

**(2019) 09 MP CK 0073**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 3285 Of 2019**

Vineet Kumar Soni And Another

APPELLANT

Vs

District Magistrate – Cum Appellate Authority And Others

RESPONDENT

---

**Date of Decision : 25-09-2019**

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227

Maintenance And Welfare Of Parents And Senior Citizens Rules, 2009 — Rule 7, 8, 10, 11(3), 12(1), 13, 15, 16, 17

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 8, 15, 16, 148

**Citation : (2019) 09 MP CK 0073**

**Hon'ble Judges : Vishal Dhagat, J**

**Bench : Single Bench**

**Advocate : Shobha Menon, Rahul Choubey, Ashok Kumar Jain**

**Final Decision : Dismissed**

---

## **Judgement**

1. Petitioners have filed the present miscellaneous petition against order dated 22.02.2019 passed by respondent No.2 Sub Divisional Officer (Revenue)-cum-Chairman, Maintenance and Welfare Tribunal, Beohari, District Shahdol in Case No.Sa.Pra.Kra/35/A-74/2018-19 the application preferred by respondent Nos.3 to 5 has been allowed and maintenance of Rs.8000/- per month has been awarded to each of the respondents No.3 to 5.

2. Counsel appearing for the respondents has raised a preliminary objection that miscellaneous petition filed by the petitioners under Article 227 of the Constitution of India is not maintainable. Counsel appearing for the respondents submits that as per the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred as "the Act of 2007") provision of remedy of appeal is provided against the order passed by the Tribunal.

3. Petitioners have challenged the order of Tribunal i.e. of S.D.O., Beohari, District Shahdol dated 22.02.2019 before the Appellate Authority i.e. District

Magistrate, Shahdol. A copy of memo of appeal is also enclosed along with this petition as Annexure P-15. Since petitioners have availed the statutory remedy of appeal under Section 16 of the aforesaid Act of 2007, therefore, petition filed under Article 227 of the Constitution of India will not be maintainable on the ground that there is violation of statutes and sections of the Act of 2007 in the order passed by the S.D.O., Beohari, District Shahdol.

4. Counsel appearing for the respondents has relied on the judgments in the case of Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, (2014) 1 SCC 603 wherein the Hon'ble Apex Court in paragraphs 16, 17 and 18 has held as under:-

"16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case. In light of the same, we are of the considered opinion that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the re-assessment orders passed and the consequential demand notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Chhabil Dass Agarwal v. Union of India, W.P. (C) No.44 of 2009. We grant liberty to the respondent, if he so desires, to file an appropriate petition/ appeal against the orders of re-assessment passed under Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of the Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 05.10.2010."

5. Counsel for the respondents has also relied on the judgment in the case of

Nivedita Sharma vs. Cellular Operators Association of India and others, 2011(14) SCC 337 wherein in paragraphs 15, 16 and 17 the Apex Court has held as under:-

"15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

16. It can, thus, be said that this Court has recognized some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Supt. Of Taxes and other similar judgments that the High court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

17. In the light of the above, we shall now consider whether the Division Bench of the High Court committed an error by entertaining the writ petition filed by the respondents."

6. Counsel appearing for the respondents has further relied on the recent judgment of Apex Court in the case of Agarwal Tracom Private Limited vs. Punjab National Bank and others, (2018) 1 SCC 626. In the said judgment, the Hon'ble Apex Court has relied upon the judgment in the case of Union of India vs. Satyawati Tondon, (2010) 8 SCC 110 and quoted the following paragraphs:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi- judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement

of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

7. Learned Senior Counsel appearing for the petitioners submits that there is violation of Rule 13 of Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as "the Rules of 2009"). Rule 13 is reproduced as under:-

"13. Action by the Tribunal in other cases. (1) In case,--

(i) the applicant (s) and the opposite parties do not agree for reference of their dispute to a Conciliation Officer as per rule 10; or

(ii) the Conciliation Officer appointed under rule 10 sends a report under sub-rule (3) of rule 11, conveying inability to work out a settlement acceptable to both the parties; or

(iii) no report is received from a Conciliation Officer within the stipulated time limit of one month; or

(iv) in response to the notice issued under sub-rule (1) of rule 12, one or both the parties decline to confirm the settlement worked out by the Conciliation Officer,- the Tribunal shall give to both the parties an opportunity of leading evidence in support of their respective claims, and shall, after a summary inquiry as provided in sub section (1) of section 8, pass such order as it deems fit.

(2) An order passed under rule 7, rule 8 or under sub-rule (1) above shall be a speaking one, spelling out the facts of the case as ascertained by the Tribunal, and the reasons for the order.

(3) While passing an order under sub-rule (1), directing the opposite party to pay maintenance to an applicant, Tribunal shall take the following into consideration:-

(a) amount needed by the applicant to meet his basic needs, especially food, clothing, accommodation, and healthcare,

(b) income of the opposite party, and

(c) value of, and actual and potential income from the property, if any, of the

applicant which the opposite party would inherit and/or is in possession of.

(4) A copy of every order passed, whether final or interim, on an application, shall be given to the applicant

(s) and the opposite party or their representatives, in person, or shall be sent to them through a process server or by registered post."

