

(2000) 12 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3517 of 2000

Deepak Soni

APPELLANT

Vs

Rajasthan Finance Co. Corporation and Others

RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 21, 226

Citation : (2001) 3 RLW 1572 : (2001) 2 WLC 525 : (2001) 3 WLN 611

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Judgement

Palshikar, J.

(1). By this petition the petitioner who is an industrial enter-prauner has claimed the following reliefs:

PRAYERS

"I/a" it be declared that modified Agreement dated 12.03.92 (An-nex. 4) is illegal and the same be quashed;

"I/b" In the alternative and without prejudice it is submitted that it be declared that Respondents are not entitled to charge revised rate of interest of 18.75% p.a. from the petitioner on the entire loan disbursed to him.

"I/c" Alternatively and without prejudice if it is found that petitioner is not entitled to aforesaid reliefs then it be declared that Respondents can charge increased rate of interest @ 18.75% p.a. only of the third installment and not on the 1st and 2nd installments.

"I/d" the amount realised from the petitioner in excess of the amount payable by calculating interest @ 14.5% may be ordered to be refunded to the petitioner with interest @ 18% p.a."

(2). Prayer I/a relates to the claim of declaration that the modified agreement dated 12.3.92 is illegal. An agreement is a contract intra-parties voluntarily entered into by two parties and a declaration is sought that such an agreement is illegal.

(3). Prayer I/b claims declaration that the respondent Finance Corporation is not entitled to charge revised rate of interest on the loan given to the petitioner. The liability to pay interest at an enhanced rate or on a different rate for loan taken under a valid legal agreement is questioned.

(4). By Prayer I/c declaration is claimed that finance Corporation can charge increased rate of interest only on the third installment and not the first two. The liability to pay interest on all the three installments or only on one installment is questioned. The liability having arisen out of contract.

(5). Prayer I/d claims a refund of interest realised from the petitioner in excess of the amount payable. It will be seen that the petitioner claims that interest be calculated @ 14.5% on the loan advanced to him he desires that it be reassertained or determined and thus claims refund on which claims payment of interest @ 18% p.a. The liability to pay interest at a particular rate flows out of the contract of financing entered into between the petitioner and the Corporation.

(6). It is pertinent to note that Rajasthan Finance Corporation is statutory body established by the Govt. of Rajasthan under the State Finance Corporations Act 1956 for the purpose of providing finance for industrial development and upliftment in the State of Rajasthan. Various schemes are floated by the Corporation and financing of industries is undertaken by the Corporation in several fields and aspects. It is the petitioner, who approached the Finance Corporation for grant of certain loans and consciously agreed to the terms on which such advance will be made to him. He was not enticed into the contract by the Corporation nor was he coerced to enter into the contract, it is a purely voluntary act on the part of the petitioner. He has consciously accepted the rate of interest. The conditions in which they can be changed the manner of payment of interest on the local advance, etc., is also voluntarily accepted by the petitioner. The conditions imposed on him by the contract as also by the Finance Corporation Act, 1956 statutorily through out the transactions the contract of the petitioner has been voluntary, he has not been coerced into any agreement, he has voluntarily taken the liability flowing out of the contract of the financing and is now seeking by this writ certain declarations and injunctions against the Corporation as will be seen from prayers quoted above. The petitioner in fact desires enforcement of his contractual rights and claims declaration that certain contractual liability cannot visit him, by filing a writ petition under Article 226 of the Constitution of India. He can efficaciously claim all these reliefs by filing civil suit for declaration of the kind claimed by him in the prayers mentioned above. Seeking injunctions for enforcement of certain terms of contract as desired by him where he will have the opportunity, wherever necessary, to lead adequate

evidence to prove his contentions. Yet the writ petition is filed and it is insisted that it must be entertained.

(7). I have been at pains to observe regarding such existence of alternate remedy and entertaining of a writ petition inspite of efficacious alternative remedy being available. Unfortunately the judgments delivered by me are ignored, probably, deliberately. Separately today again, several decisions were pointed out to me and it was claimed that the writ petition is maintainable. It was then claimed that a writ in such circumstances must be entertained as a matter of course alternative remedy must be ignored and I am again compel to write this judgment again asserting necessity of following alternate remedy.

