

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

WRIT PETITION NO.498 OF 2015

Pandit Haribhau Botre : Petitioner.
Versus
Narayan Ganpat Botre and ors. : Respondents.

Mr. Shriram S Kulkarni for the Petitioner.
Mr. R B Jagtap i/by Mr. Ashok B Tajane for the Respondent No.1.
None for the Respondent Nos.2 to 6.

CORAM : R. M. SAVANT, J.
DATE : 02nd February 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order 2/12/2014 passed by the learned District Judge-6, Pune by which order the Civil Appeal No.590 of 2014 filed by the Petitioner herein came to be dismissed on the ground that the same was not maintainable.

2 The said Appeal was filed against the order dated 6/11/2014 passed by the learned 13th Joint Civil Judge, Junior Division, Pune in Regular Darkhast No.9 of 2010 arising out of the judgment and decree in Regular Civil Suit No.3471 of 2000 by which order the objection raised by the Petitioner who is the Judgment Debtor to the notice issued under Order XXI Rule 22 of the Code of Civil Procedure came to be rejected.

3 It is not necessary to dilate on the facts involved in the Petition, as

whilst issuing the notice in the above Petition on 19/01/2015, this Court had observed in its order of the said date that prima facie the conclusion reached by the Trial Court that the Appeal filed against the order passed under Order XXI Rule 22 of the Code of Civil Procedure by the Executing Court is not maintainable, appears to be erroneous in view of the pronouncement of the Apex Court reported in (2008) 4 SCC 615 in the matter of **Barkat Ali and anr. v/s. Badrinarain (dead) by LRs.** wherein the Apex Court has held that an order passed under Order XXI Rule 22 amounts to a decree and therefore appealable.

4 The learned counsel appearing on behalf of the Respondent No.1 Shri Jagtap fairly concedes to the said position in view of the judgment of the Apex Court in **Barkat Ali's** case (supra). Hence there is no warrant to give detailed reasons for setting aside the impugned order dated 2/12/2014. The impugned order dated 2/12/2014 is accordingly quashed and set aside and the Appeal is restored to file for being dealt with on merits. It would be open for the Respondent No.1-Decree Holder to apply to the Lower Appellate Court for conditions to be imposed on the Petitioner in the event the Petitioner applies for interim relief in the said Appeal. However, it is not necessary for this Court to go into the said aspect at this stage. Needless to state that if any such application for interim relief is filed by the Petitioner, and if any application is made by the Respondent No.1 herein for the conditions to be imposed, the

same would be considered by the Lower Appellate Court on its own merits and in accordance with law without being influenced by the instant order. Since the decree is of the year 1988, the hearing of the Appeal is expedited and is directed to be disposed of latest by 31st July 2015. The learned counsel for the Respondent No.1 states that the Respondent No.1 would not precipitate the matter in the interregnum till the Appeal is taken up by the Lower Appellate Court on it being restored by the instant order. In the light of the above, the above Writ Petition to accordingly stand disposed of.

[R.M.SAVANT, J]