

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER 45 OF 2018
WITH
CIVIL APPLICATION NO. 7982 OF 2018

Shri. Navnitlal S/o Haraklal Wani,
Age: 96 years, Occu: Business,
R/o: Taloda, Taluka Taloda,
District: Nandurbar

... Appellant
(Original Plaintiff)

Versus

Shri. Ravindra S/o Shambhu Chaudhari
Age: 48 years, Occu: Business,
Proprietor Kailash Wine Shop,
S.T. Stand Road, Taloda,
Taluka Taloda,
District: Nandurbar.

... Respondent
(Original Defendant No.2)

...

Mr. C.C. Deshpande h/f Mr. C.R. Deshpande, Advocate for Appellant
Mr. A.S. Abhyankar h/f Mr. S.V. Natu, Advocate for Respondent

...

CORAM : V. K. JADHAV, J.
RESERVED ON : 26.02.2020
PRONOUNCED ON : 30.04.2020

ORDER :-

1. Heard finally with consent of the parties at admission stage.

2. This appeal is preferred against the order of remand passed by Ad-hoc District Judge-1, Shahada, District Nandurbar dated 16.03.2018 in Civil Appeal No.3 of 2018.

3. Brief facts giving rise to the present appeal against the order of remand are as follows:

(a) The appellant is an original plaintiff in Regular Civil Suit No.5 of 2002. He had instituted the said suit before the Civil Judge, Junior Division, Taloda for possession of tenanted premises under Sections 15 and 16 (1) (b) (c) (f) (g) (n) of the Maharashtra Rent Control Act, 1999 (for short, "Rent Act") in respect of Municipal House No.2122 (old House No.1686), one storage house over City Survey No.419 situated at Taloda, Taluka Taloda and District Nandurbar. It is a case of the appellant-plaintiff that he had given suit property on rent to defendant no.1, namely, Shri.Sambhu Shrawan Chaudhari (now deceased) for hotel purpose. It is further pleading of the appellant-plaintiff that defendant no.1 had erected permanent structure on the suit property without his consent. In the year 1980, defendant no.1 - Sambhu (deceased) had closed his hotel business and sublet the suit property to defendant no.2. The appellant-plaintiff required the suit property for his own bonafied purpose. Furthermore, on 05.04.1999, the appellant-plaintiff had issued notice to defendant no.1 - Sambhu (deceased) and demanded the arrears of rent. But, defendant no.1 - Sambhu (deceased) had committed default for payment of rent from November-2000. On 24.09.2001, the appellant-

plaintiff had again issued notice to defendant no.1 Sambhu (deceased) and terminated the tenancy on various grounds.

(b) In response to the suit summons, defendant nos.1 & 2 appeared and contested the suit by filing their written statement as they have denied willful default of payment of rent to the appellant-plaintiff. According to them, the appellant-plaintiff is having alternate accommodation and it would cause greater hardship, if they are evicted from suit property. They have specifically denied about the erection of permanent structure over the suit property. They have also denied that the requirement of suit property by the plaintiff is reasonable and bonafide.

(c) During pendency of the suit, defendant no.1 - Sambhu (deceased) died and thus the appellant - plaintiff has brought on record the legal representatives of defendant no.1. Defendant no.1/5 had filed a separate written statement, in which he has denied unlawful subletting, nuisance, erection of permanent structure of the suit property. According to him, the appellant-plaintiff has got alternative accommodation. He has also contended that defendant no.2 started business of wine shop on the suit property without consent of the appellant-plaintiff. Defendant Nos.1/1 to 1/4 & 1/6 to 1/8 had

filed pursis and accepted the contents of written statement and evidence led by defendant no.1/5. By judgment and decree dated 08.12.2014, the learned Civil Judge, Junior Division, Taloda, District Nandurbar partly decreed the suit and thereby directed the defendants to handover vacant possession of the suit property to the appellant-plaintiff within a period of three months and further directed the enquiry for mesne profit. The judgment and decree passed by the trial Court has attained finality when in the year 2017 Special Leave Petition vide Diary No.24040 of 2017 preferred by the respondent herein came to be dismissed by the Supreme Court.

