

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

WRIT PETITION NO. 1423 OF 2020

Sachin Vasant Rao Manekar

Vs.

Shri Prabhakar s/o Jagobaji Manekar and Ors.

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

Court's or Judge's Orders.

Mr. Rajesh Nagpure, Advocate for petitioner.
Mr. Sunil Manohar, Senior Counsel a/by Mr. D.L.
Dharmadhikari, Advocate for respondent No.1.

CORAM : MANISH PITALE J.

DATE : 27.06.2022.

By this writ petition, the petitioner has challenged an order dated 30.12.2019 passed by the Court of 2nd Joint Civil Judge Junior Division, Nagpur, whereby an application, at Exhibit 111 filed under Order 39 Rule 11 of the Civil Procedure Code (CPC) has been rejected.

2. Mr. Nagpure, learned counsel for the petitioner sought to argue on merits, when Mr. Sunil Manohar, learned Senior Counsel appearing for the respondent took preliminary objection that against the impugned order an appeal under Order 43 Rule 1 (r) would lie as per the Bombay Amendment in C.P.C.

3. A perusal of the Order 43 Rule 1(r) (Bombay Amendment) shows that it reads thus :

“(r) an order under rule 1, rule 2, rule 2-A where disobedience or breach of injunction is held proved or attachment of property is ordered, rule 4, rule 10 or rule 11 of Order XXXIX.”

4. Thus, it is clear that when an order is passed under Order 39 Rule 11 of the C.P.C. an appeal from order would lie under Order 43 Rule 1(r) of the C.P.C.. When a statutory remedy under the C.P.C. is specifically provided, this Court exercising writ jurisdiction ought to hold its hands for the petitioner to exhaust the available remedy.

5. In view of the above, the writ petition is dismissed. Needless to say, the petitioner would be at liberty to avail of the aforesaid remedy in accordance with law.

6. Consequent upon dismissal of the writ petition, the interim order stands vacated.

JUDGE