

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5424 OF 2025**

Bhau Jaitu NipurtePetitioner

Versus

Meenakshi G. Panchabhai Nee
Meenakshi Amol Pande & Ors.Respondents

Mr. C.S. Joshi a/w. Ms. Tanvi Nimbalkar and Advocate A.C. Joshi
for the Petitioner.

None for the Respondents.

**CORAM : RAVINDRA V. GHUGE
&
ABHAY J. MANTRI, JJ.**

DATE : 17th FEBRUARY, 2026

P.C. :-

1. This matter was mentioned at 11:00 a.m. today. Having noticed that the grievance of the Petitioner is that Regular Civil Appeal No.16 of 2025 is pending before the First Appellate Court, arising out of Regular Civil Suit No.728 of 2001, we listed this matter at 3:00 p.m. by granting circulation.

2. We have heard the learned Advocate for the Petitioner at length. The contention of the Petitioner is that the said Appeal filed before the Appellate Court should be treated as not

maintainable and that this Court should exercise its Writ jurisdiction under Article 226 of the Constitution and dismiss the Appeal. Reliance is placed on *Yeshwant Gajanan Joshi & Ors. v. Hindustan Petroleum Corporation Ltd. & Ors.*¹

3. We have gone through the judgment delivered in *Yeshwant Gajanan Joshi* (supra). The facts of that case are totally different. The remedy under Article 226 was invoked as against the Petroleum Company. A statutory remedy was available. Considering the peculiar facts and circumstances of that case, this Court concluded that in all cases, the litigant need not be relegated to the statutory remedy. The recent judgment on this point has been delivered by the Hon'ble Supreme Court in *Godrej Sara Lee Ltd. v. Excise and Taxation Officer & Ors.*², wherein the issue of 'maintainability' and 'entertainability' has been gone into.

4. Notwithstanding the above, the Petition before us arises out of a completely different factual matrix. The Petitioner is the original Plaintiff. He succeeded by the judgment dated

¹ 1988 Mh. LJ 455

² 2023 SCC Online SC 95

16th February, 2024 delivered by the learned Trial Court in Regular Civil Suit No.728 of 2001. The Petitioner/Plaintiff is now a Respondent in Regular Civil Appeal No.16 of 2025. He has already filed his application objecting to the maintainability of the Appeal as well as on merits. The Appeal was registered on 3rd February, 2025.

5. In such circumstances, we are of the view that the Appellate Court will have to decide the Appeal on its own merits, considering all the contentions of the stakeholders/litigating parties. We find no reason to entertain this Petition under Article 226 of the Constitution.

6. **This Petition is, therefore, dismissed.**

7. Needless to state, all the contentions of the litigating parties are kept open for consideration by the Appellate Court.

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)