HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.19230 OF 2024

ORDER:

Heard Mr. Avinash Desai, learned Senior Counsel representing Mr. D. Narender Naik, learned counsel for the petitioner and Mr. A. Venkatesh, leaned Senior counsel, representing Mr. Vishal Kumar Jain, learned counsel appearing or respondent No.2.

Undisputed facts: -

2. 2nd respondent herein had filed an application *vide* RC No.17 of 2022 before the 1st respondent under Section 10 (2) (i) of the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act') against the petitioner herein seeking eviction of it from the subject property i.e. land situated at Sardar Patel Road, Secunderabad in Old No.103, admeasuring 91'-0" North to South and 155'-0" East to West in all admeasuring 14500 sq.feet along with constructed area admeasuring 500sq.feet bounded by North: Sardar Patel Road, South: Remaining Portion of Landlord/Lessor's land, East: Neighbours property/private land and West: Parklane Road.

3. The petitioner herein filed an application under Order VII Rule 11 of CPC vide I.A. No.72 of 2022 in R.C. No. 17 of 2022 for rejection of petition filed by the 2nd respondent. *Vide* order dated 10.04.2023, 1st respondent allowed the said application rejecting the petition filed by the 2nd respondent on the ground that the schedule property was mere vacant land and not a building as defined under the Act. 2nd respondent filed a revision *vide* CRP No.1561 of 2023 challenging the said order and *vide* order dated 05.01.2024, this Court allowed the said CRP setting aside the order dated 10.04.2023 in I.A.No.72 of 2022 in R.C.No.17 of 2022 passed by the 1st respondent. 2nd respondent filed a memo along with copy of the order dated 05.01.2024 in CRP No.1561 of 2023 before the 1st respondent on 12.01.2024. 1st respondent ordered notice to the petitioner and posted the matter to 22.01.2024 on which date, 2nd respondent filed a memo along with proof of service of summons to the petitioner and that there was no representation on behalf of the petitioner herein. 1st respondent adjourned the matter to 02.02.2024 and thereafter, it was adjourned to 05.02.2024 for appearance of the petitioner as last chance before passing appropriate orders. On 05.02.2024, 1st respondent set the petitioner *ex parte* holding that the petitioner and his counsel were

absent during the call work and even after the call work called absent and again at 3.45p.m. also called absent. 1st respondent further recorded that since summons are sent through Registered Post and delivered to the petitioner herein and even after giving the petitioner ample opportunity for appearance, the petitioner failed to appear, and adjourned the matter to 19.02.2024 on which date P.W.1 filed affidavit and Exs.P.1 to P.28 were marked and learned counsel for the 2nd respondent reported no further evidence and adjourned the matter to 01.03.2024 for arguments. On 01.03.2024, 1st respondent heard the arguments of the 2nd respondent and reserved the matter. Ultimately on 18.03.2024, 1st respondent passed final order in R.C.No.17 of 2022.

4. According to the petitioner herein, it came to know about the said order dated 18.03.2024, enquired with the registry and filed an application vide I.A. No.41 of 2024 in R.C.No.17 of 2024 to condone the delay of 64 days in filing application under Order IX Rule 13 of C.P.C. to set aside the *ex parte* order dated 18.03.2024 in R.C.No.17 of 2022. It is also contended by the petitioner herein that learned counsel for respondent No. 2 refused to accept the notice in the said application on 22.06.2024. On 24.06.2024, 2nd respondent has filed

execution petition *vide* E.P.No.16 of 2024 along with the order before the 1st respondent and 1st respondent issued notice to the petitioner herein in the said E.P. 2nd respondent filed counter in I.A.No. 41 of 2024 on 26.06.2024 and respondent No.1 heard the arguments of the parties on the same day and reserved it for orders. On 02.07.2024, 1st respondent dismissed I.A. No. 41 of 2024 and the petitioner filed an application on 03.07.2024 seeking certified copy of the order. Thereafter, the petitioner filed the present writ petition of certiorari calling for the record in R.C. No.17 of 2022 filed by 2nd respondent and consequently set aside the order dated 18.03.2024 in R.C.No.17 of 2022.

5. E.P. was adjourned to 15.07.2024 from 11.07.2024 and thereafter, on 15.07.2024 to 16.07.2024. The petitioner has filed I.A.No.3 of 2024 to amend the prayer challenging the order dated 02.07.2024 in I.A.No.41 of 2024 in R.C.No.17 of 2022.

6. It is apt to note that the registry of this Court raised an objection with regard to maintainability of the writ petition vide W.P.SR No.27119 of 2024 which was listed before the Division Bench vide order dated 18.07.2024, the Division Bench directed the office to register the writ petition and list the same on 19.07.2024.

