
(2015) 09 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 1050 of 2009

Gopikisan

APPELLANT

Vs

Indubai and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 37(1)
Bombay Civil Courts Act, 1869 — Section 21, 28, 5, 8
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 115, 145
Limitation Act, 1963 — Section 12, 4, 5
Maharashtra Rent Control Act, 1999 — Section 16, 16(1)(g), 33, 34, 37
Provincial Small Cause Courts Act, 1887 — Section 17
Transfer of Property Act, 1882 — Section 106

Citation : (2015) 09 BOM CK 0009

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : M.P. Khajanchi, for the Appellant; V.S. Kukday, Advocates for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J—The petitioner is the "tenant" and the respondents are the "landlords" and shall hereinafter be referred to accordingly. The dispute in the present petition pertains to the eviction of the tenant from the suit premises on the ground of bona fide requirement under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999. Regular Civil Suit No. 78 of 2004 filed by the landlords was decreed by the Trial Court on 28-4-2006 and the tenant was directed to hand over vacant possession of the suit premises to the landlords within a period of one month from the date of the judgment and order.

2. In Regular Civil Appeal No. 37 of 2006, the learned Ad hoc District Judge-II, Gadchiroli, by her judgment and order dated 23.03.2007, set aside the decree passed by the Trial Court in favour of the landlords and dismissed the suit. Misc. Civil Application No. 16 of 2007 was preferred by the landlords under Section 114

read with Order XLVII, Rule 1 of the Civil Procedure Code for review of the decision of the lower Appellate Court, which has been allowed on 25-2-2008, and the decree passed by the Trial Court for eviction of the tenant has been restored. Hence, the tenant is before this Court in this petition. The matter was admitted on 15-7-2000 and the interim order has been passed staying the decision of the lower Appellate Court.

3. The lower Appellate Court in Regular Civil Appeal No. 37 of 2006 reversed the decree passed by the Trial Court for eviction and possession on the ground that there was non-compliance of the provision of Section 106 of the Transfer of Property Act, 1882. In Misc. Civil Application No. 16 of 2007 for review, the lower Appellate Court has recorded the finding that there was an error of law apparent on the face of the record committed in applying the provision of Section 106 of the Transfer of Property Act while deciding Regular Civil Appeal No. 37 of 2006. The application for review was, therefore, allowed, restoring the decree for eviction and possession passed against the tenant by the Trial Court.

4. The following question of law falls for consideration of this Court in this petition :

Once the District Court finally decides an appeal under clause (c) of sub-section (1) of Section 34 of the Maharashtra Rent Control Act, 1999, whether it has got power to review its own judgment on the merits of the matter?

5. Shri Khajanchi, the learned counsel appearing for the tenant, has relied upon the decision of the Full Bench of this Court in the case of Shikshan Prasarak Mandal, Akola and others v. Laxmikant Balkrishna Joshi and others, reported in 1995(2) Mh.L.J. 619 , for his proposition that the power of review is not inherent, but it has to be specifically conferred by the Statute, and in the absence of such conferment, the power cannot be exercised. He has also relied upon the decision of the Apex Court in the case of Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another, AIR 2005 SC 1782 : (2005) 105 FLR 416 : (2005) 2 LLJ 271 : (2005) 13 SCC 777 : (2006) SCC(L&S) 1635 : (2005) 2 SCR 888 : (2005) 2 SLJ 338 , for the proposition that at the most it can be held that the procedural review is permissible, but not the review on the merits of the matter. He submits that the lower Appellate Court has reviewed its own judgments on merits and the finding recorded in Regular Civil Appeal to the effect that there was non-compliance of Section 106 of the Transfer of Property Act has been reversed, holding that such provision is not applicable to the suit filed under Section 16 of the Maharashtra Rent Control Act.

