

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO. 72 OF 2022

Smt. Kamal Shamrao Wankhede vs. Shri. Raimalbua Sansthan

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

Court's or Judge's Orders.

Mr. V. B. Bhise, Advocate for appellant.
Ms. Vrushali Gordey, Advocate for sole respondent.

CORAM : MANISH PITALE J.

DATE : 04/04/2022

In this appeal a preliminary objection was raised on behalf of the respondent, contending that the appeal itself is not maintainable.

2. The objection is raised by relying upon Order 21 Rules 97 to 103 of the Code of Civil Procedure(CPC), to contend that in this case, the objector is the judgment debtor himself and nature of objection raised is not relatable to or covered under the provisions of Order 21 Rules 97 to 103 of the CPC. It is submitted that objection under Section 47 of the CPC and the appellant (original judgment debtor) is claiming that the decree is not executable.

3. The learned counsel appearing for the appellant was not able to demonstrate how nature of objection raised on behalf of the appellant could be covered under the scheme contemplated under Order 21 Rules 97 to 103 of the CPC, when an application adjudicated upon under Rule 98 or Rule 100 of Order 21 of the CPC would only have the force of a decree, which in turn can be challenged by way of an appeal. This would demonstrate that the first appeal, filed on behalf of the appellant, itself was not maintainable before the district Court. Therefore, there is substance in the preliminary objection raised on behalf of the respondent before this Court.

4. Accordingly, the appeal is dismissed.

5. Needless to say, the appellant would be at liberty to avail of such remedy as may be available in law.

JUDGE