
(1992) 12 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 227 of 1985

S.K. Palaniappah Kandaiswami Gonder and Another	APPELLANT
Vs	
Superintending Engineer, M.S.E.B., Karad and Another	RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1

Citation : (1994) ACJ 231 : (1993) 1 BomCR 350

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : A.R. Kudroli, for the Appellant; A.R.S. Baxi, for the Respondent

Final Decision : Allowed

Judgement

A.V. Savant, J.—This is an Appeal by original opponents Nos. 2 and 3 viz. the owner of the truck and the insurer thereof against whom there is an order in favour of the first respondent (original claimant) awarding Rs. 42,000/- by way of compensation with future interests at the rate of 10% per annum from the date of application, that is to say from 2nd July 1983 till the realisation alongwith the costs of the application. This order was passed on 19th October 1984 by the Motor Accident Claims Tribunal, Sangli, in Motor Accident Claim No. 40 of 1983. The relevant facts may be stated as under:

2. On 3rd January, 1983 the officers of the Maharashtra State Electricity Board (for short, the M.S.E.B.") were proceeding in an ambassador car, belonging to the M.S.E.B., bearing registration No. MTT 6431 from Karad to Kolhapur, that is to say from North to South. At the same time, that is to say at about 1.00 p.m., the truck belonging to the first appellant bearing registration No. CAA 2299 was coming from Kolhapur and was proceeding to Karad, that is to say from South to North. The 2nd respondent in this appeal is the original opponent No. 1 in the Tribunal, who was the driver of the truck at the relevant time. The case of respondent No. 1 claimant is that the truck was, being driven in a rash and negligent manner and it came to the wrong side of the road and dashed against

the ambassador car in which the officers of the M.S.E.B. were travelling. As a result of this accident, the entire right hand side of the ambassador car was extensively damaged and the M.S.E.B. had to spend Rs. 42,000/- for repairing the said car.

3. On 2nd July 1983 the claimant filed the application u/s 110-A of the Motor Vehicles Act, 1939 initially claiming a sum of Rs. 30,000/- as compensation. This was on the basis of the estimated cost of repairs which were then in progress. On 21st January 1984 the owner of the truck and its driver filed written statement denying the contents of the statement of claim and in particular, the contents of para 22, which set out the claimant's version of the accident. In the written statement the allegation that the truck was being driven in a rash and negligent manner on the wrong side of the road was denied. It was, on the contrary, alleged that the truck was being driven on the proper side of the road at a reasonable speed in accordance with the relevant rules and that it was the claimant's ambassador car which was being driven in an excessive speed and also in a rash and negligent manner. Appellant No. 1 and his driver further contended that the accident occurred as a result of negligence and rashness on the part of the driver of the claimant's ambassador car and not as a result of any rashness or negligence on the part of the driver of the truck. The claim of Rs. 30,000/- was also denied on the ground that it was an exaggerated sum.

4. On 3rd February, 1984 an application was made by the owner of the truck and the driver of the truck seeking to join the Insurance Company, present appellant No. 2, as a party to the proceedings. This application was granted on 9th March 1984 and the present appellant No. 2 Insurance Company came to be added as original opponent No. 3 in the proceedings in the Tribunal. Issues were framed on the 23rd July 1984 and 30th August 1984 was the date fixed for hearing. On this day, the original claimant preferred an application for enhancing the claim from Rs. 30,000/- to Rs. 42,000/- on the ground that the repairs were completed by them and on the basis of certain bills and vouchers the costs of repairs was Rs. 42,000/- and hence, liberty was sought to amend the claim by enhancing it from Rs. 30,000/- to Rs. 42,000/-. This application was granted on the same day viz. 30th August 1984 and what has happened immediately thereafter has given rise to the controversy in this appeal.

5. Immediately upon the amendment being granted, the learned Member of the Tribunal passed the following order on the same day:

"Heard Mr. Kshirsagar for the applicant and Mr. Wagh, Advocate, for opponents Nos. 1 and 2.