Vide order dated 19.07.2024, the Division Bench directed the Registry to list the writ petition before the appropriate Bench on 22.07.2024 under the caption 'Fresh Admission'.

7. Both Mr. Avinash Desai and Mr. A. Venkatesh, learned senior counsels appearing for the parties, argued extensively on the maintainability and entertainability of the present writ petition placing reliance on the following judgments:-

1. **Hari Vishnu Kamath vs. Syed Ahmad Ishaque**[1],
2. **Sangram Singh vs. Election Tribunal, Kotah**[2],
3. **Radhey Shyam vs. Chhabi Nath**[3].
4. **Godrej Sara Lee Limited vs. Excise and Taation Officer – cum-Assessing Authority**[4],
5. **Umaji Keshao Meshram vs. Radhikabai**[5].
6. **Astratlal vs. The Principal Rent Controller, Hyderabad**[6],
7. **G.N.R.Babu alias S.N.Babu vs. Dr.B.C.Muthappa**[7],
8. **The Koushik Muthually Aided Cooperative Housing Society vs. Ameena Begum**[8],
9. **The Koushik Mutually Aided Cooperative Housing Society vs. Ameena Begum**[9]

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[1] (1954) 2 SCC 881: 1954 SCC OnLine SC 8
[2] 1955 SCC Online SC 21 : (1955 (2) SCR 1: AIR 1955 SC 425
[3] Manu/SC/0200/2015= AIR 2015 SC 3269
[4] 2023 SCC OnLine SC 95
[5] 1986 (Supp) SCC 401
[6] 1978 SCC OnLine AP 22: (1978) 2 ALT 102
[7] 2022 SCC OnLine SC 1158
[8] 2023 INSC 1065
[9] 2023 SCC OnLine SC 1662

8. Mr. Avinash Desai, learned Senior Counsel, representing Mr. D. Narender Naik, learned counsel for the petitioner would contend that the order dated 18.03.2024 in RC No.17 of 2022 is contrary to the procedure laid down under the Act and Rules made thereunder, Civil Rules of Practice and law laid down by the Apex Court. According to him, the 1st respondent committed the following procedural irregularities: -

i. Though there is counsel on record on behalf of the petitioner herein in R.C.No.17 of 2022, learned counsel for the 2nd respondent filed a memo on 12.01.2024 along with the copy of order in CRP No.1561 of 2023 before the 1st respondent and the 1st respondent ordered notice to the petitioner herein through Registered Post.

ii. The 1st respondent could not have passed a judicial order on a memo filed by the 2nd respondent.

iii. There was no permission granted by the 1st respondent to the 2nd respondent to serve notice on the petitioner herein at Bombay Head office. However, the counsel for the 2nd respondent served notice on the petitioner at Bombay Head Office and filed a

memo on 12.01.2024 and therefore, the same is in violation of the Rule 8 of the Rules.

iv. The petitioner herein has a branch office at Banjara Hills, Hyderabad and the address of the same is mentioned in the application filed under Order VII Rule 11 of C.P.C *vide* I.A.No.72 of 2022. 2nd respondent and its counsel were aware of the said facts. Even then, they have served notice on the petitioner at Bombay office. Thus, they have played fraud on the 1st respondent and filed a memo dated 22.01.2024 and obtained *ex parte* eviction order dated 18.03.2024.

Therefore, there are procedural irregularities committed by the 1st respondent and the present writ of certiorari filed by the petitioner under Articles 226 and 227 of Constitution of India to call for the records in RC No.17 of 2022 and to set aside the order dated 18.03.2024 in R.C.No.17 of 2022 passed by the 1st respondent, is maintainable and entertainable.

9. Whereas, Mr. A. Venkatesh, learned Senior counsel representing Mr. Vishal Kumar Jain, learned counsel for the 2nd respondent would contend that the petitioner, having filed an application vide I.A.No.41 of 2024 in R.C.No.17 of 2022 under

Section 5 of the Limitation Act, to condone the delay of 64 days in filing an application under Order IX Rule 13 of CPC and invited the order dated 02.07.2024, cannot file the present writ petition. Vide the said order dated 02.07.2024, 1st respondent dismissed the said I.A.No.41 of 2024.The petitioner herein has to file an appeal under Section 20 of the Act challenging the order dated 18.03.2024 in R.C.No.17 of 2022 or file CRP under Section 21 of the Act or revision under Article 227 of the Constitution of India challenging the order dated 02.07.2024 in I.A.No.41 of 2024. Instead of doing so, the petitioner filed the present writ petition. Therefore, it is not maintainable and not entertainable.