(d) The appellant-plaintiff had filed Regular Darkhast No.2 of 2015 for execution of decree before the Civil Judge, Junior Division, Taloda. On 01.09.2017, respondent No.2 - judgment debtor Ravindra had filed an application (Exhibit-40) under Order XXI Rule 97, Rule 101 r/w Section 151 of the Civil Procedure Code (for short, "CPC") and raised the objection on various grounds. The appellant-decree holder has filed Reply (Exhibit-46). The learned Civil Judge, Junior Division, Taloda, by judgment and order dated 08.02.2018 below Exhibit-40 in Regular Darkhast No.2 of 2015 rejected the application.

(e) Being aggrieved by the same, original defendant no.2 – judgment debtor Revindra preferred Civil Appeal No.3 of 2018. Learned Ad-hoc District Judge-1 Shahda, Nandurbar, by impugned judgment and order dated 16.03.2018 in Civil Appeal No.3 of 2018 quashed and set aside the order of executing court dated 08.02.2018 passed below Exhibit-40 in Regular Darkhast No.2 of 2015 and further directed the executing court to decide application Exhibit-40 afresh with certain directions, such as to make a proper enquiry into the matter and framed issues if required and record its findings on the objection raised in the application. Hence this appeal against the order of remand.

4. Learned counsel for the appellant/decreed holder submits that learned Judge of executing court, while deciding the application (Exhibit-40) has been pleased to observe that original defendant no.2/judgment debtor does not fall in the category of “any person” as contemplated under Order XXI Rule 97 of CPC. However, still then, the lower appellate court framed the points for determination as to whether defendant no.2/judgment debtor had right to raise the objection under Order XXI Rule 97 of CPC and answered the same as it is required to be decided by the trial Court. Learned counsel submits that on point no.1 as well as point no.2 as framed by the lower appellate court, the executing court has given

sufficient reason and rejected the contentions raised by the obstructionist. Learned counsel submits that the order of remand in the matter is not at all sustainable. Learned counsel submits that the party to the original proceeding of suit for recovery of possession cannot be said to be obstructionist or "any person" as contemplated under Order XXI Rule 97 of CPC and thus, the lower appellate court has come to the erroneous conclusion. Learned counsel submits that the lower appellate court has failed to appreciate the legal position and scope of the provisions of Order XXI Rule 97 of CPC. Learned counsel for the appellant, in order to substantiate his contention, placed reliance in the case of **Niyamat-Ali Molla Vs. Sonargon Housing Co-Operative Society Ltd. & Ors.** reported in **AIR 2008 SC 225** as well as the law laid down by this Court in the case of **Nav prakash S. Pednekar Vs. Maharashtra State Financial Corporation** reported in **2013 (1) Mh.LJ 332**. Learned counsel submits that in the application (Exhibit-40), itself, the objection has been raised that the judgment and decree passed in Regular Civil Suit No.5 of 2002 is barred by limitation and it is also contended that the Court has no jurisdiction to pass the decree in Regular Civil Suit No.5 of 2002. It is also contended that the decree is nullity for want of jurisdiction and as such, it is not executable. Further, the objection has also been raised that neither original defendant Nos.1/1 to 1/8 nor defendant No.2

can be said to be the tenant under the provisions of Rent Act and there is no landlord tenant relationship. Learned counsel submits that it is not open for the judgment debtor to raise all these objections in execution of decree and more particularly, under Order XXI Rule 97 of CPC. Learned counsel submits that the provisions of Order XXI Rule 97 of CPC contemplates an existing right of any person who is not a party to the suit and whose possessory rights have not been adjudicated. Learned counsel submits that the decree passed in Regular Civil Suit No.5 of 2002 has attained finality up to the Apex Court and as such respondent-original judgment debtor now precluded from raising the objection to the decree under the garb of obstructionist proceedings. Learned counsel submits that the lower appellate court has not considered the legal position and unnecessarily directed the executing court to decide the application (Exhibit-40) afresh. The said impugned order of remand of the matter is neither covered by the provisions of Order XLI Rule 23 nor under Order XLI Rule 23(A) of CPC.