As the claim is of Rs. 42,000/-, I direct that parties should lead evidence by Affidavits.

Sd/- 30-8-1984

There is no controversy before me that there was no application made by either

of the parties for dispensing with the requirement of leading oral evidence, which would have been the normal manner of leading evidence at the trial and that the evidence should be led in the form of affidavits alone. Prima facie, the order dated 30th August, 1984 seems to have been passed without giving the parties a sufficient opportunity of being heard on the question as to whether the provisions of Order XIX of the Code of Civil Procedure, 1908 could be attracted in the facts of the present case.

6. It appears that pursuant to the above order of 30th August, 1984, the claimant filed affidavits of the persons who were travelling in the said ambassador car viz. Prakash Gopal Phasalkar, Accounts Officer of the M.S.E.B., whose affidavit is at Exh. 27, Kallappa Annappa Goutri, the Executive Engineer who was travelling in the said car, whose affidavit is at Exh. 28 and B.H. Kakade, driver of the ambassador car, whose affidavit is at Exh. 29. Another affidavit of Vasant Gopal Dhande, who was working in the Central Workshop, Chinchwad, was filed at Exh. 30 in respect of the repairs to the car.

7. On behalf of the present appellant No. 1, an affidavit of Advocate Shri Mukund Dwarkanath Wagh has been filed at Exh. 34. Advocate Wagh states that he had sent the draft affidavit for being sworn by appellant No. 1 and his driver, but it appeared that due to a bona fide mistake the draft affidavit was sent back after it was merely signed without there being any affirmation. The said signed statement of the first appellant and his driver was filed alongwith the affidavit at Exh. 38. Exhibit 40 is the panchanama dated 3rd January 1983. Exhibit 41 is the letter from the Executive Engineer, Central Workshop, Chinchwad, to the Superintending Engineer, M.S.E.B., Karad, giving the details of the costs of repairs which was worked out at Rs. 41,955.96 in respect of which the claim has been rounded upto Rs. 42,000/-.

8. The learned Member of the Tribunal accepted the affidavits filed on behalf of the first respondent claimant. The affidavits are obviously of the three persons who were travelling in the ambassador car and were themselves the injured persons viz. Exh. 27 of Phasalkar, Exh. 28 of Goutri and Exh. 29 of driver Kakade. Relying upon the evidence in the form of these three affidavits, the learned Member came to the conclusion that it was proved that the accident had occurred as a result of the rash and negligent driving of the Truck No. CAA 2299 belonging to the first appellant. It was further held that the driver of the ambassador car was not negligent. The learned Member further held that in view of the affidavit of Dhande at Exh. 30 and the letter Exh. 41 specifying the details of the costs of repairs, the claimant was entitled to a sum of Rs. 42,000/-. Accordingly, claim has been decreed as stated above.

9. Mr. Kudroli, learned Counsel appearing on behalf of the appellants, has raised certain contentions which deal with the practice and procedure adopted in the Motor Accident Claims Tribunal prior to the repeal of the Bombay Motor Vehicle Rules, 1959, which were substituted by the Maharashtra Motor Vehicle Rules, 1989, which have been published on 22nd June, 1989. At the relevant time, the

trial was under the 1959 Rules. Mr. Kudrolli's contentions can be summed up as under:

(A) The Motor Accident Claims Tribunal is a creature of statute by virtue of the Amending Act No. 100 of 1956, which came into force on 15th February, 1957. It was for the first time under the said amending Act No. 100 of 1956 that the Motor Accident Claims Tribunal was established. By a further amendment, by amending Act No. 56 of 1969, which came into force on 2nd March, 1970, the claim in respect of damage to property was permitted to be included as a claim before the Tribunal. Mr. Kudrolli, therefore, contends that the Tribunal is not a Civil Court in the strict sense of the term, but is a special creature of the statute.

