

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO. 458 OF 2020**

Nav – Reshma Apartments CHS Limited ... Petitioner
V/s.
Sorab Noshir Pochkhanawala & Ors. ... Respondents

WITH
INTERIM APPLICATION NO. 2262 OF 2022
IN
CIVIL WRIT PETITION NO. 458 OF 2020

Smt. Janak Tarachand Narang ... Applicant

In the matter between :-

Nav – Reshma Apartments CHS Limited ... Petitioner
V/s.
Sorab Noshir Pochkhanawala & Ors. ... Respondents

Mr.Phiroze Merchant i/b. Kanga & Co. for Petitioner.
Mr.P.J. Thorat a/w. Tatsat Gor i/b. One Legal Bay LLP for Applicant.
Mr.Sourasubha Ghosh a/w. Ms.Sanaya Patel i/b. Indus Law for Respondent Nos.1 & 2.
Mr.D.V. Deokar a/w. Mr.Pinaan Modi i/b. M/s. Parimal K. Shroff & Co. for Respondent No.4.

CORAM : A.S. GADKARI, J.
DATE : 7th April 2022.

PC. :

1. At the outset, learned counsel for Respondent Nos.1 & 2/Original Plaintiffs raised a preliminary objection and submitted that, against the impugned Order dated 29th November 2018 passed below Exh.10 in T.E. Suit

No.115 of 2016, a substantive statutory appeal under Section 42 of The Presidency Small Cause Courts Act, 1882 is maintainable and without availing the said statutory alternate remedy, the Petitioner has directly approached this Court under Article 227 of the Constitution of India. He further on instructions submitted that, the Respondent No.4 herein, who is defendant No.3 in the said Suit, has already availed the said remedy of filing appeal against the impugned Order.

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, Petition is accordingly disposed off by reserving the right to avail the said statutory alternate remedy available at the disposal of the Petitioner.

4. In view of disposal of Petition, Interim Application No.2262 of 2022 pending therein, does not survive and is accordingly disposed off.

5. It is needless to mention that, the present Petition is disposed off on the basis of the preliminary objection raised by the learned counsel for Respondent Nos.1 & 2 and this Court has not adjudicated the issues involved in the present Petition.

6. Contentions of all the parties are expressly kept open to be agitated in the said Appeal, which the Petitioner may file, if so advised.