6. Shri Kukday, the learned counsel appearing for the respondent-landlords, has supported the view taken by the lower Appellate Court reviewing its own judgment and has relied upon the provision of Section 37 of the Maharashtra Rent Control Act to urge that in the absence of specific rules being framed under the said Act, the lower Appellate Court was competent to invoke jurisdiction under Section 114 read with Order XLVII, Rule 1 of the Civil Procedure Code to

review its own judgment. He has further relied upon the decision of the Apex Court in the case of I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd., AIR 2002 SC 2308 : (2002) 2 ARBLR 246 : (2002) 4 CompLJ 186 : (2002) 1 JT 466 Supp : (2002) 4 SCALE 655 : (2002) 5 SCC 510 : (2002) 38 SCL 943 : (2002) 3 SCR 1122 : (2002) 2 UJ 1111 : (2002) AIRSCW 2438 : (2002) 4 Supreme 444 , wherein the Court has held that there being no specific exclusion of the Code of Civil Procedure in specific terms, no inference can be drawn that the Code of Civil Procedure is not applicable. It has been held in the said decision that the application of the Code not having been expressly barred, the revisional jurisdiction of the High Court under Section 115 of the Code of Civil Procedure gets attracted. He has also relied upon the decision of the Apex Court in the case of Kapra Mazdoor Ekta Union, cited supra, relied upon by Shri Khajanchi, the learned counsel for the tenant, to urge that it is a power of procedural review which has been exercised by the lower Appellate Court, and hence the judgment and order impugned in this petition needs to be maintained.

7. Section 33 of the Maharashtra Rent Control Act, 1999 being relevant, is reproduced below :

"33. Jurisdiction of courts:

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, -

(a) In Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1897, such court, and

(c) elsewhere, the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are suitable or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

(2) (a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887, and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area;

(b) where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, deemed to be the Court of Small Causes."

Clause (b) of sub-section (1) of Section 33 under the Maharashtra Rent Control Act confers the jurisdiction upon the Court of Small Causes to entertain, try and decide the suit or proceedings therein and elsewhere, upon the Court of Civil Judge, Junior Division having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge, Senior Division having ordinary jurisdiction, as contemplated by clause (c) therein. This clause further specifically ousts the jurisdiction of other courts to entertain any such suit, proceeding, or application or to deal with such a claim or question.

8. Section 34 of the said Act deals with appeal and the same being relevant is also reproduced below :

"34. Appeal

(1) Notwithstanding anything contained in any law for the time being in force, an appeal shall lie

(a) In Brihan Mumbai, from a decree or order made by the Court of Small Causes, Mumbai, exercising jurisdiction under section 33, to a bench of two Judges of the said Court which shall not include the Judge who made such decree or order;

(b) elsewhere, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887, or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 33 or by a Civil Judge exercising such jurisdiction, to the District Court:

Provided that no such appeal shall lie from,

(a) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908;

(b) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent in respect of any premises and the amount or value of the subject matter of which does not exceed

(i) where such suit or proceeding is instituted in Brihan Mumbai -Rs. 10,000; and

(ii) where such suit or proceeding is instituted elsewhere, the amount upto which

the Judge or Court specified in clause (b) is invested with jurisdiction of a Court of Small Causes, under any law for the time being in force;

(c) an order made upon an application for fixing the standard rent or for determining the permitted increases in respect of any premises except in a suit or proceeding in which an appeal lies;

(d) an order made upon an application by a tenant for a direction to restore any essential supply or service in respect of the premises let to him.

(2) Every appeal under sub-section (1) shall be made within thirty days from the date of the decree or order, as the case may be: Provided that, in computing the period of limitation prescribed by this sub-section the provisions contained in sections 4, 5 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.

(3) No further appeal shall lie against any decision in appeal under sub-section (1).

(4) Where no appeal lies under this section from a decree or order in any suit or proceeding in Brihan Mumbai, the bench of two Judges specified in clause (a) of sub-section (1) and elsewhere, the District Court, may, for the purpose of satisfying itself that the decree or order made was according to law, call for the case in which such decree or order was made and the bench or court aforesaid or the District Judge or any Judge to whom the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit."

