(1968) 11 BOM CK 0022

Bombay High Court

Case No: Spl. Civil Application No. 396 of 1966

Ganpat and another		APPELLANT
	Vs	
Maharashtra Revenue Tribunal, Nagpur and others		RESPONDENT

Date of Decision: Nov. 25, 1968

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 74, 76, 76A
- Civil Procedure Code, 1908 (CPC) - Section 104, 115

Citation: (1969) MhLj 447

Hon'ble Judges: V.S. Deshpande, J; D.B. Padhye, J

Bench: Division Bench

Advocate: J.N. Chandurkar, for the Appellant; V.M. Kulkarni for Respondent No. 4 and Respondents Nos. 1 to 3 and 5 were not represented, for the Respondent

Judgement

V.S. Deshpande, J.

In this Special Civil Application the petitioners challenge the legality and the correctness of the order passed by the Full Bench of the Maharashtra Revenue Tribunal in their Revision No. 1113 of 1965 on 18th November 1965. The Special Civil Application was heard by our learned brother Abhyankar J. on 4th July 1968 and he has referred the following question to the Division Bench for decision as the view taken by Paranjpe J. on this point in his judgment dated 20th December 1966 in Special Civil Application No 1189 of 1965 and Special Civil Application No. 394 of 1966, was not acceptable to him. The question referred to, is as follows:-

Whether an order of the Tahsildar or the Tribunal is revisable u/s 110 of the new Tenancy Act, whether or not such order is appealable ?

2. It is not necessary to refer in details to the facts of the case. Suffice it to say that the proceedings out of which the Special Civil Applications arise were initiated by the present respondent No. 4 Ninaji son of Raghoji, claiming declaration u/s 100 (2) of

the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereinafter referred to as the Vidarbha Tenancy Act, to the effect that petitioners in these Special Civil Applications were not the tenants of the land survey No. 407 /4, situated at village Malkapur, Taluq Malkapur, District Buldana. The petitioners resisted the claim of the original applicant. However, the Naib-Tahsildar, Malkapur granted the declaration to the respondent No. 4 by his order dated 16th June 1904, holding that petitioners were not the tenants of the said suit land within the meaning of section 6 of the Vidarbha Tenancy Act. Petitioners then challenged this order of the Naib-Tahsildar in appeal before the Special Deputy Collector, Buldana, and their appeal was rejected by him on 23rd February 1965. Petitioners carried the matter in revision to the Maharashtra Revenue Tribunal in Revision Application No. 1113 /Ten /1965. In the meanwhile doubt seems to have been raised before the Maharashtra Revenue Tribunal in several cases as to the competency of the Tahsildar to entertain application for such declarations and also about the competency of any appeal against such order of the Tahsildar in such cases before the Special Deputy Collector and the competency of the revision against the order of the Deputy Collector to the Maharashtra Revenue Tribunal u/s 110 or 111 of the Tenancy Act. This matter therefore was referred to a Full Bench of the Maharashtra Revenue Tribunal and was heard along with some other revision cases including Revision Application No. 2244/64 and Revision Application No. 745/64. By order dated 18-11-1965 the Fall Bench of the Maharashtra Revenue Tribunal held that such applications for negative declarations were maintainable and Tahsildar was competent to decide the same. Maharashtra Revenue Tribunal, however, further held that no appeal was competent against such order to the Collector or the Deputy Collector as section 107 of the Vidarbha Tenancy Act did not in terms provide for any appeal against order passed by Tahsildar u/s 6 of the Act though in the corresponding Bombay Tenancy and Agricultural Lands Act, 1948, section 74 did in terms provide for an appeal against such order passed by the Mamlatdar. The Maharashtra Revenue Tribunal further held that revisional powers of the Collector u/s 110 could be exercised only against the orders passed by the Tahsildar in cases made appealable under flections 107 of the Vidarbha Tenancy Act and no revision was competent before the Collector, in the present case, as the order passed by the Naib-Tahsildar on 16-6-1964 was not appealable u/s 107 of the Tenancy Act. It is this order that is challenged in this Special Civil Application.

