

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3400 OF 2024

Infinity Cars Pvt Ltd ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

Mrs Nikita Badheka, *with Parth Badheka & Lata Nagal, for the Petitioner.*

Ms Jyoti Chavan, *Addl GP, for the Respondent-State.*

CORAM M.S. Sonak &
 Jitendra Jain, JJ.
DATED: 18 November 2024

PC:-

1. Heard learned Counsel for the parties.
2. The challenge in this Petition is to the Show Cause Notice dated 19 December 2023 and the Order-in-Original dated 15 April 2024 made after adjudicating the Show Cause Notice.
3. Though, the Petitioner, clearly has an alternate and efficacious remedy of instituting an appeal against the Order-in-Original in which the impugned Show Cause Notice has already merged, the Petitioner, at para 95 of the Petition, has made following false and misleading statements:

“95. In view of the submission set out above, the Petitioner has no alternative and efficacious remedy but to approach this Hon’ble Court under Article 226 of the Constitution of

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India for redressal of its grievances. The relief wherein if granted will afford complete and efficacious remedy to the Petitioner.”

4. Ms Badheka, the learned Counsel for the Petitioner however, refers to the averments in paragraphs 82 to 86 to contend that the Petition is maintainable. We have no doubt about maintainability of the Petition. However, the question is about entertainability of the Petition. We are satisfied that this Petition ought not to be entertained because the Petitioner has an alternate efficacious remedy available in this matter. Ms Badheka submitted that the Show Cause Notice was confusing and in any event, the Petitioner’s detailed reply of 15 pages is not considered in the Order-in-Original. She submitted that this is a case where the Order-in-Original contains no reasons and even the circular dated 7 March 2019 was ignored. She submits that the order is perverse and therefore, this Court, should entertain the Petitioner without relegating the Petitioner to the alternate remedy available to the Petitioner. We have considered the submissions. The fact that the reply of 15 pages was filed, at least prima facie militates against the contention of the Show Cause Notice being vague or confusing. Further, at least prima facie, we cannot accept that the impugned order is unreasoned or that it has failed to take into account the defences raised by the Petitioner. The impugned order in fact, grants the Petitioner relief, where the adjudicating authority found that such relief was due.

5. There is a paragraph which concerns verification, discussion and conclusions. Therefore, at least prima facie, the contentions about any failure of natural justice cannot be accepted.

6. In paragraphs 82 to 86, the reasons which were now canvassed by Ms Badheka have been set out to avoid the rule of exhaustion of alternate remedies. As noted earlier, we find no merit in any of the contentions advanced. By merely styling an order as perverse or claiming that it is without jurisdiction, the usual rule of exhaustion of alternate remedies cannot be bypassed. In our judgment and order dated 11 November 2024 in **Oberoi Constitutions Ltd Vs The Union of India & Ors**¹, we have surveyed the various precedents on the rule of exhaustion of alternate remedies. It was also commented on the increased tendency of instituting Petitions bypassing the alternate remedies and attempting to avoid conditions of pre-deposit. Invariably, some circulars are challenge or the validity of some of the provisions is questioned. Fortunately, in this case, the Petitioner has not done that. Still, from the averments in the Petition and the arguments advanced across the bar, we are satisfied that there is no good enough ground to bypass the alternate remedies available to the Petitioner.

7. Ms Chavan points out that for the previous assessment years, the Petitioner has already filed appeals. Ms Badheka however submits that the issue involved in the previous assessment years was not the issue involved for the year for which the impugned order has been made. In any event, we do not propose to go by the submission now made by Ms Chavan because we are satisfied that in this case, there is no good ground made out by the Petitioner to bypass the alternate remedies. Besides, we do not appreciate the averment in para 95 of this Petition where, the Petitioner,

¹ WP(L) No. 33260 of 2023 and connected matters

boldly states that the Petitioner has no alternate and efficacious remedy when in fact, the Petitioner does have such remedy. The averment in paragraph 95, contradicts the averment in para 83 of the Petition.

8. For the above reasons, we decline to entertain this Petition and dismiss it with cost of Rs. 10,000/- the cost must be paid within four weeks to Tata memorial hospital.

9. At this stage, learned Counsel for the Petitioner states that the Petitioner would file the necessary appeal but some protection may be granted since the Petitioner was pursuing the remedy before this Court. This Petition was instituted on 25 June 2024 i.e., within the limitation prescribed for instituting an appeal against the order dated 15 April 2024. In all probabilities, this Petition was filed on legal advice and the same was pending till date. Ms Bhadeka states that the appeal will now be filed within four weeks after complying with all the legal requirements of pre-deposit and with proof of payment of cost. If this is done within four weeks from today, the appellate authority should entertain the appeal on merits without advertting to the issue of limitation.

10. All contentions of all parties on merits are left open. Even observations made by us in this order were in the context of examine of issue of exhaustion of alternate remedies and therefore, none of these observations need influence the appellate authority while deciding the Petitioner's appeal on merits.

11. The Petition is disposed in the above terms

12. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)