

Nikita

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

REVIEW PETITION NO.14 OF 2024

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Khwaja Garib Nawaz Co-operative
Housing Society Ltd. ... Petitioner

V/s.

Divisional Joint Registrar Co-operative
Society Mumbai Division and Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.2211 OF 2024
IN
REVIEW PETITION NO.14 OF 2024**

Budhpur Buildcon Pvt. Ltd. ... Applicant

V/s.

Khwaja Garib Nawaz Co-operative
Housing Society Ltd. and Ors. ... Respondents

Mr. Vijay Kurle a/w Mr. Chandrashekhar Acharya i/b
Mr. Manohar V. Shetty for the Petitioner in RPW.

Mr. Jagdish G. Aradwad (Reddy) for Respondent Nos.
2 and 3 (Mhada).

Ms. Neha Nagotaneekar, for Respondent No.4.

Mr. Mayur Khandeparkar a/w Mr. Bhushan Deshmukh
a/w Mr. Aditya Miskita and Ms. Aayushi Gohil a/w Mr.
Umair Merchant i/b M.T. Miskita and Company; for
Applicant in IA.

Mrs. V. S. Nimbalkar, AGP for the State-Respondent
No.1.

CORAM : AMIT BORKAR, J.

DATED : MARCH 4, 2024

P.C.:

1. The petitioner has filed present review petition based on judgment of Apex Court in the case of **Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil** 2010 8 SCC 329.

2. According to the petitioner the change record, in the order dated 16th October 2023 arises out of petition under Article 226 of the Constitution of India. There is considerable difference in the power of this Court under Article 226 and 227 of the Constitution of India.

3. According to him, parameters laid down by Apex Court in the case of **Shalini** (supra) applied in the facts of the case, and therefore, this Court need to allow the Review Application and entertain the writ petition on merits.

4. The parameters for exercise of power of this Court under which jurisdiction have been laid down by the judgment of Apex Court in the case of **Commissioner of Income Tax & Ors Vs. Chhabil Das Agrawal**, reported in (2014) 1 SCC 603. The Apex Court relied upon two constitutional Bench's decisions on the point of exercise of power of High Court and existence of statutory remedy in paragraph No.15 as held as under:

“**15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted

to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [AIR 1964 SC 1419] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

5. The Apex Court held that if the rights are created under a statute and it provides remedy and such remedy must be ipso facto executed by the petitioner.

6. In the case of **Punjab National Bank vs O.C. Krishnan And Ors**, reported in 2001 (6) SCC 569, in the context of statutory remedy provided under statute in the context of Article 227, it is held in para 6 as under:

“**6.** The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available,

judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

7. Therefore, in view of the observations made by the Apex Court in both the Judgments above, the review petition cannot be entertain.

8. The review petition is dismissed. No costs.

9. In view of disposal of review petition, the interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)