, learned senior counsel for the Petitioner, seeks leave to withdraw the present Petition with liberty to file a substantive Appeal under Section 152 of the said Act before the Competent Authority.

Leave and liberty granted.

Writ Petition is disposed off as withdrawn, with aforesaid liberty.

(A.S. GADKARI, J.)