The order passed by the Court of Small Causes under clause (b) of sub-section (1) of Section 33 or by the Court of Civil Judge, Junior Division or Civil Judge, Senior Division, as the case may be, under clause (c) of sub-section (1) therein can be challenged by filing an appeal to the District Court as provided under Clause (b) of sub-section (1) of Section 34. Sub-section (3) of Section 34 bars any further appeal against the decision of the District Court in appeal under sub-section (1).

9. Section 37 of the said Act deals with the Procedure of Courts and it is reproduced below:

"37. Procedure of Courts

The Courts specified in sections 33 and 34 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them."

The Courts specified in Section 33 and 34 have to follow the prescribed procedure in trying and hearing the suits, proceedings, applications and appeals and in executing orders made by them. Section 7(11) of the said Act defines the word "prescribed" and Section 7(13) defines the word "rules" as under :

"Section 7(11) - "prescribed" means prescribed by rules."

"Section 7 (13) - "rules" means the rules made under this Act."

It is not in dispute that no rules are framed under the said Act prescribing procedure to be followed by the courts specified in Sections 33 and 34 of the said Act in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them. Hence, the provision of Section 37 of the said Act is inoperative.

10. Regular Civil Suit No. 78 of 2004 was filed at Gadchiroli, where the Court of Small Causes under the Provincial Small Cause Courts Act, 1897 was not established. Obviously, it was not entertained, tried and decided by the Court of Small Causes. The suit in question was also not entertained, tried and decided by the Court of Civil Judge, Junior Division, conferred with the power of the Small Causes Court as contemplated by Section 28 of the Bombay Civil Courts Act. The suit in question was entertained, tried and decided on 28-4-2006 by the Civil Judge, Junior Division having ordinary jurisdiction, which is neither the "Court of Small Causes", as contemplated under clause (b) of sub-section (1) of Section 33 nor the Court which is "deemed to be the Court of Small Causes", as contemplated by clause (c) of sub-section (2) of Section 33 of the said Act. Regular Civil Appeal No. 37 of 2006 was entertained, tried and decided by the District Judge, under clause (b) of sub-section (1) of Section 34 of the said Act. The same Court entertained and allowed Review Petition, i.e. Misc. Civil Application No. 16 of 2007, invoking power under Section 114 read with Order XLVII, Rule 1 of the Civil Procedure Code. The question involved is about the power to review the judgment delivered by the Court of Appeal under Section 34 of the said Act.

11. Shri Kukday has invited my attention to Section 17 of the Provincial Small Cause Courts Act, 1887, to urge that the procedure to decide the suit filed under the Maharashtra Rent Control Act is governed by it and hence, the said provision is reproduced below:

"17. Application of the Code of Civil Procedure

(1) The procedure prescribed in the Code of Civil Procedure, 1908 (5 of 1908), shall, save insofar as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realised in manner provided by section [145] of the Code of Civil Procedure, [1908 (5 of 1908)]."

It is urged by the learned counsel that the proviso below sub-section (1) of Section 17 confers a power of review upon the Court of Small Causes, and hence, the District Court being the Appellate Court under Section 34 of the Maharashtra Rent Control Act, 1999 shall also carry the same power of review on the principle that the Appellate Court is competent to exercise all such powers, which the Court of original jurisdiction has under the Statute. The contention is, therefore, rejected.

12. It is not possible to accept the aforesaid argument based upon the Section 17 of the Provincial Small Cause Courts Act for the reason that in the present case, the matter has neither been decided by the "Court of Small Causes" under clause (b) of sub-section (1) of Section 33, nor by the "Court deemed to be a Court of Small Causes", as contemplated under clause (c) of sub-section (2) of Section 33 of the Maharashtra Rent Control Act. The procedure to entrain, try and decide the suit in question was, therefore, not governed by the provisions of Section 17 of the Provincial Small Cause Courts Act. The power of review contemplated under proviso to sub-section (1) of Section 17 therein was, therefore, not available to the Court of Civil Judge, Junior Division exercising ordinary jurisdiction. Consequently, the District Court exercising appellate jurisdiction under Section 34 of the Maharashtra Rent Control Act was not competent to exercise the power of review available under the proviso to sub-section (1) of Section 17 of the Provincial Small Cause Courts Act.