(B) Section 100-B of the Motor Vehicles Act, 1939 contemplate that on receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 109-B may make an award determining the amount of compensation which appears to be just. Section 110-C lays down that in holding any inquiry u/s 110-B, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. It is true that sub-section (2) of section 110-C provides that the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for other purposes as may be prescribed. Section 111 confers power on the Central Government to make rules. Whereas section 111-A confers power on the State Government to make rules. Clause (b) of section 111-A deals with the rules in respect of the procedure to be followed by the Claims Tribunal in holding an inquiry under the Chapter and Clause (c) deals with the powers vested in a Civil Court which may be exercised by the Claims Tribunal.

(C) Mr. Kudrolli then invited my attention to the provisions of Rule 294 of the Bombay Motor Vehicles Rules, 1959 which deal with the powers vested in the Civil Court which may be exercised by the Claims Tribunal. It is no doubt true that under Clause (a) of sub-rule (1) of Rule 294 the Claims Tribunal constituted by the State Government u/s 110 may exercise all or any of the powers vested in a Civil Court under certain provisions such as sections 30 and 151 of the CPC 1908. Mr. Kudrolli then invited my attention to Rule 295 which states that on receipt of an application under Rule 291, the Claims Tribunal may examine the applicant upon oath, and the substance of such examination shall be reduced to writing and shall be signed by the member constituting the Tribunal or as the case may be, the Chairman. Rule 301 deals with the method of recording the evidence. Rule 310 deals with the procedure to be followed by the Claims Tribunal for holding inquiries and sub-rule (1) of Rule 310 makes certain provisions of the Code of Civil Procedure, 1908 applicable to the proceedings before every Claims Tribunal. However, it is relevant to note that in the long list

of provisions under Clauses (a) and (b) of sub-rule (1) of Rule 310 there is no mention of Order XIX of the Code of Civil Procedure. Mr. Kudrolli contends that the new rules viz. The Maharashtra Vehicles Rules, 1989 specifically make a mention of Order XIX of the CPC being applicable to the inquiries before the Claims Tribunal. Rule 276 of the 1989 Rules is similar to Rule 310 of the 1959 Rules and, according to the learned Counsel, it is of some significance that now in the 1989 Rules there is a specific mention of the provisions of Order XIX of the CPC being made applicable to the proceedings before the Claims Tribunal.

(D) In view of the above provisions, Mr. Kudrolli contends that, in the first place, it was obligatory on the part of the Claims Tribunal to have recorded the evidence of the witnesses and it was not permissible for the Tribunal to resort to an order directing the filing of mere affidavits. He contends that the provisions of Order XIX could not at all be applicable to the inquiry before the Tribunal. Without prejudice to the above contention, Mr. Kudrolli contends that assuming that the provisions of Order XIX were to be invoked in a substantive inquiry under the Motor Vehicles Act, Rule (1) of Order XIX requires the recording of sufficient reasons for passing an order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read at the hearing on such conditions as the Court may think reasonable. It is necessary to reproduce the Order XIX of the CPC which reads as under:

ORDER XIX

AFFIDAVITS

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

3. (1) Affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same."

(E) Mr. Kudrolli, further, contends that except mentioning that the claim was of Rs. 42,000/-, there is no other reason given in the order dated 30th August, 1984 that the parties should lead evidence on affidavits. It further appears that the proviso to rule (1) of Order XIX has not even been considered. The proviso says that where it appears to the Court that either parties bona fide desire the production of witness for cross-examination and that such witness can be produced, the order shall not be made authorising the evidence of such witness to be given by affidavit. Mr. Kudrolli has invited my attention to a decision of this Court in the case of Shamsunder Rajkumar Vs. Bharat Oil Mills, , where the procedure for passing an order for recording evidence in the form of affidavits has been elaborated. He has then invited my attention to a decision of the Gujarat High Court in the case of Bai Zabu Khima Vs. Amardas Balakdas, . This was a case of proceedings under the Succession Act, 1925 and it was observed that in case there was no contest to the application for probate or letters of administration, the court may, following the procedure under Order XIX, Rule 2 allow evidence to be given by affidavits and acting on such evidence, grant the relief. But where a contention was raised against the grant of probate or letters of administration and the case become a contentious one, this procedure cannot be followed.

