

Chaitanya

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

WRIT PETITION NO. 14413 OF 2025

Jayesh Shah

... Petitioner

Versus

The Union of India

Through the Secretary, Ministry of Law

And Justice Department And Ors.

... Respondents

Mr. Aditya Talpade a/w Mr. Pratik Karande, for the Petitioner.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 20 November 2025

PC:-

1. Heard learned counsel for the parties.
2. This Petition challenges the Order-in-Original dated 01 August 2025.
3. Admittedly, as against this order, the Petitioner has an alternate remedy of an Appeal. Still, the Petitioner, in paragraph 22 of the Petition, has made a patently false statement that the Petitioner has no remedy available under the Act against the impugned action of the Respondents. This paragraph proceeds to plead that "*In any event, the Petitioner is entitled to invoke the extraordinary jurisdiction of this*

Hon'ble Court under Article 226 of the Constitution of India. The Petitioner is entitled to approach the Hon'ble Court."

4. In the first place, the Petitioner has made a false statement. Secondly, the Petitioner seems to be under some misconception that the jurisdiction under Article 226 can be invoked as a matter of right or entitlement. It is well settled that this jurisdiction is both equitable and discretionary. The fact that the Petitioner has a statutory alternate remedy of an appeal is a permissible ground to decline the exercise of discretion. An exceptional ground has to be made out to bypass the alternate statutory remedy.

5. The learned counsel for the Petitioner, without any serious pleadings to back the same, now urges a failure of natural justice. He argues that certain documents were applied for but were furnished belatedly. He argues that the Petitioner should have been allowed an opportunity of cross-examination. Based on these bare arguments, we cannot infer any patent breach of natural justice to bypass the normal rule of exhaustion of the alternative remedy.

6. At this stage, however, since we propose to relegate the Petitioner to avail of the alternate remedy, we refrain from ruling on the argument of failure of natural justice. We leave it to the Petitioner to raise such a plea before the Appellate Authority should the Petitioner choose to avail such a remedy.

7. This is a case where factual issues would have to be gone into even to determine whether there has indeed been any violation of natural justice. Besides, in such matters mere technical breach of natural justice is never sufficient. The Petitioner will have to make out a case of prejudice. At least in the Petition, no such case is made out.

8. In **Oberoai Constructions Ltd. vs. Union of India and Ors.**¹, this court reviewed the precedents on the subject and noted the rising trend of instituting Petitions bypassing the alternate remedies provided under the statute. By adopting the reasoning in the said decision and the precedents referred to therein, we decline to entertain this petition, leaving it open to the petitioner to avail of the alternate remedy.

9. At this stage, the learned counsel for the Petitioner, on instructions, states that the Petitioner will institute an Appeal against the impugned order within four weeks from today, after complying with the necessary requirements like pre-deposits, etc. If this is done, we direct the Appellate Authority to consider the Appeal on merits without adverting to the issue of limitation.

10. All contentions of all parties are expressly left open to be considered by the Appellate Authority in the first instance. The observations in this order are only prima facie and are in the context of deciding the issue of an alternate remedy. The Appellate Authority need not be influenced by such

¹ 2024 SCC OnLine 3508

observations and may decide the matter independently of such observations.

11. This petition is disposed of with liberty in the above terms. No costs.

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

(Advait M. Sethna, J.)

(M.S. Sonak, J.)