(8). I am well aware of the fact that Humble Supreme Court has laid down that normally a writ petition should not be entertained directly. It is also observed that alternate remedy is no bar to exercise of extra ordinary jurisdiction of this Court under Article 226 of the Constitution as the powers conferred on this court by that Article are plenary in nature, and are meant to be exercised to undo injustice or do positive justice as efficaciously as possible. I will again examine the decisions relied upon the learned counsel for the petitioner in this regard.

(9). Reliance was placed on the judgment of the Humble Supreme Court of India reported in *Style (Dressland) vs. Union Territory, Chandigarh & Anr* (1), wherein the Humble Supreme Court has observed that judicial review of arbitrary exercise of discretionary power is permissible. The Humble Supreme Court was considering the question of enhancement of rent by the Union Territory of Chandigarh. I have carefully gone through the decision. This judgment nowhere deals with the question as to whether a writ petition for enforcement of contractual matter must be entertained directly by the High Court even though alternate remedy by way of civil suit is available. Assuming that the Rajasthan Finance Corporation is acting arbitrarily in claiming enhanced interest from the petitioner, inspite of circulars passed by the controlling authorities and that action being arbitrary is amenable to judicial review the question is whether the judicial review must be undertaken only by this Court under Article 226 of the Constitution and the petitioner need not to go to civil court which also has the power to strike down an arbitrary action or an arbitrary exercise of discretionary power. The civil court also has the power to issue necessary injunctions to prevent any injury being caused to the fiscal interests of the plaintiff. The petitioner can claim such relief from civil court. No reasons are staled nor were any canvass before me in the Court as to what injury would be caused to the petitioner by going to civil court instead of rushing to this Court under Article 226 of the Constitution.

(10). Then the division bench decision of this Court in *M/s. Bharat Construction Co. vs. State of Rajasthan* (2), was relief upon wherein the division bench has held that writ jurisdiction can be invoked in contractual matters when there has been unjust and arbitrary exercise of power and it is against the principles of natural justice. There can be no quarrel with the preposition that writ petition

may be maintainable the power can be exercised in certain cases of contractual nature also, but the question is whether it should be done as a matter of course ignoring the alternate remedy or it should be done only in exceptional case where requiring the litigant to go to the ordinary remedy of the civil suit will result in irreparable injury to the litigant. When two remedies are available recourse to one which normally should be taken is according to me, the rule of law uniformly laid down by the Humble Supreme Court of India from its inception to the date of this judgment. The Rajasthan High Court is no exception.

(11). Thereafter reliance was placed on the Humble Supreme Court of Indian in *Air India Statutory Corporation & Ors. vs. United Labour Union & Ors.* (3). Reliance was placed on paragraph 59, 60 & 61 contending that legal right of an individual may be founded on a contract or a statute, it is enforceable under Article 226 of the Constitution. It is true that a writ can issue under Article 226 of the Constitution for such purpose, it can, therefore issued for enforcing the contractual rights of individual. Whether this Court should as a matter of course entertain petitions for enforcement of contractual rights as a matter of course without requiring the litigant to pursue the alternate remedy which does not cause him any injury. No such preposition is laid down by the judgment in *Air India Statutory Corporation* case that a writ must as a matter of course be entertained. Though it was forcefully claimed by the learned counsel for the petitioner appearing on behalf of the petitioner.

(12). The decision of the Humble Supreme Court in *Century Spinning & Manufacturing Co. Ltd. & Anr vs. The Ulhasnager Municipal Council & Anr.* (4), was pressed into service for the preposition that a party claimed to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to hearing of its petition on the merits. In that case the Humble Supreme Court was not considering the question of existence of alternate remedy and I repeat that in a particular case where the unlawful, high handed, arbitrary or unjust action of a public body or an authority hurts a litigant and is required to approach the court for redressal of his grievance may require exercise of jurisdiction by the High Court under Article 226 on the ground going for that alternate efficacious remedy of civil suit will cause some substantial injury to him. No such case is made out by the present petition.

