

JARDINE, J.:—The Court, following *Ras Behari Das v. Balgopal*, holds that the Sessions Judge, in rejecting the appeal under section 421 of the Criminal Procedure Code (X of 1882) was not bound to write a judgment; and it dismisses the application made by Wárubái, widow of Bháu Pándurang Gumre.

Application dismissed.

1895.
 QUEEN-
 EMPRESS
 v.
 WÁRUBÁI.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Parsons.

TUKA'RA'M VALAD NAGURA'M (ORIGINAL PLAINTIFF), DECREE-HOLDER, v.
 KHANDU VALAD BHAVA'NI (ORIGINAL DEFENDANT), JUDGMENT-DEBTOR.*

1895.
 June 13.

Practice—Procedure—Civil Procedure Code (Act XIV of 1882), Secs. 98, 248 and 647—Darkhást for execution of decree—Notice to the judgment-debtor to show cause why decree should not be executed—Failure of both parties to appear on the appointed day—Dismissal of darkhást.

A darkhást for the execution of a decree can be dismissed when on its presentation a notice is issued to the judgment-debtor under section 248 of the Civil Procedure Code (Act XIV of 1882), and neither party appears on the day on which it is made returnable.

THIS was a reference by Ráo Sáheb K. S. Risvadkar, Second Class Subordinate Judge of Párner in the Ahmednagar District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

Plaintiff, Tukárám valad Nagurám, having obtained a decree against Khandu valad Bhaváni, presented a darkhást for its execution. The Subordinate Judge issued notice to the judgment-debtor, under section 248 of the Civil Procedure Code (Act XIV of 1882), requiring him to show cause why the decree should not be executed. The notice was made returnable on the 12th March, 1895. On that day neither party having appeared, the Subordinate Judge disposed of the darkhást and made a reference in the following terms:—

“The practice hitherto followed was to dismiss it (darkhást) under sections 98 and 647 of the Civil Procedure Code, no separate procedure having been laid down in the Code in the matter, on the understanding that the procedure applicable to

* Civil Reference, No. 9 of 1895.

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TURKARAM
v.
KHANDE.

suits was also applicable to darkhásts, which were proceedings in suits as laid down by section 4 of Act VI of 1892. But it has been held by the High Court that there is nothing in the Code of Civil Procedure (Act XIV of 1882) as amended by Act VI of 1892 which authorizes a Court to apply to execution proceedings any of the procedure enacted in Chapter VII of the Code to which the said section 98 belongs (see *Hajrat Akramnissa Begam v. Valiunnissa Begam*, I. L. R., 18 Bom., 429)."

The Subordinate Judge, therefore, being at a loss to know how to deal with the darkhást, and his order not being appealable, referred the following questions:—

"(1) Whether, relying as heretofore on sections 98 and 647 of the Civil Procedure Code, I can dismiss the accompanying darkhást?

"(2) If not, how the darkhást should be disposed of, or what procedure should be followed therein?"

The opinion of the Subordinate Judge was on the first question in the affirmative, and he gave no opinion on the second question, having expressed his inability to do so.

Dhondu P. Kirtóskar (*amicus curiæ*) appeared for the judgment-creditor.

Shivram V. Bhandárkar (*amicus curiæ*) appeared for the judgment-debtor.

BAYLEY, Acting C. J.:—Upon the facts stated in this reference we are of opinion that the Subordinate Judge can dismiss the darkhást.

Order accordingly.