3. In this meanwhile, aggrieved parties in Revision Application No 2244/ 64 had preferred a Special Civil Application to this Court being Special Civil Application No. 1189/65 against the same order of the Maharashtra Revenue Tribunal dated 18-11-1965. Applicants in Revision No. 745 of 1964 had also preferred a Special Civil Application being Special Civil Application No. 394/66 against the same order of the Maharashtra Revenue Tribunal. Both these Special Civil Applications were beard by Paranjpe J. on 20th December 1966. Paranjpe J. confirmed the view of the Maharashtra Revenue Tribunal on all the points and consequently held that no

appeal was competent before the Collector or Deputy Collector against the order of the Mamlatdar giving negative declaration as to the tenancy claims of the tenants and as such the said order also was not revisable u/s 110 of the Tenancy Act as the revisional powers of the Collector u/s 110 are confined to only such orders which are rendered appealable u/s 107 of the said Act. As stated above, when the present Special Civil Application came up for hearing before Abhyankar J. on 4-7-1968, he did not find it possible to agree with the view of Paranjpe J. as far as the competency of the Collector to revise the order of the Tahsildar u/s 110 of the Tenancy Act is concerned. On other two points, however Abhyankar J. has concurred with views of Paranjpe J. Hence this reference by Abhyankar J. to this Division Bench on a limited question formulated by him and extracted in the earlier part of this judgment.

4. We, therefore, proceed to dispose of this question referred to us on the basis that order passed by the Naib-Tahsildar dated 16th June 1904 is not appealable, and that the order passed by the Special Deputy Collector on 23rd February 1965 can be said to have been passed by him in his revisional jurisdiction u/s 110 of the Tenancy Act in case we hold that Collector can revise the order of the Tahsildar without regard to whether the same is appealable u/s 107 of the Act. It is not disputed that revision to Maharashtra Revenue Tribunal u/s 111, in that event will be maintainable. After the judgment of Maharashtra Revenue Tribunal dated 18-11-1965, section 107 of the Tenancy Act has been now amended by Maharashtra Act No. 17 of 1966 and order passed to that effect u/s 6 of the Tenancy Act i. e. adjudicating the claim to the tenancy of any claimant is made specifically appealable by virtue of this amendment. For the purpose of recording our answer to the question formulated by Abhyankar J. it is not necessary to consider the effect of this amendment on the present controversy as the same is beyond the purview of the limited scope of the reference made to us. We may also add that notwithstanding the prayer for possession made by the respondent No. 4 in the residuary clause of his petition, the Courts below have proceeded in this case on the basis that the proceedings initiated by respondent No. 4 essentially are for claiming negative declaration of the petitioner not being the tenant of the suit land.

5. Section 110 of the Tenancy Act is as follows:-

(1) Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Commissioner or the State Government, at any time,-

(a) call for the record of any inquiry or the proceedings of any Tahsildar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Tahsildar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit:

Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Tahsildar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be beard.

(2) Where any order u/s 81 is made by an Assistant or Deputy Collector performing the duties or exercising the powers of the Collector or by an officer specially empowered by the State Government to perform the functions of the Collector under this Act, such order shall be subject to revision by the Collector and the provisions of sub-section (1) shall apply to the proceedings of the Assistant or Deputy Collector or officer concerned, as they apply to the proceedings of a Tahsildar or Tribunal.

6. Section 110 occurs in Chapter 10. Section 97 to section 116 of this Act deal with procedure and jurisdiction of Tribunal, Tahsildar and Collector, appeal and revision. Duties and functions of the Tahsildar are enumerated in section 100. Section 107 provides for the appeal against the order of the Tahsildar or Tribunal and only certain specific orders passed by them are made appealable. Sections 110 and 111 provide for the revisional powers. Parties aggrieved by any order of the Collector including the orders in appeal or revision, can approach the Maharashtra Revenue Tribunal u/s 111 of the Tenancy Act and Maharashtra Revenue Tribunal can revise the said order if any case, as contemplated in clauses (a) to (c) of sub-section (1) of the said section is made out. These revisional powers, however, can be invoked only by the aggrieved parties and Revenue Tribunal does not possess any jurisdiction to revise any order suo motu. Section 110, however, authorises the Collector to suo motu revise any order passed by the Tahsildar or the Tribunal if he considers so necessary or fit after sending for the records for the purpose of satisfying himself as to the legality or propriety of any order or as to the regularity of the proceedings before such Tahsildar or the Tribunal. Collector can also proceed to send for the records of the Tahsildar or Tribunal and revise the order if he so thought necessary if reference in this behalf is made by the Commissioner or the State Government. It is now well settled that suo motu revisional powers can also be invoked if attention of the Collector is drawn to some such errors even by any aggrieved party even though the section in terms does not refer to such powers being capable of being invoked at the instance of the aggrieved party. This power, however, is subject to two limitations contained in the proviso to sub-section (1) of section 110. First, limitation is that no record and proceedings can be sent for after the expiry of one year from the date of such order. Second limitation is that the order of the Tahsildar or the Tribunal cannot be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard. Next question is: Is this revisional power subject to any further limitation?