(F) Mr. Kudrolli has also invited my attention to a recent decision of the Gujarat High Court in the case of Gagubhai and Others Vs. Goswami Bhikhu Gangaram, . It appears that in the State of Gujarat there is a rule that in case the claim was exceeding Rs. 25,000/-, the Tribunal has to follow the procedure laid down in the CPC for trial of suits. Despite the fact that the claim was for Rs. 75,000/-, the Tribunal had followed the procedure of deciding the claim on mere affidavits. The Division Bench of the Gujarat High Court set aside the award.

(G) Finally, Mr. Kudrolli contended that the affidavits filed are not in accordance with the mandate of Rule 3 of Order XIX requiring the deponent to specify which of the portion of the affidavit was true to his own knowledge and which was true to his belief. Though the affidavits mainly relate to the accident, there are also statements on the question of claim for damages or compensation. However, the affirmation clause is as in many cases, a one-line clause.

10. As against this, Miss Baxi appearing on behalf of the first respondent claimant has contended that sub-section (2) of section 110-C contemplates that the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and enforcing the attendance of witnesses. She then relies upon the provisions of Rule 294 and sub-rule (2) in particular. While Clause (a) of sub-rule (1) of Rule 294 makes the provisions of section 30 and section 151 of the CPC applicable, sub-rule (2) of rule 294 says that for the purposes other than those specified in sub-rules (1), the Claims Tribunal may exercise all or any of the powers of the Civil Court as may be necessary. Rule 294 may be reproduced below for ready reference:

"294. Powers vested in Civil Court, which may be exercised by Claims Tribunal:

(1) Without prejudice to the provisions of section 110C---

(a) every Claims Tribunal constituted by the State Government u/s 110 may exercise all or any of the powers vested in a Civil Court under the following provisions of the Code of Civil Procedure, 1908, in so far as they may be applicable, namely:

Sections 30, 32, 34, 35, 34A, 75(a) and (c), 76, 77, 94, 95, 132, 133, 134, 145, 147, 148, 149, 151, 152 and 153: and

(b) and subject to the provisions of section 110 E---

(i) any Claims Tribunal constituted for Greater Bombay, where the amount of compensation awarded by it does not exceed Rs. 50,000 shall have all the powers of the City Civil Court and, where such amount exceeds Rs. 50,000 shall have all the powers of the High Court, for the purpose of execution of the award, as if the award, is a decree for the payment of money made in a suit by the City Civil Court or the High Court, as the case may be:

(ii) any Claims Tribunal constituted for any area outside Greater Bombay shall have all the powers of the Court of Civil Judge (Senior Division) for the purpose of execution of any award for compensation made by it, as if the award is a decree for the payment of money made in a suit by such Court.

(2) For purposes other than those specified in sub-rule (1), the Claims Tribunal may exercise all or any of the powers of Civil Court as may be necessary in any case for discharging its functions under the Act and these rules."

11. Miss Baxi further contends that under Rule 311 the Claims Tribunal may follow such a summary procedure as it thinks fit in case of a minor accident. It is not, however, clear as to what are the norms or guidelines for deciding as to which is a case of minor accident. Miss Baxi was, therefore, not able to elaborate this submission. But her contention is that having regard to the background of the setting up of the Claims Tribunals and the desirability of speedy disposal of such disputes, filing of affidavits should be encouraged rather than be discouraged. At this stage, it must be borne in mind that the 1959 Rules have now been substituted by the 1989 Rules and under Rule 276 of the 1989 Rules provisions of Order XIX of the CPC have been specifically made applicable.

12. Miss Baxi further contends that under Rule 310 though there is no specific reference to the provisions of Order XIX of the CPC in the long list of provisions contained in Clauses (a) and (b) of sub-rule (1) of Rule 310, the concluding portion of Clause (b) of sub-rule (1) of Rule 310 of the 1959 Rules reads as under:

"In so far as the Act and these rules make no provision or make sufficient provision, the relevant provisions of the Code of Civil Procedure, 1908, shall so far as may be, apply to the proceedings before the Claims Tribunal".

