

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAW] No. 1354 of 2017
IN
Writ Petition No.1613 of 2017
[Shashank Kamleshkumar Bajpayee Vs. Chandrakishor Shalikram
Chourasiya & another]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. K. S. Motwani, Adv., for the applicant.
Mr. V. D. Muley, Adv., for respondent nos. 1 and 2.

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CORAM : A. S. CHANDURKAR, J.

DATE : 20th April, 2018

The application for amendment is opposed by the learned counsel for the respondents on the ground that the remedy of appeal under provisions of Order-XXI, Rule 103 of the Code of Civil Procedure, 1908 is available.

In view of aforesaid, the Civil Application is permitted to be withdrawn with liberty to the petitioner to avail the statutory remedy.

Civil Application is disposed of.

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Writ Petition No. 1613 of 2017 :

In this Writ Petition filed by the judgment debtor, the orders passed in execution proceedings directing issuance of possession warrant and subsequently rejecting the application calling back that warrant are under challenge. During pendency of the Writ Petition, the warrant of possession has been executed and the petitioner has been dispossessed. There is some dispute with regard to the actual nature of dispossession.

Be that as it may, during pendency of the present Writ Petition, the petitioner had filed an application under provisions of Order-XXI, Rule 99 of the Code which came to be rejected on 1st March, 2017. As the remedy of filing an appeal under provisions of Rule 103 of Order-XXI of the Code is available, the grounds raised in the present Writ Petition for challenging the issuance of possession warrant and refusal to cancel the same can be raised in those proceedings.

By keeping these points open for being raised in those proceedings in accordance with law, the Writ Petition is disposed of.

Judge