7. It is argued by Mr. Kulkarni, the learned Advocate for respondent No. 4, that the opening clause of sub-section (1) of section 110 introduces one more limitation on

the revisional powers of the Collector. Sub-section (I) of section 110 opens with the words, "where no appeal has been filed within the period provided for it". It is urged that clear implication of this clause is that Collector''s revisional powers can only be invoked in regard to such orders in which appeal can be filed by the aggrieved party. If the order of the Tahsildar or the Tribunal itself is not appealable u/s 107 of the Act or under any other section of the Act the question of filing any appeal within the period provided for it, does not arise at all, and such non-appealable orders cannot be revised by the Collector, otherwise this clause will be redundant and meaningless if it is held that Collector can revise any order of the Tahsildar or the Tribunal in exercise of the powers under this section without regard to whether the said order is appealable or not. This contention of the respondent found favour with the Maharashtra Revenue Tribunal and the same view commended itself to Paranjpe J. In support of his view, Paranjpe J. also relied on the judgment of the Supreme Court in the case of British India General Insurance Co. v. Itbar Singh A I R 1959 S C 1831. To our mind, the ratio of the judgment of the Supreme Court is, at any rate, not directly relevant for the decision of the point that has arisen in this case. But it roust be conceded that the interpretation sought to be placed on this opening clause of sub-section (1) of section 110 by Paranjpe J. cannot be said to be not possible. The basis of the entire approach is the implication of the plain wording of the above opening clause when it says that the Collector may call for the record of any enquiry or proceedings of any Tahsildar or the Tribunal, "where no appeal has been filed within the period provided for it".

8. Mr. Chandurkar, the learned Advocate for the petitioners, however, argues that this clause has the effect only of excluding such cases from the revisional jurisdiction of the Collector where in any appealable case, in fact, any appeal has been filed before the appellate authority and the same is pending. According to Mr. Chandurkar, the Collector can revise any order of the Tahsildar, whether appealable or not except in the case where the appeal is actually pending before the appellate authority and the error is capable of being corrected by the appellate authority in view of the pendency of the said appeal. Contention is that the errors of Tahsildar or Tribunal are always capable of being corrected by the appellate authority once the appeal is filed, and, therefore, Legislature wanted to exclude such pending cases from the scope of revisional powers of the Collector when the appeals were lodged before the appellate authority within time. According to Mr. Chandurkar, the clause "where no appeal has been filed within the period provided for it" only means that all other orders of Tahsildar and Tribunal are capable of being revised by the Collector excepting in the limited contingencies where the appellate authority is seized of the matter.

9. In our opinion, interpretation suggested by Mr. Chandurkar also is equally possible. In fact, the said interpretation has commended itself to Abhyankar J. We are also inclined to accept the same as in our opinion, the same is more sound and logical, and accords with the tenor of the section as a whole.

10. Comparison of the revisional powers of the Collector u/s 110 with the revisional powers of the High Court u/s 115 of the CPC will not be without some benefit to get a correct answer to the controversy raised in this case. Material portion of section 115 of the CPC reads as follows:

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) (b) (c) * * *

the High Court may make such order in the case as it thinks fit.