In the light of this provision, Miss Baxi wants to rely upon the provisions of

section 30, Clause (c) and section 151 of the Code of Civil Procedure. Under Clause (c) of section 30 the Court may at any time either on its own motion or on the application of any party order any fact to be proved by affidavit. Section 151 deals with the inherent powers of the Court. Miss Baxi, therefore, contends that though it may be true that Order XIX has not been specifically mentioned in sub-rule (1) of Rule 310, by virtue of the concluding portion of Clause (b) of sub-rule (1) of Rule 310, resort can be had to the powers u/s 30 and section 151 of the Code of Civil Procedure.

13. I have heard Mr. Kudrolli and Miss Baxi at some length since both of them desired a decision on all the contentions raised by them. In my view, however, it is not necessary to decide all the above mentioned contentions in this Appeal. Having regard to the scheme of the provisions of the Motor Vehicles Act, 1939 and the Bombay Motor Vehicles Rules, 1959 which were applicable at the time the trial was in progress, it is doubtful whether the provisions of Order XIX of the CPC could have been invoked and made applicable in the present case. It is not even necessary to decide this question since assuming for the sake of the argument that the provisions of Order XIX of the CPC were applicable, in my view, the Appeal can be disposed of on the narrow point of the failure to comply with the mandate of Rule 1 of Order XIX of the Code of Civil Procedure. As stated earlier, the issues were framed on 23rd July 1984 and 30th August 1984 was the date fixed for hearing. On this day, the claimant moved an application for enhancement of claim from Rs. 30,000/- to Rs. 42,000/-. This was granted. Immediately thereafter, the learned Member has passed the order quoted above in para 5 which apparently is a suo motu order in the absence of any application or record, directing that since the claim was for Rs. 42,000/- the parties should lead evidence by affidavits. Reverting to the provisions of Rule 1 of Order XIX, it is clear that the Court has to record sufficient reasons that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read at the hearing on such conditions as the Court thinks reasonable. Proviso to Rule 1 is also important since where it appears to the Court that either party bona fide desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit. This would, therefore, contemplate an initial inquiry even as to whether an order under Rule 1 of Order XIX can be passed. No opportunity has been given to the parties and Mr. Kudrolli is justified in making a grievance that the whole procedure was hurried through on the 30th August, 1984 culminating in the passing of the order directing the parties to lead evidence by affidavits. The proviso to Rule 1 of Order XIX contemplates a prior inquiry of the kind mentioned therein, which has not been done in the facts of the present case. Excepting mentioning that the claim was for Rs. 42,000/-, no other reasons have been mentioned nor any conditions have been imposed.

14. Mr. Kudrolli is justified in placing reliance on the decision of this Court in *Shamsunder Rajkumar Vs. Bharat Oil Mills*, . This was a case where in a suit which was contested the defendants' Counsel prayed for adjournment on certain

ground, which prayer was granted. On the adjourned date, however, the defendants did not appear but a request was made that commission be issued for examining the ailing witness. That application was rejected and an ex-parte decree was passed against the defendants. In challenging the said decree, a question arose whether evidence could be led in the form of affidavit. The Court observed in para 11 of the judgment, at page 40 of the Report as under:

"(11) What evidence means and includes is described in section 3 of the Indian Evidence Act, but affidavits are not included within that description. On the contrary, affidavits have been expressly excluded by section 1 of the Indian Evidence Act from the applicability of that Act. That means that affidavits cannot be used as evidence under any of the provisions of the Indian Evidence Act. Affidavits can however, be used as evidence, only under Order 19, of the Civil procedure Code. In accordance with Order 19, Rule 1, of the Civil Procedure Code, the Court has, for sufficient reasons, to pass an order that any particular fact or facts may be proved by affidavit. That would mean that affidavit evidence cannot be entertained unless the Court passes an order, for sufficient reasons, that any particular fact or facts may be proved by affidavits. While passing an order under Order 19, Rule 1 to call for evidence on affidavits, it is necessary to consider compliance with the proviso to Rule 1 and with the requirements of Rule 2 under Order 19, as the circumstances of each case may require, I would also like to point out the decision in *Kanhaiyalal v. Meghraj*, ILR 1954 Nag. 603: AIR 1954 Nag 260 wherein it was held that in cases where affidavits are filed in support of applications and are received by the court, the order receiving the affidavit is tantamount to passing an order under Order 19, Rule 1, of the CPC and complies with the law. When an affidavit is filed, the Court official receiving it ought to see that it is properly drawn up and verified as per order 19, Rule 3, of the CPC and the instructions in Chapter XXIII, Civil Manual, Volume I. If it is not properly drawn up or verified, it ought not to be received and the parties should be required to file a proper affidavit. A judge ought not to act upon an affidavit which is not properly drawn up and verified in accordance with the requirements explained in the rulings cited supra."

15. Similarly, a Division Bench of the Gujarat High Court had occasion to consider the circumstances in which the provisions of Rule 1 of Order XIX of the CPC can be invoked. In the case of *Bai Zabu Khima Vs. Amardas Balakdas*, , *Bhagwati, J.*, (as he then was) observed in para 4 of the judgment at page 218 of the Report as under:

"There can be no doubt that when a case is a non-contentious one, the Judge hearing an application for probate or letters of administration can act on affidavits. Order 19, Rule 2 of the CPC provides that upon any application evidence may be given by affidavit, but the Court may at the instance of either party, order the attendance for cross-examination of the deponent. The Judge hearing an application for probate or letters of administration may, therefore, allow evidence to be given by affidavits and acting on such evidence given by

affidavits, grant probate or letters of administration. But where a contention is raised against the grant of probate or letters of administration and the case becomes a contentious one, this procedure we are afraid, cannot be followed by the Judge."

16. I have ascertained from both the Counsel as to whether there is any rule in Maharashtra similar to the rule in Gujarat providing for trial by filing affidavits where the claim does not exceed a particular amount. Both Mr. Kudrolli and Miss Baxi have categorically stated that there is no such rule like the one which fell for consideration of the Division Bench in the case of Gagubhai and Others Vs. Goswami Bhikhu Gangaram, . The ratio of the said decision in Gagubhai's case clearly supports Mr. Kudroli's contention that in the facts of the present case there was no occasion for dispensing with the requirement of a trial by examination of the witnesses and resorting to the evidence in the form of affidavits alone. Admittedly, the order dated 30th August 1984 is not a consent order. What is worse is that no opportunity has been given to the parties to address the Tribunal on the question of the requirement of Rule 1 of Order XIX and in particular, the proviso of Rule 1 of Order XIX of the Code of Civil Procedure. On this ground alone, viz. failure to comply with the provisions of Order XIX, Rule 1, the order dated 30th August 1984 cannot be sustained. If that be so, interests of justice would require that the impugned order be set aside and the parties are given a fresh opportunity of leading their evidence at the trial. As stated earlier, this is not a case where the liability is admitted. As to what exactly happened on the date of the incident is a matter of serious controversy between the parties. The pleading shows that each side is trying to find fault with the other. There is also some substance in the contention of Mr. Kudrolli that there is lack of sufficient opportunity, both at the time of passing the order of 30th August 1984 and subsequent thereto, when the affidavits were accepted as gospel truth and a decree has been passed on the basis of the said affidavits.

17. Hence, in my view, the impugned order is liable to be set aside. The judgment and Order dated 19th October 1984 in Accident Claim No. 40 of 1983 is, therefore, set aside. The matter is remanded back to the Motor Accident Claims Tribunal, Sangli, for being disposed of in accordance with law. There will, however, be no order as to costs. Appeal allowed.

18. It is made clear that there is no expression of any opinion on the merits of the contentions of rival parties and the said contentions are kept open for being adjudicated at the trial.

19. Certified copy to be expedited.

20. Records & proceedings to be sent down forthwith.