

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

WRIT PETITION NO. 8767 OF 2025

Infinite Uptime India Pvt. Ltd. ... Petitioner

Versus

Union of India, Through the Ld.
Secretary, Ministry of Finance And Ors. ... Respondents

Mr Ram Heda i/b Ms Priyanka Shukla, for Petitioner.

Ms Shruti D. Vyas, Addl.G.P a/w Mr Aditya S. Deolekar, A.G.P,
for Respondent-State.

**CORAM : M.S. Sonak &
Jitendra Jain, JJ.**

DATED : 01 JULY 2025

PC:-

1. Heard learned counsel for the parties.
2. The Petitioner challenges the order dated 28 February 2025 made by the 3rd Respondent.
3. In paragraph 15, the Petitioner has made a bold averment that it has no other alternative or equally efficacious remedy than to approach this Court for the redressal of its grievance. This is a false statement. The impugned adjudication order itself states that the same is appealable, and even the details of the Appellate Authority and the period of limitation within which such an Appeal is to be filed are set

AMOL
PREMNATH
JADHAV

Digitally signed by
AMOL PREMNATH
JADHAV
Date: 2025.07.08
11:42:24 +0530

out. Despite this, the Petitioner was not justified in pleading that it had no alternative efficacious remedy.

4. The learned counsel for the Petitioner has urged that the show cause notice in this case was issued beyond the prescribed period of limitation. Secondly, the adjudicating authority was biased. None of these contentions can be decided without considering the factual matrix. Even the limitation issue concerns the law and facts. At least at this stage, it is difficult to hold without detailed evaluation that the impugned show cause notice and consequently the impugned order are wholly without jurisdiction.

5. In short, there is no justification for the Petitioner to bypass the alternative and efficacious remedy provided by the statute. This is a case where the Petitioner merely seeks to take a chance and avoid the pre-deposit, which is one of the statutory requirements for instituting an Appeal.

6. In **Oberoi Constructions V/s. Union of India**¹, we have discussed several precedents on the issue of exhaustion of an alternative remedy. By relying on those precedents and our reasoning in the said Judgment and Order, we declined to entertain this Petition.

7. Even recently, the Hon'ble Supreme Court in the case of **Bank of Baroda V/s. Farooq Ali Khan & Ors**² has not approved the High Court's exercising its extraordinary jurisdiction

¹ 2024 SCC OnLine Bom 3508

² 2025 171 taxmann.com 643

bypassing the statutory remedies available to the parties. The Hon'ble Supreme Court has held that the statutory process should not be frustrated by entertaining Petitions under Article 226 of the Constitution, unless, strictly, the parameters set out in **Whirpool Corporation V/s. Registrar of Trademarks, Mumbai & Ors**³ are satisfied.

8. Accordingly, we dismiss this Petition. At this stage, the learned counsel for the Petitioner states that the Petitioner will file an Appeal against the impugned order within four weeks from today.

9. Accordingly, we direct that if the Appeal is instituted within four weeks, then the Appellate Authority should decide the Appeal on merits without adverting to the issue of limitation.

10. All contentions of all parties, including the contentions now raised in this Petition, are left open to be decided by the Appellate Authority in the first instance.

11. This Petition is disposed of in the above terms.

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

(Jitendra Jain, J)

(M.S. Sonak, J)

³ 1998 (8) SCC 1