



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7980 OF 2023

Mrs. Dipali Anant Narvekar and Ors.

... Petitioners.

Versus

Mr. Deepak Satyawar Tondwalkar and Anr.

... Respondents.

Mr.Suresh Barne a/w. Mr.Ravindra Mungekar i/by Mr.Sagar S. Tambe
for the Petitioners.

Mr.Yogendra M. Pendse, for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : October 30, 2023.

P. C. :

1. Heard.

2. The challenge in the writ petition presumes to be a challenge to the order dated 24th April, 2023 passed by the learned District and Sessions Judge, returning the appeal on the ground that the remedy of the Petitioners lie elsewhere. Although, paragraph No.1 of the Petition assails the order of 24th April, 2023, there is no corresponding relief sought in the prayer clause. The relief sought is that the Petitioners may be directed to present a civil appeal and the District and Sessions Court be directed to admit the civil appeal and hear the same on merits and other relief sought is to quash and set

aside the order of issuance of possession warrant.

3. During the arguments, it was fairly conceded by the learned counsel appearing for the Respondents that against the order of issuance of possession warrant under the Order 21 Rule 35 of the Code of Civil Procedure, 1908, the provision of Order 43 would not apply. That having been fairly conceded, there is no infirmity in the order dated 24th April, 2023 returning the appeal for presentation before the appropriate forum.

4. Learned counsel appearing for the Petitioners sought to canvass submissions on the merits of the matter, however, considering the limited issue which arose for consideration as to whether an appeal would lie under the provisions of Order 43 of C.P.C., which provisions according to the learned counsel for the Petitioners himself would not apply, there is no necessity of going into the merits of the matter.

5. Having regard to the above, there is no merit in the matter, the Petition stands dismissed.

(Sharmila U. Deshmukh, J.)