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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 533 OF 2000
WITH
CIVIL APPLICATION NO. 6741 OF 2000
IN
SECOND APPEAL NO. 533 OF 2000**

Dattatraya Irranna Kurle

.. Appellant

Vs.

1. Maharashtra State Electrical Board
and Ors.
2. The Superintending Engineer (SURC)
Maharashtra State Electricity Board, Solapur
3. The Executive Engineer (Urban)
Maharashtra State Electricity Board, Solapur .. Respondents

.....
Ms. Ashwini B. Jadhav i/b Mr. Jagdish G. Reddy for the appellant
Ms. A.R.S. Baxi for the respondents
.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

**CLOSED ON : 28th JUNE, 2024.
PRONOUNCED ON : 25th JULY, 2024.**

JUDGMENT :-

1. On 15th November 2000 this appeal was admitted on the following substantial questions of law :-

(i) If a resignation which has been tendered to the

employer is withdrawn before it is accepted, is it open to the employer to disregard the resignation and treat the employee as having ceased to be in service ?

ii) In view of paragraph 7 of the written statement, in which it has been admitted that the Appellant had given an application dated 24th March, 1997 withdrawing his resignation, is it correct and proper to hold that the application withdrawing the resignation has not been proved or established ?

2. Briefly stated, the facts are as follows.

3. The appellant had filed a suit for declaration that an order dated 31st March 1987 relieving him from the services by accepting his resignation and refusing to reinstate him in the service, is illegal. The suit has been dismissed by 6th Joint Civil Judge, Junior Division, Solapur on 29th September 1994 being Regular Civil Suit No. 399 of 1991.

4. An appeal preferred by the appellant before the District Judge, Solapur being Civil Appeal No. 83 of 1995 also came to be dismissed on 22nd September 1999 and, therefore, the appellant approached this Court by way of Second Appeal.

5. A suit has been filed by the appellant against the Maharashtra State Electricity Board (For short "Board") as well as

Superintendent Engineer (SURC) and Executive Engineer (Urban). The appellant was appointed as a Steno Typist in the Board, who had joined the services at Vita, Dist. Sangli on 31st January 1980.

6. Subsequently, he was transferred to the Board's office at Pandharpur. On 6th March 1982, he was transferred to Circle Office at Solapur, where he worked till 31st December 1986. According to the appellant, he served the Board with integrity and honesty. His work was also satisfactory.

7. Prior to 31st December 1986, due to some family issues, appellant was frustrated. His first marriage was dissolved. He performed second marriage but his second wife had committed suicide. In 1984, he performed third marriage but there were differences and his image in the society was lowered down.

8. Due to aforesaid reasons, his mental condition was not proper and, therefore, he tendered his resignation on 31st December 1986 and in lieu of one month's notice, he had deposited a months salary at Rs.1601.70 under Receipt No.112242 dated 31st December 1986. The said amount was deposited in the office of the respondent no.3. According to the appellant, respondent no.3 was

not a competent authority to accept resignation but it was respondent no.2, as per the Employees' Service Regulations. The respondent no.3, therefore, forwarded his resignation to the respondent no.2. It is his contention that resignation had been tendered by him due to grave and sudden provocation.

9. After tendering the resignation, the appellant was attending the office of the respondent no.3 since he was not relieved from the service as the resignation was not accepted.

10. The respondent no.3 by an order dated 10th March 1987 informed the appellant that his resignation will not be accepted until he deposits an amount of Rs.630/- towards the dues outstanding against him. It is the contention of the appellant that till 10th March 1987 his resignation was not accepted by the respondent no.3.

11. Subsequently, by his communication dated 24th March 1987, the appellant informed respondent no.2 that he has withdrawn his resignation. The said communication was addressed to the respondent no.2 and was submitted through respondent no.3. It is the contention of the appellant that despite said communication, he

was not allowed to resume duties by allowing him to withdraw the resignation. No action had been taken on his letter of withdrawal of resignation. The respondent no.2 by its communication dated 31st March 1987 accepted the resignation of the appellant w.e.f. 31st December 1986. Thus, the contention of the appellant that the act of the respondent no.2 to accept the resignation by ignoring his withdrawal, is a *mala fide* act.