The clause "in which no appeal lies thereto" in section 115 is decisive and excludes all appealable orders from its purview. u/s 115, therefore, no appealable order is capable of being revised. Now, the clause, "where no appeal has been filed within the period provided for it" in sub-section (1) of section 110 of the Tenancy Act cannot be said to be as clear and unambiguous as "in which no appeal lies thereto". The scope of the revisional powers conferred u/s 110 on the Collector appears prima facie to be extremely wide, unfettered and unrestricted. One would expect a very strong, clear, unambiguous and compelling phraseology to exclude the non-appealable orders from its sweep and confine the scope of Collector''s such powers only to appealable orders. The true interpretation, therefore, of this opening clause of subsection (1) of section 110 to our mind is that appeal ability of the order has nothing to do with the rev inability of the same by the Collector in exercise of the powers conferred under this section and its effect must be limited only to such cases where the appeal is actually filed and is pending where the appeal is competent. Where however no appeal is competent or where appeal is competent but the same is not filed, Collector appears to be free to proceed to revise any order provided of course the other requirements of this section are satisfied.

11. It is worthy of note that section 76A of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Bombay Tenancy Act) is identically worded as sub-section (1) of section 110 of the Vidarbha Tenancy Act. In fact, section 110 (1) is verbatim-copy of section 76A of the Bombay Tenancy Act. Chapter 6 of the Bombay Tenancy Act is identically the same as Chapter 10 of the Vidarbha Tenancy Act, both of which deal with identical heading viz. Procedure and Jurisdiction of Tribunal, Mamlatdar and Collector; Appeals and Revision. When originally the Bombay Tenancy Act was enacted in 1948, section 76A was not there. This section was introduced for the first time in the Act by Bombay Act No. 38 of 1957. Even prior to the introduction of section 76A, aggrieved parties could have recourse to the revisional jurisdiction of the Maharashtra Revenue Tribunal u/s 76 of the Bombay Tenancy Act. There was, however, no section authorising the Collector or the Revenue Tribunal to exercise suo motu revisional powers to correct the illegality or impropriety in the orders passed by the Mamlatdar or the Tribunal or correct the

irregularity in the proceedings before them. The Legislature found it necessary to introduce section 76A in the statute with a view to meet certain ends and ensure that the underlined policy behind the Tenancy Act was duly implemented. No doubt, sweeping rights have been created in favour of the tenants, and aggrieved tenants can always get redress by preferring appeals and revisions as provided in this chapter. It is, however, clear that, apart from the landlords and tenants, the State is equally interested not only in implementing the policy behind the Tenancy Act but also in seeing that policy of the State is not affected either by the ignorance of the tenants or their indolence or their collusion with the landlords. It appears, with a view to meet such contingencies where the ignorant and helpless tenants could not avail of the remedies provided for them or with a view to avoid the policy of the enactment being defeated by the collusion between the landlord and the tenant, it was found necessary to confer such revisional powers on the Collector to initiate the proceedings suo motu wherever he himself comes to know of certain illegalities or improprieties or where his attention is drawn by some one else. The Vidarbha Tenancy Act, 1958, was brought on the statute book after Bombay enactment of 1948. The section 76A has therefore been copied verbatim in section 110 (1) of the Vidarbha Tenancy Act presumably with the same object. If this is the legislative history and if this is the object with which section 76A in Bombay Tenancy Act and corresponding section 110 sub-section (1) is brought on the statute book, this object can better be advanced by accepting the interpretation suggested by Mr. Chandurkar, particularly when both interpretations are found to be possible.

12. As observed by Abhyankar J. in his referring order, interpretation accepted by Revenue Tribunal and confirmed by Paranjpe J. is likely to lead to unintended and startling results. The enactment confers powers on the Tahsildar to puss orders in several contingencies and, many of his such orders are not made appealable. Some of his unappeasable orders are capable of producing sweeping consequences having a bearing on the policy of the State in regard to the tenancy legislation. It is inconceivable that Legislature could have contemplated to exclude all such orders from the sweep of the Collector''s revisional powers u/s 110 merely because they are not appealable u/s 107 of the Tenancy Act, In fact, non-appealability of such orders itself affords a strong ground why Legislature must be intended to have included all such orders within the sweep of the Collector''s revisional powers. It is true that merely because certain interpretation is capable of causing inconvenience and producing unjust results, the same cannot be a ground for interpreting a certain statute in a manner found convenient and just by the Court. Plain language of a statute must be given its due effect where the language is unambiguous and admits of no doubt. Where, however, as here, the language is doubtful and is capable of being interpreted more than one way, the same must be interpreted in such a way which will have the effect of suppressing the mischief and advancing the cause and the object for which the same was enacted. In this view of the matter, we are inclined to hold that the revisional powers of the Collector u/s 110 are not limited

only to orders that are made appealable u/s 107 of the Act but this power can be exercised by him suo motu without regard to whether the particular order is appealable or not.

