

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3449 OF 2024

Mohammed Yaya Mohammed Sayyed ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

Mr. Vinayak Salokhe with Ms. Shraddha Kadam i/by
Mr. Santosh L. Patil for the petitioner.

Mr. Y.D. Patil, AGP for the respondent No.1/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 11, 2024

RC.:

1. The order impugned in the present writ petition is capable of being challenged before the Appellate Authority under the provisions of the Maharashtra Prohibition Act, 1949 (“the Act”).

2. The law on this point is settled in view of the decision of the Apex Court in the case of **Commissioner of Income Tax v. Chhabil Dass Agarwal** reported in (2014) 1 SCC 603. The Apex Court in paragraph 15 has held as under:

“15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and

discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (*See: State of U.P. v. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107; State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499*)."

3. In view of the aforesaid decision, the rights claimed by the petitioner are created under the provisions of the Act. Remedy is provided under the provisions of the Act.
4. The writ petition is, therefore, dismissed. No costs.
5. However, the petitioner is at liberty to challenge the order before the Appellate Authority.
6. All questions raised in the present writ petition to kept expressly open to be agitated before the Appellate Authority.

(AMIT BORKAR, J.)