IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3524 OF 2026
(Arising Out of SLP (Civil) No. 20405 Of 2025)

GAJANAN **....APPELLANT(S)**

VERSUS

PRALHAD **...RESPONDENT(S)**

O R D E R

VIJAY BISHNOI, J.

Leave Granted.

2. The present appeal has been preferred by the Appellant ("**Decree Holder**") challenging the judgment dated 03.02.2025 (hereinafter referred to as "**impugned judgment**") passed in Writ Petition No. 565 of 2024 by the High Court of Judicature at Bombay, Nagpur Bench (hereinafter referred to as "**the High Court**") wherein the High Court allowed the writ petition filed by the Respondent ("**Judgment Debtor**") and set aside the order dated 31.10.2023 passed by the Court of Civil Judge, Junior Division, Motala (hereinafter referred to as "**Executing Court**"), whereby the execution application filed by the Decree Holder was allowed for the enforcement of the decree dated 03.12.1999.

3. The essential facts necessary for the disposal of this appeal are

that the Decree Holder had instituted a suit bearing Regular Civil Suit No.68/1997 for declaration and recovery of possession by removal of encroachment, along with payment of mesne profits, in respect of 51R of agricultural land out of Gat No.77 situated at village Takli, Taluq Motala, District Buldhana (hereinafter referred to as "**suit land**") against the Judgment Debtor before the Court of Civil Judge (Junior Division), Malkalpur (hereinafter referred to as "**Trial Court**"). The said suit came to be decreed *vide* judgment and order dated 02.12.1999 and the decree was prepared on 03.12.1999. The relevant extract of the order passed on 02.12.1999 is reproduced hereinbelow:

"Order

1) *Suit is decreed.*
2) *Defendant shall hand over possession of 51 R. land out of land Gat No. 77 to the plaintiff as shown in blue colour in map Exh.42 which shall form the ;part of decree hereinafter, within 3 months.*
3) *Defendant shall also pay Rs. 500/- to the plaintiff towards mesne profit prior to filing of suit.*
4) *The future inquiry be held in respect of mesne profit under Order 20 rule 12 of CPC from the date of Judgment till delivery of possession by defendant to plaintiff.*
5) *Defendant shall pay costs to plaintiff and shall bear his own.*
6) *Decree be drawn up accordingly."*

4. On 31.12.1999, the Judgment Debtor preferred the first appeal bearing Regular Civil Appeal No.131/1999 against the judgment and order dated 02.12.1999 under Order 41 Rule 1 read with Section 96 of the Code of Civil Procedure, 1908 (for short "**the CPC**") before the Court of District Judge, Buldhana (hereinafter referred to as "**First**

Appellate Court").

5. The said first appeal came to be dismissed in default for want of prosecution on 25.11.2004. It is pertinent to note that the decree dated 03.12.1999 passed by the Trial Court was never stayed by the First Appellate Court during the pendency of the appeal.

6. Subsequently, on 04.12.2015, the Decree Holder initiated execution proceedings before the Executing Court for the enforcement of the decree dated 03.12.1999 *vide* Regular Darkhast No.05.2015. The Judgment Debtor appeared in the execution proceedings and filed his objections on 26.02.2016, challenging the maintainability of the proceedings as hopelessly barred by law, having been filed beyond 12 years of the judgment and decree dated 02.12.1999 passed by the Trial Court. It was further contended that he had not filed any appeal against the decree of the Trial Court, stating that he had given Vakalatnama to file an appeal but could not contact his lawyer due to illness. However, the Decree Holder submitted in its reply that the limitation period began from the dismissal of the appeal on 25.11.2004 and thus, the execution proceedings were filed within time. The Decree Holder also contended that the Trial Court's decree was not enforceable as it was only a preliminary decree based on the direction passed with respect to the inquiry of mesne profits under Order 20 Rule 12 of CPC.

7. The Executing Court *vide* judgment and order dated 31.10.2023 in Regular Darkhast No.05.2015 allowed the execution application, directing the Judgment Debtor to hand over possession of the suit land, with assistance of the Deputy Superintendent of Land Records for showing boundary marks as per measurement map, execution through Bailiff under Order 29 Rule 35 CPC, and payment of Rs. 500/- mesne profit and Rs. 1,053.25 costs. The Executing Court rejected the Judgment Debtor's contention of non-filing of appeal and categorically held that an appeal against the judgment and decree of the Trial Court was indeed filed, which was discovered from the record of the R.C.A. No.131/1999, called from the Copy Section of the District Court, Buldhana. It was further observed that the said appeal came to be dismissed in default on 25.11.2004 due to the constant absence of the Judgment Debtor himself. In view of the said finding, the Executing Court held that the execution application was maintainable and filed within 12 years i.e. on 04.12.2015, from the dismissal of the appeal as per Article 136 of the Limitation Act, 1963 (hereinafter referred to as "**1963 Act**").

8. Aggrieved by the judgment and order dated 31.10.2023, the Judgment Debtor filed Writ Petition No. 565/2024 before the High Court.