5. Learned counsel for the appellant-plaintiff, in order to substantiate his contention, placed reliance on the following cases;

(1) N.S.S. Narayana Sarma Vs. Goldstone Exports Private Limited reported in **2001 DGLS (SC) 1476**

(2) **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal & Anr.** reported in (1997) 3 SCC 694

(3) **Shreenath and Anr. Vs. Rajesh & Ors.** reported in (1998) 4 SCC 543

(4) **Niyamat Ali Molla Vs. Sonargon Housing Co-Operative Society Ltd. & Ors.** reported in AIR 2008 SC 225

(5) **Noorduiddin Vs. Dr. K.L. Anand** reported in (1995) 1 SCC 242

(6) **Nav Prakash S. Pednekar Vs. Maharashtra State Financial Corporation & Ors.** reported in 2013(1) Mh.L.J. 332

(7) **Ashwinkumar K. Patel Vs. Upendra J. Patel and Ors.** reported in (1999) 3 SSC 161

(8) **P. Purushottam Reddy and Ors. Vs. Pratap Steels Ltd.** reported in AIR 2002 SC 771

(9) **Nirmala Devi Vs. Gurgaon Scheduled Caste Vimukta Agriculture Thrift and Credit Society Limited & Ors.** reported in 2018 (1) ALL MR 931

(10) **Rampyare Ram Hiranman Prasad Vs. Usha Prasad Rampyare Ram Hiranman** reported in 2017 (5) Mh.L.J 378

(11) **Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises** reported in AIR 1999 SC 246

6. Learned counsel for respondent-judgment debtor submits that respondent - original judgment debtor no.2 has raised various objections by filling an application (Exhibit-40),

but the trial Court has not considered the same in proper manner and rejected it without any enquiry. Learned counsel submits that in terms of the provisions of Order XXI Rule 97 of CPC, "any person" including a stranger can move such application. Learned counsel submits that the person in possession who was either party to the suit or not has a right to move the executing court. Learned counsel submits that the issue of limitation can be raised at any time. Learned counsel submits that in terms of the provisions of Section 3 of the Limitation Act, it is duty of the Court not to proceed with the suit, appeal or application if it is made beyond the period of limitation prescribed irrespective of the fact whether the plea of limitation has been set up in defence or not. Learned counsel submits that the original suit wherein sub-tenancy of 1980 is alleged and suit being filed in the year 2002 was apparently barred by limitation in terms of the provisions of Article 66 of Limitation Act. Thus the decree, which was passed by the Rent Court after 12 years i.e. after 1992 was apparently barred by limitation and it was thus nullity as court was having no jurisdiction to entertain the suit after the period of 12 years. Learned counsel submits that it is the case of inherent lack of jurisdiction. Learned counsel submits that even as per finding in the original suit and the appeal the respondents were not held to be legal representative of

deceased tenant - Sambhu under Section 7 (8) of Rent Act as neither of them was doing business along with the deceased original tenant at the time of his death and deceased tenant himself had sublet the premises to original defendant no.2 without consent of landlord.

7. Learned counsel for the respondent- judgment debtor submits that even paragraph No.39 of the judgment passed by the trial Court in Regular Civil Suit No.5 of 2002, it is observed that defendant no.1/1 to 1/8 and defendant no.2 does not fall under the category of tenant as per provision of 7(15)(d) of Rent Act. Learned counsel submits that it is well settled that unless original tenant is ordered to be evicted, there cannot be decree against sub-tenant, such a decree or order was inherently bad in law and without jurisdiction of Rent Court. Learned counsel submits that respondent - original defendant no.2 had claimed an independent right over the property and put resistance. Learned counsel submits that when any person claiming title to the property in his possession obstructing the attempt by the decree holder to dispossess him from the said property, the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order XXI Rule 103 is to be treated as a decree. Learned counsel submits that

the executing court has simply considered that the judgment and decree passed by the court in the present suit has attained finality up to the Apex court and as such the objections raised are not tenable. Learned counsel submits that the lower appellate court has, therefore, rightly remanded the matter. There is no substance in this appeal and the same is liable to be dismissed. Learned counsel submits the executing court can go behind the decree if the decree is found to be nullity and the same can be challenged at the execution stage. It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity. Its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in the collateral proceedings.

