

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2173 OF 2025**

Initiating Officer	]	
and Deputy Commissioner of	]	
Income Tax (Benami Prohibition)	]	
Unit-Pune Room No.711,	]	
7 th Floor, Aayakar Sadan, Bodhi	]	
Towers, 548/2B, Salisbury Park,	]	
Gultekdi, Pune-411 037	]	 Appellant.

V/s

1. Rahul V. Takalkar	]	
Village Hivre Kumbhar,	]	
Tal-Shirur, Pune	]	
	]	
2. Pratap Vittal Bandal	]	
Bandal Bunglow, Behind Bandal	]	
Complex, Shikrapur, Tal-Shirur,	]	
Dist. Pune	]	 Respondents.

Mr Ashok Kotangale a/w Mr Suresh Kabra & Mr. Nikitesh Kotangale, advocates for the appellant.
None for the respondents.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 20th NOVEMBER 2025.

PER SHREE CHANDRASHEKHAR, CJ

The appellant-Department through its Initiating Officer-cum-Deputy Commissioner of Income Tax (Benami Prohibition) has challenged the order dated 19th April 2023 under section 46 of the Prohibition of Benami Properties Transactions Act, 1988 (in short, “Benami Act”) passed by the Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

(in short, “the Appellate Tribunal”).

2. The short facts of this case are that an order of provisional attachment under section 24(4)(a)(i) of the Benami Act was passed on 24th November 2017 against the respondents directing that the attachment shall continue until an order under section 26(3) of the Act is passed by the adjudicating Authority. The adjudicating Authority confirmed the provisional attachment by an order dated 31st December 2018. Aggrieved by the confirmation order, the respondents preferred appeal before the Appellate Tribunal. By the impugned order dated 19th April 2023, the Appellate Tribunal allowed the appeal. However, the Tribunal granted liberty to the appellant-Department herein to adopt an appropriate remedy including filing a review petition or initiating proceedings under the Prohibition of Benami Transactions (Amendment) Act, 2016 (in short, “the Amendment Act”). Aggrieved by the impugned order dated 19th April 2023, the appellant-Department has filed the present appeal.

3. Mr. Ashok Kotangale, the learned counsel for the appellant-Department submitted that the Appellate Tribunal has placed reliance on the decision in “*Union of India v. M/s. Ganpati Dealcom Pvt. Ltd.*” 2022 SCC OnLine SC 1064 as well as the review petition filed against the said judgment which was then pending before the Hon’ble Supreme Court. The relevant portion of the impugned order reads as follows:-

“It is however made clear that if the Apex Court reviews its judgment, the respondent would be at liberty to take appropriate remedy pursuance to it which includes filing a review petition before this Tribunal.

It is also made clear that if the Department has an independent right to initiate the action taking the Amendment Act, 2016 to be prospective and does not offend the judgment of the Apex Court in the case of UOI V/s M/S

Ganpati Dealcom (Supra) then this order would not come in their way as otherwise action can be governed by para 130(f) of the judgment (supra)."

4. Mr. Ashok Kotangale, the learned counsel for the appellant-Department indicates that now the review has been allowed by the Hon'ble Supreme Court and original judgment in "*M/s. Ganpati Dealcom Pvt. Ltd.*" stands recalled. Consequently, the present appeal deserves to be allowed. The relevant portion of the review order dated 18th October 2024 reads as under:-

"6. A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. We accordingly allow the review petition and recall the judgment dated 23 August 2022. Civil Appeal No.5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side.

*7. Where any other proceedings have been disposed of by relying on the judgment of this Court in **Ganpati Dealcom Private Ltd.** (supra), liberty is granted to the aggrieved party to seek a review in view of the present judgment."*

5. We have perused the impugned order as well as the order passed by the Hon'ble Supreme Court in the review petition. During the hearing before the Appellate Tribunal, the appellant-Department had sought specific liberty to adopt appropriate remedies including filing a review petition before the Tribunal depending on the outcome of the review proceedings in "*M/s Ganpati Dealcom Pvt. Ltd.*". At that time, the judgment in "*M/s. Ganpati Dealcom Pvt. Ltd.*" was in force which held that the Amendment Act, 2016 was prospective and did not apply to transactions prior to the amendment. The Appellate Tribunal proceeded on the basis of the then prevailing legal position. Being conscious of the pendency of the review before the Hon'ble Supreme Court, it has granted the liberty to the appellant-

Department of filing a review application before the Appellate Tribunal depending on the outcome of proceedings pending before the Hon'ble Supreme Court. Similarly, the order dated 18th October 2024 also grants the same liberty until the matter is adjudicated by the Hon'ble Supreme Court.

6. We may also note that the learned counsel for the appellant-Department did not address the merits of the matter. In our view, as liberty is already granted to the appellant-Department to file review petition before the Appellate Tribunal, both by the impugned order and by the order of the Hon'ble Supreme Court dated 18th October 2024 and the appellant-Department can avail of the same after a final decision is rendered by the Hon'ble Supreme Court in "*M/s. Ganpati Dealcom Pvt. Ltd.*" Consequently, First Appeal No. 2173 of 2025 stands dismissed. We clarify that we have not examined the appeal on merits and all contentions on merits are expressly kept open to be urged before the Appellate Tribunal in an appropriate proceeding after the judgment is delivered in "*Union of India v. M/s Ganpati Dealcom Pvt. Ltd.*".

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

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