12. Admittedly, the respondents sanctioned gratuity amount and paid the same to the appellant in the month of June, 1987. He contends that the act of payment of gratuity by the respondents is illegal, which would not affect his withdrawal of resignation.

13. Meanwhile, the appellant had also preferred an appeal before the respondent no.1 in view of Rule 106 of the Employees' Service Regulations on 29th June 1988, challenging an order passed by the respondent no.2. The said appeal was dismissed. He also moved a representation to the Ministry of Power but the same was not accepted. Finally, he filed the present suit.

14. The respondent – Board contested the suit by raising a legal issue of bar of limitation, as according to the Board, cause of action

arose on 31st December 1986 and later on the date, on which the resignation was accepted. The suit was hopelessly barred by limitation.

15. It is the contention of the respondents that after tendering the resignation on 31st December 1986, the appellant had accepted the amount of Gratuity and Provident Fund etc. and, therefore, he could not have withdrawn his resignation or challenge the validity of acceptance of his resignation. The respondents denied to have committed any illegality or unfairness on their part as the employer of the appellant.

16. It is the contention of the respondents that the appellant had tendered his resignation to the respondent no.3 and the same was forwarded by it to the competent authority, namely respondent no.2. It is only after acceptance of his resignation, the appellant had accepted and received the amount of Gratuity and Provident Fund etc., by which he waived his right to remain in service. The resignation of the appellant was accepted by following due procedure and, therefore, prayed for dismissal of the suit.

17. The trial Court after framing necessary issues and recording

the evidence, dismissed the suit as stated hereinabove.

18. Even, the first Appellate Court dismissed the appeal by maintaining the impugned judgment and order passed by the Civil Judge, Junior Division, Solapur.

19. I heard Ms. Jadhav, learned Counsel for the appellant at a considerable length as well as Ms. Baxi, learned Counsel for the respondents.

20. The question is whether the respondent had accepted the resignation of the appellant tendered on 31st December 1986 before it was withdrawn ?

21. Ms. Jadhav, learned Counsel for the appellant would argue that the resignation tendered by the appellant on 31st December 1986 was accepted by the respondent on 31st March 1987. However, the appellant had already withdrawn his resignation by a communication dated 24th March 1987. She invites my attention to the evidence of the appellant recorded by the trial Court wherein the appellant had testified that on 24th March 1987 itself he had withdrawn his resignation by making a communication which was

tendered along with the plaint bearing signature of the clerk of the respondent and that there has not been any communication of his withdrawal of resignation dated 24th March 1987. The Counsel would also invited my attention to para 7 of the written statement filed by the respondent no.3, which indicates that though the appellant had given an application dated 24th March, 1987 to the respondent no.3, there was no option with the respondent no.3 as the resignation was forwarded to the respondent no.2 for sanction or acceptance. After acceptance of the resignation, the respondent no.3 paid the legal dues i.e. Provident Fund, Gratuity and other dues from the respondent no.2.

22. Learned Counsel for the appellant would argue that the respondents were aware about the withdrawal of letter, dated 24th March 1987 yet, they turned blind eye and, therefore, in view of the catena of decisions of various High Courts and the Supreme Court, the relationship between the respondents and the appellant continued and it cannot be said that his resignation had been duly accepted and he had been relieved from the service as a Steno Typist. Learned Counsel would also invite my attention to various documents, which shall be dealt with at the appropriate stage.

Learned Counsel for the appellant has pressed into service the following few decisions.

- (a) *Shambhu Murari Sinha Vs. Project and Development India Ltd., AIR 2002 SC 1341.*
- (b) *Andhra Bank Vs. Sudha Nagaraj, 1999 SCC 793.*
- (c) *Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, (1997) 4 SCC 280.*
- (d) *Balram Gupta Vs. Union of India & Anr. 1987 SCC 228.*
- (e) *Srikantha S.M. Vs. Bharath Earth Movers Ltd. (2005) 8 SCC 314.*

23. Ms. Baxi, learned Counsel for the respondents, on the other hand, strongly contested the argument of the learned Counsel for the appellant that having tender his resignation on 31st December 1986 by the appellant, it was given effect to on 1st January 1987 i.e. before the appellant alleged to have tender his withdrawal on 24th March 1987. The Counsel would argue that admittedly, till date, the appellant did not work with the respondents. It is not even his case that he made an attempt to join the services, especially, in view of the fact that he had accepted all the terminal benefits. Gratuity was accepted by the appellant on 15th June 1987 and the Provident Fund was accepted by him on 1st February 1988. Apart

from the said facts, neither the appellant made any attempts to resume the duty nor there was any communication in that regard. The suit itself was barred by limitation and, therefore, learned Counsel would pray for dismissal of the Second Appeal.