(13). It is true that Humble Supreme Court has consciously laid down that existence of alternate remedy is no bar to exercise an extra ordinary jurisdiction of this Court under Article 226 of the Constitution. The Humble Supreme Court has also laid down consistently in number of decisions that the alternate remedy, If available, should not be normally ignored. It will be necessary in the circumstances to notice such judgments of the Humble Supreme Court of India, in this regard. The Humble Supreme Court has always observed that the rule which requires that alternate remedy should be exhausted before writ jurisdiction is invoked is a rule of convenience and discretion. It is a rule of self imposed

restrain. Unfortunately, in this Court I am regularly asked to through away this discretion and look at the convenience of the lawyer only and no case at any time is made out for requiring exercise of Jurisdiction under Article 226 by this Court inspite of existence of the alternate remedy on the ground that it causes substantial injury to the litigant to undertake the alternate remedy.

(14). The observations made by the Humble Supreme Court of India in *State of Himachal Pradesh vs. Raja Mahendra Pal & Ors.* (5), wherein the Humble Supreme Court has very authoritatively and finally decided what should be done in cases where alternative remedy is available in Para 6, which is as under:

"The learned counsel appearing for the appellant has vehemently argued that the writ petition filed was not maintainable as the High Court was not justified in entertaining the same and consequently granting the relief to the respondent No. 1. The rights of respondent No. 1, if any, are staled to be based upon a contract for which he was obliged to avail of the alternative efficacious remedy of filing a suit either for the recovery of the money or for rendition of accounts, it is contended that the discretionary powers vested in the High Court under Article 226 of the Constitution could not have been exercised in the facts and circumstances of the case. Though, we find substance in the submission of the learned counsel for the appellant, yet we are not inclined to allow the appeal and dismiss the writ petition of respondent No. I only on this ground. It is true that the powers conferred upon the High Court Court Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental right of legal right but not for mere contractual rights arising out of an agreement particularly in view of the existence of efficacious alternative remedy. The Constitutional Court should insist upon the party to avail of the same instead of invoking the extraordinary writ jurisdiction of the Court, This does not however debar the Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of the special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article. In instant case, the High Court did not notice any special circumstances which law regarding the exercise of the writ jurisdiction under Article 226 of the Constitution. For exercise of the writ jurisdiction, the High Court pressed into service the alleged fundamental right to livelihood of the respondent which was found to have been violated by not making him the payment of the amounts claimed in the writ petition. It is true that utmost importance, violation of which, as and when found, directly or in directly, or remotely, has to be looked with disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforesaid Article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claim relating to the legal or contractual rights of the parties

completely ignoring the person approaching the Court and the alleged violation of the said right. The High Court appears to have adopted a very generous, general and casual approach in applying the right to livelihood to the facts and circumstances of the case apparently for the purpose of clothing itself with the power and jurisdiction under Article 226 of the Constitution. We are sure that if the High Court had considered the argument in the right perspective and in the light of various pronouncements of the Court, it would not have ventured to assume jurisdiction for the purposes of conferring the State largess of public money, upon an unscrupulous litigant who preferred his claim on his proclaimed assumption of being as important as the Government of the State and equal thereto. Despite holding that the High Court had wrongly assumed the jurisdiction in the facts inclined to dismiss the writ petition of the respondent No. 1 on this ground at this stage because that is likely to result in miscarriage of justice on account of the lapse of time which may now result in the foreclosure of all other remedies which could be availed of by the respondent in the ordinary course. The alternative remedies available to the respondent admittedly not being efficacious at this stage has persuaded us to decide the claim of the respondent on merits."

(15). In the present case no special circumstances have been pleaded by the petitioner to require exercise of extra ordinary jurisdiction under Article 226 of the Constitution, in this case. The Humble Supreme Court has observed that the existence of special circumstances which require to be noticed before issuance of directions by the High Court will invoke the jurisdiction under Article 226 of the Constitution, it of necessity means specific pleading by the petitioner claiming exercise of extra ordinary jurisdiction under Article 226 of the Constitution inspite of alternative remedy no such pleading is made. In fact I have never come across such a pleading in vast majority of petitions filed before this Court claiming indiscriminate exercise of extra ordinary powers under Article 226 of the Constitution, as a matter of course. I would like to mention here the fact that a division bench judgment of this Court had taken a view that a writ petition should be entertained as a matter of course was taken in The matter of Rajasthan Pull Nigam case it was specifically over-ruled by a larger bench of this Court in Gopilal Teli's case (6). In a very recent decision reported in J.M. Baxi & Co. Gujarat vs. Commissioner of Customs, New Kandla & Anr. (7), has observed that normally the High Court! ought not to interfere in exercise of its jurisdiction under Article 226 when adequate alternative remedy is available, meaning thereby that when the alternative remedy is either inadequate or not available or is resulting in any injury of substantial nature jurisdiction under Article 226 can be exercised.