10. In the backdrop of the above facts, this Court is called upon to decide whether the present writ petition is maintainable. It is a settled position of law that High Courts shall not exercise their writ jurisdiction if an efficacious and alternative remedy is available. However, that is not to say that existence of an alternative remedy automatically renders a writ petition not maintainable. Even where an alternative remedy is available, the courts can still entertain a writ petition. The power of issuing writs is discretionary and subject to certain self-imposed limitations. The object behind these self-imposed

limitations is to not usurp the statutory jurisdiction of other courts/tribunals.

11. Explaining the nature of writ jurisdiction and the existence of alternative remedies, the Supreme Court in **State of U.P. v. Labh Chand**[10] held as follows**:-**

> **9.** When a statutory forum or tribunal is specially created by a statute for redressal of specified grievances of persons on certain matters, the High Court should not normally permit such persons to ventilate their specified grievances before it by entertaining petitions under Article 226 of the Constitution is a legal position which is too well settled. A Constitution Bench of this Court in *Thansingh Nathmal* v. *A. Mazid, Superintendent of Taxes* [(1964) 6 SCR 654 : AIR 1964 SC 1419 : (1964) 15 STC 468] when had the occasion to deal with the question as to how the discretionary jurisdiction of a High Court under Article 226 of the Constitution, was required to be exercised respecting a petition filed thereunder by a person coming before it bypassing a statutory alternate remedy available to him for obtaining redressal of his grievance ventilated in the petition, has given expression to the said well-settled legal position, speaking through Shah, J., as he then was, thus:

[10] (1993) 2 SCC 495.

> "… 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 Article. 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 …. 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 bypassed, and will leave the party applying to it to seek resort to the machinery so set up." (Pages 661-62)

12. Likewise, in **United Bank of India v. Satyawati Tondon**[11], the Hon'ble Supreme Court held as follows:

> **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,

[11] (2010) 8 SCC 110.

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.

13. In **Assistant Commissioner of State Tax v. Commercial Steel Limited**[12], the Hon'ble Supreme Court had held that a writ petition, in presence of an alternative remedy, is maintainable only in exceptional cases. The Court explained that the High Court can be approached directly if there is a breach of fundamental rights or violation of principles of natural justice or where the impugned order was passed without jurisdiction or where the *vires* of a law is challenged. The relevant paragraph is extracted below:

> 11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. **The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But**

[12] 2021 SCC OnLine SC 884.

> **a writ petition can be entertained in exceptional circumstances where there is:**
> **(i) a breach of fundamental rights;**
> **(ii) a violation of the principles of natural justice;**
> **(iii) an excess of jurisdiction; or**
> **(iv) a challenge to the vires of the statute or delegated legislation.**

14. At this stage it is also important to know the subtle difference between maintainability and entertainability of a writ petition. While a writ petition may be maintainable even where an alternative remedy exists, the courts can refuse to entertain the same. As stated above, the power of issuing writs is discretionary and the court, in its discretion, can refuse to issue a writ.

15. In **Godrej Sara Lee Ltd. v. E&TOCAA**[13], the Hon'ble Supreme Court explained 'entertainability' and 'maintainability' of a writ petition as follows:

> **4.** Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by

[13] 2023 SCC OnLine SC 95.

the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of

the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however,

> examining whether an exceptional case has been made out for such entertainment would not be proper.

16. Now coming to the facts of the case, the petitioner seeks issuance of writ of certiorari. The only argument made by the petitioner in support of maintainability of the writ petition is that there were procedural irregularities committed by respondent No.1 and without an opportunity of hearing, the impugned order dated 18.03.2024 was passed. On the other hand, respondent no. 2 contended that the writ petition is not maintainable as alternative remedies in the form an appeal and an application under Order IX Rule 13 were available.

17. The decisions cited by both the sides state the established legal position that a writ petition usually should not be entertained when an alternative remedy is available. However, a writ can be issued in situations enumerated in **Assistant Commissioner of State Tax (supra)**.