13. Acceptance of Paranjpe J.''s interpretation would mean that the Legislature wanted the Collector to exercise his revisional powers only in appealable orders even when the aggrieved party could have availed of the remedy of appeal with a view to get his grievances redressed and has failed to do BO and slept over his rights, but the Legislature did not intend the Collector to come to the rescue of those who could not have appealed at all for want of appeal provision and who were forced to acquiesce in the injustice and wrong done to them under the order of the Tahsildar or the Tribunal even when such orders defeated the legislative policy. We do not think that there is any warrant for attributing any such intention to the Legislature.

14. This interpretation of ours, gains further strength from two more factors. Now the clause (a) of sub-section (1} of section 110 authorises the Collector suo motu to call for the record of "any" enquiry or the proceedings of any Tahsildar or Tribunal. Thus, the words, "record of any enquiry" are not restricted to the appealable orders when no appeal is filed implying that the powers of the Collector are not restricted or confined to call for the records of only "such enquiry", "where no appeal has been filed within the period provided for it". The absence of word "such" in this clause, to our mind, is not unintentional and affords a further clue to understand what precisely is meant by the opening clause of this section viz., "where no appeal has been filed within the period provided for it." It can only mean that there is no direct nexus between the case referred to in the opening clause of sub-section (1) "where no appeal was filed within the period provided for", and the powers of the Collector to send for the record of any enquiry. On the plain interpretation of clause (a), Collector''s power to call for the record of any enquiry is unrestricted without regard as to whether the said enquiry has actually resulted in an appealable order or not and whether appeal could, in fact, have been filed against any order passed in the said enquiry. Only limitation and restriction contemplated appears to be that records of any enquiry shall not be sent for where appeal is filed, and the opportunity to get redress has been, in fact, availed of within the prescribed period of limitation provided for it. This language of clause (a), therefore, also supports the interpretations suggested to us by Mr. Chandurkar.

15. Then power to send for the records or the proceedings of any Tahsildar or the Tribunal contemplated in clause (a) of sub-section (1) of section 110 is not confined to any particular kind of orders. Object of the sending for the records as specified in clause (a) is to satisfy the Collector "as to the legality or propriety of any order" and (b) "as to the regularity of the proceedings of the Tahsildar or the Tribunal". There is nothing in the language of clause (a) to suggest that such legality or propriety is required to be considered only in regard to the final orders passed in any

proceedings or that regularity of any proceedings before any Tahsildar or Tribunal can be examined by the Collector only after the said proceedings ultimately come to an end. The word, ''order'' is capable of being meant as any order whether interlocutory or final. It is true, in the context sometimes the word, ''order'' can only mean final order., and not any interlocutory order. But as stated above, that depends upon the context in which the word ''order'' is employed by the Legislature. In one context, it may mean the final order and yet in another context, it may mean any order whether interlocutory or final and whether appealable of non-appealable. The appealable orders are in term enumerated u/s 107 of the Act. A bare glance at the list of these enumerated orders will at once show that all these orders on the face of them appear to be final orders in regard to which the section authorises an appeal to the Collector. There is nothing in section 110 to restrict the meaning of the word ''order'' only to appealable orders. If the word is permitted to take its colour from the contest in which it is used u/s 110, it appears to us that this word ''order'' means any order whether interlocutory or final and whether appealable or non-appealable. The power to examine legality or propriety of the order passed by the Tahsildar or the Tribunal and the regularity of the proceedings before them is not restricted to depend on its appeal ability . appeal ability does not appear to be the necessary attribute of the orders passed by these authorities for the purposes of being revised by the Collector. Having regard to the object with which this section has been enacted and having regard to the nature of the revisional powers of the Collector contemplated under this section, it will not be open for the Courts to arbitrarily exclude some orders from the sweep of this section by some unnatural interpretation without any rhyme or reason.