13. In response to the expression of the aforesaid view, it is urged by Shri Kukday, the learned counsel for the landlords, that in terms of clause (c) of sub-section (1) of Section 33, it is the Court of ordinary jurisdiction constituted under Section 21 of the Bombay Civil Courts Act, 1869, which is empowered to entertain, try and decide the suit and the District Court constituted under Section 5 therein is empowered to hear and decide the appeals under clause (b) of sub-section (1) of Section 34 of the Maharashtra Rent Control Act. He, therefore, submits that the procedure to be followed by the Civil Judge, Junior Division exercising ordinary jurisdiction and the District Court exercising appellate jurisdiction is therefore, governed by the provisions of the Code of Civil Procedure. He further submits that once the Code of Civil Procedure is held applicable, then the power of review contained under Section 114 read with Order XLVII, Rule 1 of the Code becomes available not only to the Court of ordinary jurisdiction, but also to the Appellate Court under Section 34 of the Maharashtra Rent Control Act. The reliance is placed upon the decision of the Apex Court in *ITI Ltd. v. Siemens Public Communications* cited supra. It has been held in the said decision that the exclusion of applicability of the provisions of Code of Civil Procedure cannot be readily inferred and the power of appeal conferred shall carry with it the power of review contained under the Code.

14. Clause (b) of sub-section (1) of Section 33 of the Maharashtra Rent Control Act specifically confers the jurisdiction upon the Civil Court of ordinary jurisdiction to entertain and try any suit or proceeding between a landlord and a

tenant relating to recovery of rent or possession of any premises and to decide any application made under the said Act. The said provision further states that no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such a claim or question. It, therefore, becomes very clear that but for the provision of clause (c) of sub-section (1) of Section 33 of the said Act, the ordinary jurisdiction of the Civil Court under the provision of Section 21 of the Bombay Civil Courts Act to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises is expressly barred. Similarly, but for the provision of clause (b) of sub-section (1) of Section 34 of the said Act, the District Court shall not be a Court of appeal as provided in Section 8 of the Bombay Civil Courts Act, to entertain an appeal against any order passed by the Civil Court conferred with the jurisdiction under clause (c) of sub-section (1) of Section 33 of the said Act. Hence, the ordinary jurisdiction of the Civil Court and the appellate jurisdiction of the District Court becomes available only by virtue of the provisions of Sections 33 and 34 of the Maharashtra Rent Control Act and the said Courts are not exercising the jurisdiction available to them under the provisions of the Bombay Civil Courts Act.

15. The Code of Civil Procedure not only contains the procedural requirements of law but also contains the substantive provisions conferring right upon the parties and the jurisdiction upon the Courts established in hierarchy under the provisions of the Bombay Civil Courts Act. No doubt, that the procedure in the Court of Civil Judge, Junior Division, or the Court of Civil Judge, Senior Division, exercising ordinary jurisdiction to decide any suit or proceeding under clause (b) of sub-section (1) of Section 33 under the Maharashtra Rent Control Act, and the District Court exercising appellate jurisdiction under clause (b) of sub-section (1) of Section 34 therein to decide appeal, would be governed by the provisions of the Code of Civil Procedure. However, it does not follow that by virtue of it, the substantive provisions contained in the Code of Civil Procedure also becomes available and the right and/or jurisdiction conferred therein becomes available either to the parties or to the Courts. Once it is held that the Civil Court of ordinary jurisdiction or the District Court of appellate jurisdiction becomes available only by virtue of Sections 33 and 34 of the Maharashtra Rent Control Act, it cannot invoke the power of review under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure unless it is so specifically conferred upon it by the provisions of the Maharashtra Rent Control Act.