24. Before advertng to the substantial questions of law, it would be expedient to crystallize a few facts, which are no more in dispute.

(a) The appellant was appointed as a Steno Typist with Board on 31st January 1980 by following due process of law.

(b) Appellant worked at Vita from 31st January 1980 to 23rd May, 1980.

(c) The appellant came to be transferred to Pandharpur w.e.f. 26th June, 1980 to 5th March 1982.

(d) He was again transferred to the Circle Office at Solapur where he worked from 6th March 1982 to 31st December 1986.

(e) On 31st December 1986, the appellant tendered his resignation and in lieu of one month's notice, deposited Rs.1601.70/- towards a month's salary. His application of resignation was rejected by the Board on 10th March 1987.

(f) An appeal preferred by the appellant came to be rejected on 29th June 1988 by the Board.

(g) The appellant approached Civil Judge, Junior Division on 18th April, 1991 by filing a Suit bearing No. 399 of 1991, which was dismissed on 29th September 1994.

(h) An appeal preferred in the lower Appellate Court also came to be dismissed on 22nd September 1999.

25. In light of the admitted fact of acceptance of resignation w.e.f. 31st March 1987, it would be interesting to see whether the acceptance has been duly communicated to the appellant before he alleged to have withdrew his resignation on 24th March 1987 ?

26. The respondent's witness DW-2 Shashikant Kerad, Administrative Officer in the office of the respondent no.2 testified that acceptance of resignation w.e.f. 31st March 1987 was communicated to the appellant by registered post and under Certificate of Posting (**Exh.72**). This witness had produced original packet addressed to the appellant which was refused by him, as is evident from the endorsement of the postal department "REFUSAL". Thus, the respondents had proved that acceptance of resignation had been duly communicated to the appellant, however, he had refused to accept the same deliberately. Adverse inference, therefore, is required to be drawn against him.

27. It would be relevant to refer Section 27 of the General Clauses Act, which reads thus :-

*“27. **Meaning of service by post** – Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”*

28. There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt, the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered registered letter to him or that there was no occasion for him to refuse the same. Of course, the burden to rebut the presumption lies on the party, challenging the factum of service. Here, the appellant had neither rebutted the presumption nor had raised a plea that it has not been served upon him.

29. *Sans* pleadings, it appears that DW-2 Shashikant Kerad was suggested that the appellant had withdrawn his resignation on 18th March 1987. Strangely, such question, without any pleading, could not have been asked or permitted to be asked. It is surprising to note that there is a pleading in the plaint that the appellant had communicated withdrawal of his resignation on 24th March 1987. There is no case of withdrawal of resignation on 18th March 1987. The appellant himself seems to be confused as to whether the withdrawal of resignation was on 18th March 1987 or 24th March 1987, or any time before its acceptance.

30. The appellant has come up with a case that he had submitted an application for withdrawal of his resignation in the office of respondent no.3 on 24th March 1987. In the witness box, the appellant had proved office copy of the said communication dated 24th March 1987 from which, according to him, a clerk in the office of the respondent no.3 had put his signature as an acknowledgment of its receipt. The learned trial Court as well as the lower Appellate Court noted that there is no such signature of any clerk of respondent no.3, except some number and date. Even the original letter (**Exh.78**) does not bear any signature of any of the employees

of respondent no.3. Thus, the appellant himself belied his own case that he had obtained signature of employee of respondent no.3 on his so called communication dated 24th March 1987. Since the appellant had worked in the same office, he could have very well named the same employee who alleged to have accepted his communication dated 24th March 1987.

31. It is an admitted fact that the appellant had received all the benefits namely Gratuity, Provident Fund etc. **(Exh.52 to 54)** on 15th June, 1987 and 1st February 1988. Had the resignation been really withdrawn, the appellant would have accepted all the monetary benefits without prejudice to his right of continuing in service due to withdrawal of his resignation. He also could have refused to accept any such terminal benefits. This conduct also speaks volumes.