16. Our attention has also been drawn to some observations of the Supreme Court in the judgment reported in Major S.S. Khanna Vs. Brig. F.J. Dillon, . These observations may not be directly relevant for the purposes of deciding the point that has arisen before us. These observations, however, can be of immense help and guide to correctly interpret the restrictive scope of the opening clause of section 110 of the Vidarbha Tenancy Act. The Supreme Court in the above case was called upon to interpret the words "any case" which has been decided by any Court- "in which no appeal lies thereto", in section 115 of the Civil Procedure Code. Relying on the two judgments of the Rajasthan High Court reported in Pyarchand and Others Vs. Dungar Singh, the scope of revisional powers u/s 115 was sought to be restricted only to such final orders passed by any subordinate Court against which no appeal lies. All other interim orders were sought to be excluded from its purview which could be corrected in appeal, preferred against the final order in the case made appealable either as a decree or an order under Order 43 read with section 104 of the Civil Procedure Code. This contention was negatived by the Supreme Court and the judgments of the Rajasthan High Court were overruled, holding firstly that the word ''case'' includes a part of a case or a suit, and even interlocutory orders can be revised by the High Court, provided the order raises a question of jurisdiction

contemplated in clauses (a) to (c) of section 115 of the Civil Procedure Code. The Supreme Court also further held that the words ''case in which no appeal lies'' do not warrant the interpretation that interlocutory orders capable of being corrected in the course of the appeal preferred against the final order are excluded from the revisional jurisdiction of the High Court. The expression ''in which no appeal lies thereto'' according to the Supreme Court is not susceptible of the interpretation that it excludes to exercise the revisional jurisdiction when an appeal may be competent from the final order. The use of the word ''no'' is not intended to distinguish orders passed in proceedings not subject to appeal from the final adjudication from those from which no appeal lies.

17. In the present case, we are called upon to restrict the revisional powers of the Collector by the opening clause of the said section "where no appeal has been filed within the period provided for it". Borrowing from the reasoning of the Supreme Court, in the above case, we can safely say that these words in the opening clause of the section were never intended to distinguish the appealable orders against which no appeal was filed within time, from the non-appealable orders which are sought to be excluded from his revisional jurisdiction. These words appear to be intended to distinguish orders in which appeal has actually been filed and all other orders in which no appeal is or could be filed,

18. Sub-section (2) of section 110 also gives further support to the above interpretation of ours. There is no such sub-section (2) in the corresponding section 76A of the Bombay Tenancy Act. Reason seems to be that the Bombay Act does not contain any Chapter corresponding to Chapter 7 of the Vidarbha Tenancy Act. The orders passed u/s 81 of the Vidarbha Tenancy Act referred to in sub-section (2) of section 110 are not made appealable under the Act and yet sub-section (2) in terms enables the Collector to revise any order passed by any authority performing the functions of the Collector as contemplated under sub-section (2) of section 110. But for this sub-section (2), the orders of such officer could not have been capable of being revised by the Collector as sub-section (1) authorises the Collector only to revise the orders of Tahsildar and the Tribunal. The circumstance that sub-section (2) deals with non-appealable orders, lends further support to the view that the revisional powers of the Collector u/s 110 do not depend upon the Appeal ability of the order and that only such orders of Tahsildar or Tribunal are contemplated to be excluded from the sweep of this section where appeal has been filed and the remedy of the appeal is being availed of by the aggrieved party. We accordingly hold that the revisional powered of the Collector u/s 110 are not restricted by the Legislature only to the appealable orders under the Act.

Within the sweep of the revisional powers of the Collector under this section are included, not only the appealable orders against which appeal could have been filed, but also other orders whether appealable or not. Only such orders are excluded from the sweep of the revisional powers of the Collector in regard to which appeal

has been filed within time and the remedy of the appeal is being availed of. We answer the reference in the affirmative. The case will now be placed before the learned single Judge for disposal according to law.