(16). As already observed by me no such need is at all pleaded or contended in the present case. The Rajasthan Finance Corporation can be told by civil court to obey the directives issued by other controlling authority the civil court can in exercise of its power under Order 39 Rule 1 & 2 of the CPC restrain the Rajasthan Finance Corporation even by an ex-parte order for not giving effect to

the modified agreement of 1992. It is nowhere contended or pleaded that the reliefs which are prayed for in this petition cannot be granted by a civil court and therefore the writ jurisdiction should be exercised. The contention however is that bar of alternate remedy not being absolute this Court must exercise writ jurisdiction in contractual matters as a matter of course; as observed by the Humble Supreme Court. However no such decisions was brought to my notice. In my limited knowledge, I am not aware of such observations of Humble Supreme Court of India. Infact in State of Himachal Pradesh's case the court has observed that the constitutional court should exist upon the party to available in such extra ordinary jurisdiction. I feel that I am doing my duty in insisting upon availing the alternative remedy as ordained by Humble Supreme Court of India as is observed by Humble Court in the above referred case unless such circumstances exist and are pleaded before the Court, Court should not deviate from the discretionary rule of not entertaining the writ petition directly when alternate remedy exists.

(17). Taking into consideration the fact that the question regarding ignoring of the alternate remedy is repeatedly taken up and vehemently argued, I would like to reinstate certain facts of law as laid down by this Court in regard to the question of alternate remedy.

(18). The question of pursuing alternate remedy, as provided by the Industrial Disputes Act was taken up by me by making a reference in Gopi Lal Tali's case (supra), which culminated in a unanimous order of Five Judges bench of this Court holding that alternate remedy, wherever available, must be pursued and only in very exceptional cases, the rule could be deviated from.

(19). Thereafter, after the judgment in Gopi Lal Tali's case (supra), it was argued that alternate remedy provided under the Industrial Disputes Act is required to be followed, that judgment does not require or lay down that in matters other than industrial disputes, rule of following alternate remedy before approaching this Court need not be observed. I therefore wrote another judgment in a writ petition where this Court was asked to exercise the powers under Article 226 directly when remedy by way of appeal under the provisions of Rajasthan Civil Services Appellate Tribunals Act, 1976 was available, It was in this case that the argument mentioned above in relation to the Gopi Lal Tali's case (supra) was advanced, It was, therefore, held by me that rule of following alternate remedy is a rule of general application, as has been observed by the Humble Supreme Court of India in various cases and service matters are now exception.

(20). Then the argument of ignoring alternate remedy was again taken up where arbitration proceedings were available under the terms of contract and where civil suit for the reliefs claimed was better efficacious remedy. Again, I considered the submissions In the case of M/s. Modi Enterprises vs. Union of India (8), decided on 25.9.00. By that judgment the question regarding following of the alternate remedy was re-examined in light of the various decisions of the Humble Supreme Court of India and it was held that where arbitration or civil suit as

alternate remedy is available writ petition should not be directly entertained. This matter was taken in appeal and the Humble Division Bench confirmed this order after noticing several judgments of this Court and the Humble Supreme Court of India on this issue I have already referred to the above judgment in Laxman Singh vs. State of Rajasthan & Ors. (9) and in Marudhara Conductors & Anr. vs. Haryana State Electricity Board and Anr. these judgments were also noticed and it was held that where alternate remedy is available a writ petition without following the same should not be entertained. Before the Division Bench a submission was also made that in view of several decisions rendered by this Court as noticed above a reference to larger bench should be made. Dealing with this submission, the learned Division Bench found as under: Modi Enterprises vs. Union of India and Ors. (10).