8. Learned Senior Counsel appearing for the petitioners submits that as per aforesaid Rules, Tribunal shall give opportunity of leading evidence to both the parties in respect of their claim and shall after a summary inquiry as provided in sub-section (1) of Section 8 pass an order as it deems fit. Learned Senior Counsel referred to the ordersheets of the Tribunal and pointed out that the case was fixed on 18.02.2019 for conciliation between the parties. The conciliation between the parties failed and thereafter the matter was fixed on 20.02.2019 and on 20.02.2019 the case was fixed for orders and orders were passed on 22.02.2019. Parties were not given an opportunity to adduce evidence in the case and there was blatant violation of Rule 13 of the Rules of 2009. Since there is statutory violation of the Rules and also the fundamental rights of the petitioners, therefore, petition filed under Article 227 of the Constitution of India is maintainable though alternate remedy to file an appeal is available to the petitioners.

9. Learned counsel appearing for the petitioners has relied upon the judgment of the Kerala high Court in the case of Johnson M. Paul and another vs. State of Kerala and others passed in W.P. (C) No.26925/2011 (M) wherein the Kerala High Court has held that though there is alternate remedy before the Appellate Tribunal constituted under Section 15, but Court took the view that parties need not be relegated to such remedy since interim orders are per-se illegal and totally unsustainable.

10. Learned Senior Counsel appearing for the petitioners has also relied on the judgment reported in the case of Ashutosh Dubey and another vs. Tilak Grih Nirman Sahakari Samiti Maryadit, Bhopal and another, 2004(2) MPHT 14 wherein this Court has relied upon the judgment of Apex Court and considered the scope of Article 227 of the Constitution of India. The relevant paragraphs are quoted as under:-

"38.(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the

subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied :- (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

11. On the basis of aforesaid, it is submitted by the learned Senior Counsel appearing for the petitioners that scope of Article 227 of the Constitution of India is wider than Article 226 of the Constitution of India. The jurisdiction of this Court is supervisory in nature and this Court will exercise its power of supervisory jurisdiction if error is manifest and apparent on the face of the proceedings and when the order is passed in utter disregard to the provisions of the law and, therefore, miscellaneous petition filed by the petitioners under Article 227 of the Constitution of India is maintainable.

12. Considered the rival submissions of the learned counsel for the parties.

13. It is clear that Section 16 of the Act of 2007 provides for remedy of appeal to an aggrieved party from the order of the Tribunal. There is a statutory provision of appeal under Section 16 and further there is also a clause in Section 16 that every endeavor shall be made by the appellate authority to pronounce its order within one month of the receipt of appeal. Rules are also framed under the Act as Rules of 2009 wherein Rules 15, 16 and 17 provides for procedure of Appellate Tribunal. A complete mechanism of statutory appeal against the order is provided under the Act and the Rules and, therefore, it is clear that there is a statutory provision of appeal available to the petitioners. There is no quarrel to the fact that petitioner can challenge the order passed by the Tribunal directly before this Court under Article 227 of the Constitution of India if it comes within the exceptions settled by various judgments of this Court i.e. the order was without jurisdiction; it violates fundamental rights of aggrieved parties; and it is passed in blatant violation of principles and statutory rules. But, the question which crops up in this case is that petitioners have already exercised the option to exercise the remedy of appeal and have preferred an appeal before the Appellate Authority and the same is pending consideration before the said authority. As petitioners have already exercised their option of preferring statutory appeal and a complete mechanism for redressal of grievance has also been provided under the Act and the Rules, then also can petitioners file the present petition before this Court under Article 226 of the Constitution of India. The coordinate Bench of this Court has taken a view that this Court can interfere in the matter and notices were issued.

14. In view of the aforesaid, I am of the opinion that when petitioners have already exercised their option to file an appeal before the statutory authority and appeal has already been filed which is pending for consideration whether petition under Article 227 of the Constitution of India will be maintainable. The judgments which are referred to by the petitioners that petition under Article 226/227 of the Constitution of India will be maintainable even if there is an alternate remedy. If there is an alternate remedy on condition that the order under challenge is passed in violation of statutory provisions of law. Petitioners were unable to refer a single judgment in which party has exercised its right to file a statutory appeal and then also the writ petition and miscellaneous petition was filed before the High Court and same was maintained.

15. It is settled law that two parallel remedies could not be pursued by the petitioners at one and the same time. Petitioners have already approached Collector in appeal and, therefore, the present miscellaneous petition filed by the petitioners is not maintainable. The Hon'ble Apex Court in the case of Delhi Gate Auto Service Station and others vs. Bharat Petroleum Corporation Limited, Agra and others, (2009) 16 SCC 766 has held that writ petitions could not have been entertained on the ground that two parallel remedies could not have been pursued by the appellants at one and the same time. In this case, Bharat Petroleum Corporation Limited have terminated the dealership of Delhi Gate Auto Service Station and others. The order of termination of dealership was challenged in the writ petition and simultaneously remedy of arbitration was also availed by the party. In view of the said background, Delhi High Court has dismissed the writ petitions filed by the appellants. Later on petitioners approached Supreme Court by filing Civil Appeal. Appeal was also dismissed by the Apex Court affirming the order of High court.

16. Considering the aforesaid facts and circumstances of the case, miscellaneous petition filed by the petitioners is dismissed being not maintainable as petitioners had already filed statutory appeal provided under the Act before the authority.

17. In view of the aforesaid, miscellaneous petition filed by the petitioners is dismissed.