32. The appellant had addressed an application to the Finance Minister on 15th February 1988 **(Exh.57)** requesting for reinstating him in service since he was facing financial difficulties. Though, he made a reference of his resignation, he did not mention as regards his alleged withdrawal of resignation, which he had afterwards

pleaded in his case. It is apparent that after receiving communication of acceptance of his resignation and after receiving an amount of gratuity, he had addressed a communication to the Finance Minister. It clearly shows how crafty the appellant is. It indicates that he has concocted a false story of withdrawal of his resignation.

33. Second Appeal shall have to be heard only on the substantial question of law. However, the proviso to Sub-section 5 of Section 100 of the Civil Procedure Code contemplates that this Court, for the reasons to be recorded, can also hear the Second Appeal on any other substantial question of law, which was not formulated. The legal position is well settled that when the judgment of the final Court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence, then, this Court in Second Appeal is entitled to interfere with the judgment. Admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by Courts. It is not the case of the appellant that both the Courts below have either misinterpreted any documentary evidence referred hereinabove or considered the inadmissible evidence or

even ignored material evidence. As such, this Court cannot and should not reverse the finding of fact concurrently arrived at two Courts below, in a routine and casual manner by substituting its subjective satisfaction in the place of the lower Courts.

34. As regards limitation, both the Courts below concurrently held that the suit was barred by limitation in view of Article 58 of the Limitation Act. The appellant was relieved from services w.e.f. 31st March 1987. A suit came to be filed on 18.04.1991 wherein he sought a declaratory relief. To save limitation, the appellant pleaded that since he had preferred an appeal before the competent Authority which was decided on 29th November 1988, which he had preferred under Section 106 of the Employees' Service Regulations, his suit was well within limitation. The appellant, however, placed no such record before the trial Court. He contends that he came to know about the acceptance of resignation on 11th June 1988. However, no document was produced in that regard. An application to the Finance Minister cannot be construed as an appeal under the Rules. The learned District Judge has rightly observed that it cannot give a fresh cause of action to the appellant.

35. It is apparent that the day on which the appellant had received the monetary benefits such as Gratuity, Provident Fund etc., he had requisite knowledge of acceptance of his resignation and that he had been relieved from the service. He had duly received amount of gratuity on 15th June, 1987. He could have filed the suit within 3 years but he did not. It has, therefore, rightly been held that the suit was barred by limitation.

36. In view of the aforesaid discussion, I am of the opinion that the jural relationship of appellant and the respondent ceased to exist when the respondents accepted his resignation on 31st March 1987 and communicated the same to the appellant through registered post, which was refused by him. The respondents have duly proved the said facts. Thus, the relationship of employer and employee came to an end as the appellant had failed to prove his alleged withdrawal of resignation on 24th March 1987 as discussed hereinabove. The appellant has no *locus poenitentiae*.

37. Learned Counsel for the appellant has pressed into service a decision of the Supreme Court in case of ***Shambhu Murari Sinha (supra)***. Para 18 and 19 of the said decision read thus:-

“18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as though option of the appellant for the voluntary retirement under the scheme was accepted but it was stated that the 'release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated August 07, 1997 and September 24, 1997, but there was no response from the respondent. By office memorandum dated 25th September, 1997, the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26 September, 1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26th of September, 1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.

19. We, therefore, hold that the respondent could not have refused to accept the letter of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time the appellant might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service.

38. In the said case, the appellant sought for voluntary retirement

which was accepted by the management. However, before the employee was actually released from service, he withdrew his option for voluntary retirement by sending two letters dated 7th August 1997 and 24th March 1997, but there was no response from the management. The employee was released from service by an Office Memorandum dated 25th September 1997 and was paid salary till his date of actual release i.e. 26th September 1997. It is held that the jural relationship of employee and employer, therefore, continued till his date of actual release i.e. 26th September 1997. Admittedly, the employee had sent two letters withdrawing his voluntary retirement before the date of his actual release from the service, which is “effective date”. It is alleged that the withdrawal of resignation was, therefore, valid. I am afraid this ratio could not be of any assistance to the appellant in view of the discussion already made hereinabove.