8. Learned counsel for the respondent, in order to substantiate his contention, placed reliance on the following cases.

(1) **Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal & Anr.** reported in 1997 (1) Mh.L.J. (SC) 817

(2) **Sarup Singh & Anr. Vs. Union of India & Anr.** reported in 2011 SAR (Civil) 40 SC

(3) **Mani Nariman Daruwala since deceased by his heirs Rusinariman Daruwala and Ors. Vs. Phiroz N. Bhatena and Ors.** reported in 1991 Mh.L.J. 376

(4) **M/s. Eureka Builders & Ors. Vs. Gulabchand S/o. Veljee Dand Since Deceased by L.Rs. & Ors. Etc.** reported in 2018 SAR (Civil) 851 SC

(5) **Gurnam Singh (D) through Lrs. & Ors. Vs. Gurbachan Kaur (D) by Lrs. & Ors.** reported in 2017 SAR (Civil) 704 SC

(6) **Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai(D) through Lr.S. and Ors.** reported in 2015 SAR (Civil) 789 SC

(7) **Bhavan Vaja and Ors. Vs. Solanki Hanuji Khodaji Mansang and Anr.** reported in AIR 1972 SC 1371

(8) **Raghuram Rao and Ors. Vs. Eric P Mathias and Ors.** reported in AIR 2002 SC 797

(9) **Hiralal Vallabhram Vs. Sheth Kasturbhai Lalbhai and Ors.** reported in AIR 1967 SC 1853

(10) **Taherbhai T. Poonawala & Ors. Vs. S. Hamid H. Patel (Deceased by L.Rs.) and Ors.** reported in 2008(1) BCJ 42

(11) **Hemchand M. Singhania Vs. Smt. Shakuntala S. Tiwari** reported in 1987 (2) Bom.C.R. 428

(12) **Shripati Ganpati Jadhav & Ors. Vs. Chandrakant Ganpati Jadhav & Ors.** reported in 2011 (2) Mh.LJ 689

9. In the case of **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and Anr.** (Supra) relied upon by the learned counsel appearing for both the parties, in Paragraph Nos.5, 9 & 11, the Supreme Court has made the following observations;

“5. A mere look at the aforesaid provision shows that warrant for possession can be straightaway sought against persons occupying immovable property which is subject-matter of decree by the decree-holder provided such persons who are occupying the suit property are judgment-debtors or persons claiming through the former. We are concerned with the situation in which the appellant resisted the execution proceedings on the ground that he was a stranger to the decree and claimed an independent interest in the suit immovable property possession of which was decreed in favour of respondent no.1 decree-holder. The Nazir in his report dated 28th April 1991 has noted that the warrant for possession could not be executed on spot on account of the resistance and obstruction offered by the appellant, amongst others. Once that report was received by the Executing Court respondent no.1 decree-holder naturally became alive to the fact of such resistance on spot by the appellant, amongst others. Thereafter when he moved the application on 6th May 1991 for issuance of fresh warrant for possession with the help of police force though the application purported to be under Order XXI Rule 35 it would strictly not fall within that provision as the decree-holder wanted to bypass the obstruction and resistance offered by a stranger to the decree, namely the appellant who was not claiming any right, title or interest through the judgment-debtor. Whether his claim was right or wrong on merits is a different matter. But once such resistance was offered by him the proper procedure which was required to be followed by respondent no.1 decree-holder was the one contemplated by Order XXI Rule 97, CPC. The said provision reads as under:

"97. Resistance or obstruction to possession of immovable property,- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application

to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

9. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even

after losing possession as per Order XXI Rule 99. Order XXI Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest de hors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order XXI Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard or merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered

on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 and 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