18. It is also relevant to note that the petitioner seeks a writ of certiorari on the ground of procedural irregularity. It is apposite to discuss the nature of certiorari. In **Central Council for Research in**

Ayurvedic Sciences v. Bikartan Das[14], the Hon'ble Supreme Court discussed the scope of certiorari and held that it is a highly prerogative writ which cannot be issued on mere asking. The Apex Court held that where the impugned order was passed without jurisdiction or in excess of jurisdiction or where the jurisdiction was exercised illegally, a writ of certiorari lies. Also, certiorari can be issued where the impugned order was passed in violation of principles of natural justice. However, a caution needs to be exercised and the High Courts cannot act as an appellate court while issuing a writ of certiorari. The relevant paragraphs are extracted below:

> Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.
>
> **51.** The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be

[14] 2023 SCC OnLine SC 996

without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary

jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

53. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in *T.C. Basappa* v. *T. Nagappa*, AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:

*"**7.** … In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal …..*

***8.** The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Summer in* King *v.* Nat Bell Liquors Limited *[[1922] 2 A.C. 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. ….*

9. *Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction."*

54. Relying on *T.C. Basappa* (supra), the Constitution Bench of this Court in the case of *Hari Vishnu Kamath* (supra), laid down the following propositions as well established:

"(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous."

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60. So far as the errors of law are concerned, a writ of certiorari could be issued if an error of law is apparent on the face of the record. To attract the writ of certiorari, a mere error of law is not sufficient. It must be one which is manifest or patent on the face of

the record. Mere formal or technical errors, even of law, are not sufficient, so as to attract a writ of certiorari. As reminded by this Court time and again, this concept is indefinite and cannot be defined precisely or exhaustively and so it has to be determined judiciously on the facts of each case. The concept, according to this Court in *K.M. Shanmugam* v. *The S.R.V.S. (P) Ltd.*, AIR 1963 SC 1626, 'is comprised of many imponderables… it is not capable of precise definition, as no objective criterion could be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element.' A general test to apply, however, is that no error could be said to be apparent on the face of the record if it is not 'self-evident' or 'manifest'. If it requires an examination or argument to establish it, if it has to be established by a long drawn out process of reasoning, or lengthy or complicated arguments, on points where there may considerably be two opinions, then such an error would cease to be an error of law. (See : *Satyanarayan Laxminarayan Hegde* v. *Mallikarjun Bhavanappa Tirumale,* AIR 1960 SC 137.)

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65. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high

prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

66. A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the

> tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. (See : *King* v. *Nat Bell Liquors Ltd.*, [1922] 2 A.C. 128 (PC))

19. Now coming to the question whether the writ petition is maintainable, this Court holds that the present writ petition is maintainable. However, this Court refuses to entertain the present writ petition. After the *ex parte* impugned order dated 18.03.2024 was passed, the petitioner was left with multiple remedies. The petitioner could have filed an appeal under Section 20 of the Act or could have filed a revision under Section 21 or could have filed an application under Order IX Rule 13 seeking to set aside the order dated 18.03.2024. In the context of the present writ petition, these remedies were also the alternative remedies available to the petitioner.

20. The petitioner from among the available remedies, chose to file an Order IX Rule 13 application along with an application to condone delay. This action of the petitioner amounts to it choosing a

remedy. Once the petitioner chose to challenge the impugned order dated 18.03.2024, it was not open for it to challenge the same order in the present writ petition.

21. In **National Insurance Co. Ltd. v. Mastan**[15], Hon'ble Supreme Court explaining the Doctrine of election held that when a party has two remedies available, he can choose only one. In the present case, once the petitioner chooses to exercise its right under Order IX Rule 13 seeking to set aside the order dated 18.03.2024, it could not have filed a writ of certiorari challenging the same order.

22. It is relevant to note that the application (I.A. No. 41 of 2024) to condone delay in filing the Order IX Rule 13 application was dismissed *vide* order dated 02.07.2024 by the 1st respondent. Instead of challenging the same in a revision petition, the petitioner sought to amend the prayer to challenge the same as part of the present writ petition. As held above, the same cannot be permitted as the petitioner chose to avail the alternative remedy.

23. As this Court refuses to entertain the present writ petition, it need not deal with the contentions of the petitioner that there were procedural irregularities, no notice was served and orders were passed

[15] (2006) 2 SCC 641.

on a memo filed by the 2nd respondent. It is open for the petitioner to raise the said grounds before the appropriate forum.

CONCLUSIONS:-

24. In view of the above discussion, this writ petition is disposed of holding that:-

i. This writ petition is maintainable, but not entertainable.

ii. Liberty is granted to the petitioner to avail the remedy of revision to challenge the order dated 02.07.2022 in I.A.No.41 of 2024 in R.C.No.17 of 2022 passed by respondent No.1. and

iii. Protection granted to the petitioner vide order dated 23.07.2024 is extended by 10 days from today.

As a sequel thereto, miscellaneous Petitions, if any, pending, shall also stand closed.

JUSTICE K. LAKSHMAN

Date:05.08.2024

Note: Issue C.C. forthwith.

Registry is directed to return
The original record to the Trial Court
Concerned. b/o. vvr