39. In case of *Andhra Bank (supra)*, similar ratio has been laid down. Para 4 of the said judgment reads thus :-

19. Para 522 (2) of the Shastry Award in Section IV indicates that in case a permanent employee desires to give up service, he is required to give one month's notice in writing to the manager. The manager shall give an order of relieving

signed by him. In this case, admittedly, the relieving order had not been given by the Manager. The jural relationship of the respondent with the appellant as an employee remains undisturbed. On the other hand, it indicates that until the relieving order came to be passed by the competent authority, the employee had a right to exercise her power to withdraw the resignation. Since the withdrawal letter was written before the authority relieved her, the resignation letter stands withdrawn. With the result, the respondent continues to be in the service of the Bank. This legal position is well settled. Therefore, there is no legal flaw in the order passed by the High Court for interference. However, the respondent is not entitled to the back wages as ordered by the learned Single Judge and by the Division Bench, since she had voluntarily withdrawn from work to join her husband working at Warangal. To that extent, the order of the High Court stands set aside. In other aspects, it stands confirmed.”

40. In the above case, withdrawal letter was written by the respondent before she was relieved. The resignation, therefore, did not become effective. She was deemed to have continued in service. Here also, the Supreme Court observed that the jural relationship of the respondent with the appellant as an employee remains undisturbed, which is not the case in hand and, therefore, this decision could not be of any help to the appellant.

41. Learned District Judge has also considered the ratio laid down by the Supreme Court in case of ***Balram Gupta (supra)***. Para 11 of the judgment, reads thus :-

“11. In *Air India etc. etc. v. Nergesh Meerza* [1982] 1 SCR 438, the Court struck down certain provisions of *Air India Employees Service Regulations*. We are not concerned with the actual controversy. But the Court reiterated that there should not be arbitrariness and hostile discrimination in Government's approach to its employees. On behalf of the respondent it was submitted that a Government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in *Raj Kumar v. Union of India*, [1968] 3 S.C.R. 857. There the Court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has *locus poenitentiae* but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had *locus*. As mentioned hereinbefore the main question was whether the sub-rule (4) of Rule 48-A was valid and if so whether the power exercised under the sub-rule (4) of Rule 48-A was proper. In the view we have taken it is not necessary, in our opinion, to decide whether sub-rule (4) of Rule 48-A was valid or not. It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the *Pension Rules* is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not *ipse dixit* of the approving authority. The approving authority who has the statutory

authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason. The guidelines indicated are as follows:

(2) A question has been raised whether a Government servant who has given to the appropriate authority notice of retirement under the para 2(2) above has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such right. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case to withdraw the notice given by him, but ordinarily such permission should not be granted unless he is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given.

Where the notice of retirement has been served by Government on the Government servant, it may be withdrawn if so desired for adequate reasons, provided the Government servant concerned is agreeable."

42. It was also a case of voluntary retirement. The same was withdrawn by the appellant before retirement became effective notwithstanding any rule providing for obtaining of specific approval of the concerned Authority as a condition precedent to withdrawal of notice. It is alleged that the authority is not entitled to refuse to grant approval for withdrawal in absence of any reason showing disturbance in administrative set up or arrangement as a

result of such withdrawal.

43. Similar view has been echoed in a decision of the Supreme Court in case of ***Srikantha S.M. (supra)***. Para 29 and 30 are extracted below :-

“29. We must frankly admit that we unable to uphold the contention of the respondent-Company. A similar situation had arisen in J.N. Srivastava and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to “full salary and allowances” of the entire period he was kept out of service. In Balram Gupta, in spite of specific provision precluding the Government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.

30. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent-Company in accepting the resignation of the appellant from 4-1-1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned single Judge and the Division Bench upholding the action of the Company are also set aside. The respondent-Company is directed to treat the appellant in continuous service upto the age of superannuation i.e. 31-12-1994 and give him all benefits including arrears of salary. The Company may adjust any

amount paid to the appellant on 15-1-1993 or thereafter. The appeal is accordingly allowed with costs.”

44. The learned District Judge has correctly appreciated not only the facts and the evidence on record, but the law governing the jural relationship between the respondent and the appellant and had correctly arrived at the conclusion while dismissing the appeal.

45. The substantial questions of law, as such, are answered accordingly and consequently the appeal stands dismissed with costs.

46. In view of the dismissal of the appeal, pending application, if any, also stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)