"Under these circumstances, we are of the considered opinion fortuitous circumstances should not be used by the appellants in there favour. It was submitted by learned counsel Shri Shrimali for the appellants that other division bench of this Court after entertaining the writ petitions/appeals decided the same on merits though preliminary objection regarding alternate remedy was raised because of pendency of matters before this Court for long time. He, therefore, submitted that it would not be proper for this Court to dismiss both the appeals only on the ground of alternative remedy. He submitted that the best course open to this court is to refer this matter to the larger Bench. With respect to the submissions made by the learned counsel for the appellants, we are of the opinion that on this very point, in the past the matter was referred to the larger bench of this Court and five Humble Judges of this Court in full Bench have held that when there is alternate remedy available to the appellants-petitioners, then in such type of cases the Court should not exercised its extra ordinary jurisdiction under Article 226 of the Constitution of India Gopi Lal Teli Vs. The State of Rajasthan and Others,

In case of Laxman Singh Verma vs. State of Raj. and others reported in (2000 (1) RLR 137), the Division Bench of this Court has held that mere pendency of petition or appeal would not be a ground to entertain the appeal or petition. If the appellants or petitioners have alternative remedy available to them we are in complete agreement with the view taken by the Division Bench of this Court in Laxman Singh Verma's case (supra). Under these circumstances we are of the considered opinion that when there is already a judgment of five Humble Judges of this Court, then it is not proper for us to, refer the matter to me larger bench because in some of case other division bench of this Court have entertained appeals/petitions though there was alternative remedy. We are bound by the judgment of full bench of this Court in Gopi Lal Teli's case (supra). Hence, this submissions of Shri Shrimali also fails and is rejected".

(21). The Division Bench has just categorically observed that the judgment in Gopi Lal Tali's case rendered by the Bench of Five Judges of this Court is conclusive and binding on this Court and no different view ignoring the judgment

was possible. It therefore, rejected the prayer for reference. In my opinion, this should permanently settle the controversy regarding following alternate remedy.

(22). The question as to whether alternate remedy should be followed or not, was again agitated before me under the provisions of Rajasthan Sales Tax Act, 1994 in certain cases wherein show cause notices issued under the Act were challenged. Several statutory remedies under the Act itself were available on objection being raised as to maintainability of the petition directly to the High Court ignoring the alternate remedies available. Submission again was made that all those judgments including that of Gopi Lal Teli's Case did not pertain to tax matters and cannot or should not be made applicable in cases arising out of taxing statute. I, therefore, again undertook the exercise of hearing the arguments on alternate remedy, again noted the judgments of the Humble Supreme Court of India on the point and held in the case of M/s. B.S.L., Bhilwara vs. State of Rajasthan & Anr. (11), decided with other four cases on 25.8.2000 holding that in view of the existence of alternate remedies a petition directly to the High Court is not liable to be entertained. In that judgment I have taken into consideration the judgments rendered by the Humble Supreme Court of India right from 1953 onwards.

(23). Yet again today, this argument is advanced that alternate remedy is no bar and writ jurisdiction should be exercised even in contractual matters and, as a matter of course, I sincerely hope that this is the last time I am called upon to adjudicate on this issue which has been firmly and authoritatively decided finally by this Court in several judgments apart from my own judgments. I would therefore, again point out certain Constitutional Bench judgments delivered by the Humble Supreme Court of India.

"As early as 1953, a Constitution Bench of the Supreme Court in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, laid down that a court will not issue a prerogative writ when an adequate alternative remedy does not apply where a party has come to the Court with an allegation that his fundamental right has been infringed and short relief under Article 226 of the Constitution of India. It will be seen from the ratio of this case decided by a Constitution Bench of Supreme Court of India that the basic principle or the rule is that a Court will not issue a prerogative writ when an adequate alternate remedy is available and it has carved out an exception to this general rule saying that it will not apply where breach of fundamental right is alleged and relief claimed therefore".

(24). Then, in *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, the Constitutional Bench of the Humble Supreme Court held that where alternate remedy as judicial or quasi-judicial adjudication is available the matter cannot be considered under Article 226. This, of course, was a judgment under the Industrial Disputes Act. It is to be noted, therefore, that the ratio of this decision and the ratio as I understand is that existence of alternate remedy should not be ignored.