16. The position of law in respect of power to review the judgment and order passed by the Court is well-settled in various decisions of the Apex Court, which have been followed by this Court in two decisions -(i) in the case of Shikshan Prasarak Mandal delivered by the Full Bench of this Court, cited *supra*, and (ii) in the case of Kausalyabai delivered by the learned Single Judge of this Court, cited *supra*. The power of review is not inherent and it has to be specifically conferred by the Statute, and in the absence of such conferment, it cannot be exercised. The Court or the Tribunal does not remain in seisin of the matter once it has

been decided. There is no dispute in the present case that there is no provision contained in the Maharashtra Rent Control Act conferring power of review either upon the Court of Civil Judge, Junior Division, or the Court of Civil Judge, Senior Division exercising the ordinary jurisdiction under clause (b) of sub-section (1) of Section 33, or upon the District Court exercising the appellate jurisdiction under clause (b) of sub-section (1) of Section 34 of the said Act. The learned District Judge has, therefore, committed an error of law in travelling beyond the scope of her jurisdiction in review of the judgment delivered by her earlier.

17. So far as the decision of the Apex Court in the case of ITI Ltd., cited supra, relied upon by Shri Kukday, the learned counsel for the landlords, is concerned it pertains to the supervisory jurisdiction of the High Court under Section 115 of the Code of Civil Procedure, which is available over the courts subordinate to the High Court. Further, the decision of the Apex Court turns upon the fact of existence of the provisions of Section 37(1) contained under the Arbitration and Conciliation Act, 1996 read with sub-section 2(b) therein, which refers to an appeal to a "Civil Court", as defined therein to mean the principal of civil court of any district and includes in exercise of ordinary jurisdiction, but excluding any Court of Small Causes. In the light of this position the Apex Court has held that the exclusion of the applicability of the Code of Civil Procedure is not to be readily inferred. The jurisdiction of the High Court under Section 115 of the Code of Civil Procedure is quite different from the jurisdiction of appeal under Section 34 of the Maharashtra Rent Control Act. Further, the appeal under Section 34 therein is not to the "Civil Court", similar to one constituted under Section 37(1) of the Arbitration and Conciliation Act. The decision is, therefore, not applicable to the facts of the present case.

18. In the decision of the Apex Court in the case of Kapra Mazdoor Ekta Union, cited supra, a distinction is made between procedural review, which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under misapprehension by it and a review on merits, when the error sought to be corrected is one of law and is apparent on the face of the record. After referring to the decision of the Apex Court in the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, AIR 1981 SC 606 : (1981) 42 FLR 88 : (1981) 1 LLJ 327 : (1981) 2 SCR 341 : (1981) 1 SLJ 510 : (1981) 13 UJ 42 , the Apex Court has held in para 19 as under :

"19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein.

Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal* it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

The aforesaid decision clearly spells out the cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice has been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, as some of the illustrative cases in which the power of procedural review may be invoked. The Court further holds that in such cases, the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify the review. This is not the situation in the present case. The lower Appellate Court has set aside its own judgment upon review on the ground that there was an error of law apparent on the face of the record in deciding the appeal earlier on 23-3-2007. It is, therefore, not a case of procedural review, but it is a case of exercise of substantive power of review by the lower Appellate Court, which was not available with it. The order is, therefore, without jurisdiction.

19. In the result, the writ petition is allowed. The judgment and order dated 25-2-2008 passed by the Lower Appellate Court allowing Misc. Civil Application No. 16 of 2007, is hereby quashed and set aside, and the judgment and order dated 23-3-2007 passed in Regular Civil Appeal No. 37 of 2006, is restored. Needless to say that it shall be open for the landlords to challenge the judgment and order dated 23-3-2007 passed in Regular Civil Appeal No. 37 of 2006 by filing separate writ petition, if it is so permissible in accordance with law, and this

judgment and order shall not come in the way of the parties.