11. In view of the aforesaid settled legal position, therefore, and in the light of the statutory scheme discussed by us earlier it must be held that respondent no.1 decree-holder's application dated 6th May 1991 praying for issuance of warrant for delivery of possession with the aid of armed force, was in substance for removal of obstruction offered by the appellant and others under Order XXI Rule 97, CPC and had to be adjudicated upon as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 101 and Order XXI Rule 98. In this connection the Court had also to follow the procedure laid down by Order XXI Rule 105 which enjoins the Executing Court to which an application is made under any of the foregoing Rules of the Order to fix a date of hearing of the application. As the Executing Court refused to adjudicate upon the obstruction and the claim of the appellant who obstructed to the execution proceedings it had clearly failed to exercise jurisdiction vested in it by law. The High Court in

revision also committed the same error by taking the view that such an application was not maintained. It is of course true as submitted by learned counsel for the decree-holder that in paragraph 4 of the judgment under appeal the High Court has noted that there was some discrepancy about the Khasra Number. But these are passing observations. On the contrary in the subsequent paragraphs of the judgment the High Court has clearly held that such an application by the objector was not maintainable and his only remedy was to move an application under Order XXI Rule 99 after handing over possession and consideration of objection to delivery of possession by a stranger to the decree at any earlier stage was premature. It must, therefore, be held that neither the Executing Court nor the High Court in revision had considered the objection of the appellant against execution or merits. Consequently the impugned judgment of the High court as well as the order of the Executing Court in Civil Execution Case No. 25 of 1990 dated 15th February 1996 are quashed and set aside and proceedings are remanded to the Court of Munsif II, Munger to re-decide the application of respondent no.1 decree- holder dated 6th May 1991 by treating it to be one under Order XXI Rule 97 for removal of obstruction of the appellant and after hearing the decree-holder as well as the appellant to adjudicate the claim of the appellant and to pass appropriate orders under Order XXI Rule 97 sub-rule (2), CPC read with Order XXI Rule 98, CPC as indicated in earlier part of this judgment.

10. The Supreme Court while interpreting the provisions of Order XXI Rule 97 of CPC, in Paragraph No.4 of the judgment observed that the resistance or obstruction to possession of immovable property as contemplated by Order XXI Rule 97 of CPC could have been offered by any person.

The words “any person” as contemplated by Order XXI Rule 97 sub-rule (1) are comprehensive enough to include apart from the judgment-debtor or anyone claiming through him even persons claiming independently and who would, therefore, be total strangers to the decree.

11. The respondent – original judgment debtor no.2 has raised various objections. Even the executing court in Paragraph No.1 of the order below Exhibit-40 summarized those objections. On perusal of the order passed below Exhibit-40, I am in agreement with the observations made by the lower appellate court that the executing court has only considered that the decree has attained finality and as such the issues raised by respondent original judgment debtor no.2 in the application Exhibit-40 are not tenable.

12. It is well settled that in terms of the provisions of Order XXI Rule 103 of CPC, when an application has been adjudicated under Order XXI Rule 100, the order made thereon shall have the force of decree and subject to the same condition as to an appeal. In the instant case, I refrain myself from considering the merits of objections raised by respondent – original judgment debtor no.2 by way of filling application Exhibit-40. However, I am in agreement with the

observations made by the lower appellate court that the executing court has not decided the application Exhibit-40 in proper manner by considering the submissions of both the sides.

13. Even in the cases relied upon by the learned counsel for the appellant so far as the scope and ambit of Order XXI Rule 97 along with provisions of Order XXI Rule 103, the Supreme Court and even this Court in all these cases in one or other forms followed the interpretation made by the Supreme Court in the case of *Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal* (Supra).

14. So far as the power of remand by the appellate Court is concerned, it is well settled that the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. It is also well settled that an unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided, as observed by the Supreme Court in the case of *Nirmala Devi Vs Gurgaon Scheduled Caste Vimukta Agriculture Thrift and Credit Society Limited and Ors.* (Supra) relied upon by the learned

counsel for the appellant. However, in the instant case, I find no fault on the part of the lower appellate court in remanding the matter. In the cases relied upon by the learned counsel for the appellant on the point of remand, the observations have been made in terms of the facts of respective case.

15. In view of the same, I find no fault in the impugned order passed by the Ad-hoc District Judge-1 Shahda, dated 16.03.2018 in Civil Appeal No.3 of 2018. Hence, I proceed to pass the following order:

ORDER

- (i) The appeal against the order is hereby dismissed.
- (ii) In view of dismissal of appeal, pending civil application is disposed of.

(V. K. JADHAV, J.)

Sam..