(25). Yet in another judgment of five Judges Constitutional Bench, the Humble Supreme Court of India has observed in *Than Singh Nathmal & Ors. vs. The Superintendent of Taxes, Dhurbi & Ors.* (13), as under:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy which without being unduly onerous, provided and equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be by passed, and will leave the party applying to it to seek resort to the machinery so set up."

(26). This judgment is under taxing statute. Thus we have the Humble Supreme Court judgments by Constitutional Bench of five Judges in relation to Industrial Disputes and in relation to taxation matters.

(27). The Humble Supreme Court in *UP Jal Nigam and Anr. vs. Nareshwar Sahai Mathur & Anr.* (14) has observed in relation to alternative remedy as under:-

"When a statutory Tribunal was constituted specially to look into the grievances of Govt. servants, it is statutory obligation on the part of such govt. servants, first to avail themselves of the statutory remedy. In case, they are aggrieved against the order passed by the Tribunal, the remedy under Article 226 is always available to them. Under these circumstances when the two Division Benches had rightly declined to entertain the writ petitions and directed the parties to avail themselves of the statutory remedy, another Division Bench was wholly unjustified in entertaining the writ petition under The impugned order and directing its early disposal."

(28). This judgment of the Humble Supreme Court of India was given in service matter so the Humble Supreme Court held in service matter also that alternate remedy should be observed before approaching the Court directly under Article 226. I have already considered in extenso the judgment in the case of *State of*

Himachal Pradesh vs. Raja Mahendra Pal (supra), earlier in the judgment it deals with interference in contractual matters, It will thus be seen that on at least four different kinds of disputes it has been laid down by the Humble Supreme Court of India authoritatively and finally that writ petition should not be directly entertained if alternate remedy exists.

(29). After taking into consideration the entire case law on the point I had summarised in the case of BSL the exception to this rule of following alternate remedy first and then approaching the High Court under Article 226.

"The rule is following of the alternative remedy. The exceptions are (i) infringement of fundamental right granted by Part III of the Constitution of India; (ii) constitutional validity of any statute is under challenge; (iii) a statutory provision is considered outside the legislative competence of the Legislature making it;" (iv) vindication of public right; (v) prevention of injury to public at large."

(30). One more category can be added to it as sixth category that is where following of the alternate remedy is hazardous, injurious to the interests of the litigant and cannot provide adequate relief to the litigant and the litigant comes out with a case of such hardship. This category, it will be noted, flows from the ratio laid down in the decision of the State of Himachal Pradesh vs. Raja Mahendra Pal (supra). There must be specific pleadings for non-observance of the alternate remedy, there must be specific reason pointing out that why alternate remedy cannot be observed spelling out the reasons requiring interference of the High Court under Article 226 directly.

(31). I have already pointed out that such pleadings are totally wanting in the present case. I have already pointed out in the beginning of the judgment itself that each of the reliefs claimed by the petitioner can be granted adequately, if not better, by the civil court and there is, therefore, no question of not observing the rule in this case.

(32). The aspect of enforcing the contractual applications was also considered by me in the case of M/s. Marudhara Conductors & Anr. vs. Haryana State Electricity Board & Anr. and by my order dated 6.5.98. I have extensively dealt with the aspect of alternate remedy and necessary to pursue the same after noticing the Constitutional provisions in this regard, the amendment to the Constitution that was made during the course of emergency and several decision of the Humble Supreme Court of India including the judgment of this Court in Gopi Lal Teli's case. Thus I held:

"This position of law must prevail in relation to every other case where an alternate efficacious remedy is available. It has been held consistently held for decades that proper remedy for recovery of money due is a civil suit where rival claims can be examined analyzed, proved and awarded which cannot be done in the writ jurisdiction. To claim that the existence of alternate remedy should be ignored in cases of such kind is unsustainable in law for the reasons aforesaid.

What is true of a remedy available to the Industrial remedy available to the Industrial Disputes Act must also be true of a civil suit."

(33). Thus almost all aspects of litigation have been considered by this court as also the Humble Supreme Court of India and it has been laid down that alternate remedy wherever available must be pursued before this Court is approached for exercising its extra ordinary jurisdiction under Article 226 of the Constitution.

(34). The other exception noted above also does not exist in the present case requiring another departure from the rule considered from every aspect. Therefore, The petition is liable to be rejected on the ground of availability of alternate remedy.

(35). It is hereby so rejected.