9. The High Court, by way of the impugned judgment, allowed the

petition and set aside the order dated 31.10.2023 passed by the Executing Court. Relying on this Court's judgment in ***Bimal Kumar and Anr. vs. Shakuntala Debi and Ors.***, reported in 2012 (3) Civil LJ 266, the High Court held that filing of an appeal does not affect the enforceability of the decree unless the appellate court stays its operation, but in case, the appeal results in a decree that supersedes the decree passed by the lower court, then it is decree of the appellate court which becomes enforceable. It further held that when the order of the appellate does not amount to a decree, the lower court's decree remains enforceable as there was no supersession.

10. The High Court rejected the Decree Holder's contention of the decree dated 03.12.1999 being a preliminary decree for requiring an inquiry of mesne profits, holding that such inquiry under Order 20 Rule 12 of CPC is an independent inquiry and it does not make the Trial Court's decree a preliminary one. Accordingly, the High Court held that the execution proceedings filed on 04.12.2015 were not maintainable, being beyond the limitation period, which has been prescribed under Article 136 of the 1963 Act. It was held that there was no supersession of the Trial Court's decree in this case as the appeal was dismissed in default on 25.11.2004 and thus, there was essentially no decree passed in appeal. Further, the Court noted that the operation of Trial Court's decree was not stayed during the

pendency of the appeal and thus, it remained enforceable and executable within 12 years from the passing of the judgment and decree in R.C.S No.68/1997. The High Court held that the execution application ought to have been filed before 02.12.2011, that is within 12 years from the judgment and decree dated 02.12.1999.

11. The learned Counsel for the Decree Holder vehemently submitted that the impugned judgment suffers from an error of law as it failed to take note of the fact that the Judgment Debtor played a fraud upon the Court and did not approach it with clean hands. It was submitted that the Judgment Debtor misled the Executing Court by contending that no appeal against the Trial Court's decree was preferred due to his illness, however, the said contention was false as rightly held by the Executing Court. It was further argued that the High Court committed a grave mistake in relying upon ***Bimal Kumar*** (supra), as the facts were clearly distinguishable.

12. It was further contended that when an appeal is dismissed for non-appearance, the limitation period for execution starts from the date of the dismissal order, as such order is considered the final order of the appellate court and the original decree merges into it, meaning thereby that the appellate court's order becomes the final and executable decree. Consequently, the period of limitation for executing the decree would begin from the date of the appellate court's dismissal

order and not from the date of the lower court's original decree, and therefore the Decree Holder had 12 years to initiate execution proceedings from the date of dismissal of the appeal. It was further submitted that the filing of an appeal keeps the matter *sub judice* and the decree attains finality only upon disposal of the appeal. The dismissal order, being a judicial order, results in the original decree being superseded by the appellate court's order.

13. The learned Counsel also relied upon the judgment of this Court in ***Shyam Sundar Sarma vs. Pannalal Jaiswal & Ors***., reported in (2005) 1 SCC 436, to argue that even dismissal of appeal for default or non-prosecution is a decision in appeal and the decree attains finality only on disposal of the appeal finally. In light of the said position, the learned Counsel argued that the execution application was filed within the limitation period.

14. *Per contra,* the learned Counsel for the Judgment Debtor submitted that the decree became enforceable on 02.12.1999 and since there was no stay on its operation, the limitation period for execution expired on 01.12.2011. Relying upon the judgment in ***Ratansingh vs. Vijaysingh and Ors.***, reported in (2001) 1 SCC 469, it was argued that filing of an appeal would not affect the enforceability of the decree unless the appellate court stays its operation. It was finally submitted that the appeal being dismissed in

default on 25.11.2004 did not create a new starting point of limitation as the original decree of the Trial Court remained enforceable throughout.

15. Now, the only question that falls for our consideration is whether the execution application filed by the Decree Holder on 04.12.2015 was maintainable and filed within the limitation period?

16. The limitation period provided for filing for execution of any decree or order under Article 136 of the 1963 Act is 12 years, and the period of limitation begins to run from the date when the decree or order becomes enforceable. It is settled law that when an appeal is preferred against such decree, the decree of the Trial Court generally merges into the appellate decree. However, in the present case, the First Appellate Court dismissed the appeal in default on 25.11.2004.

17. While it is undisputed that there was no stay on the operation of the decree of the Trial Court during the pendency of the appeal and the said decree remained enforceable, the dismissal of such appeal, albeit in default, reset the limitation clock for filing of the execution proceedings as it had the effect of confirming the decree of the Trial Court.

18. A four-Judge Bench of this Court in ***Sheodan Singh vs. Daryao Kunwar (SMT)***, reported in 1966 SCC OnLine SC 98, while dealing with the issue of *res judicata*, has unequivocally held that even when

an appeal is dismissed on some preliminary ground, say limitation, it essentially confirms the decision of the trial court on merits and such appeal is deemed to have been heard and finally decided on merits, no matter the grounds for such dismissal. The relevant portion of the said judgment is reproduced hereinbelow:

> ***"14.*** *This brings us to the main point that has been urged in these appeals, namely, that the High Court had not heard and finally decided the appeals arising out of suits Nos. 77 and 91. One of the appeals was dismissed on the ground that it was filed beyond the period of limitation while the other appeal was dismissed on the ground that the appellant therein had not taken steps to print the records. It is therefore urged that the two appeals arising out of suits Nos. 77 and 91 had not been heard and finally decided by the High Court, and so the condition that the former suit must have been heard and finally decided was not satisfied in the present case. Reliance in this connection is placed on the well-settled principle that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. Where, for example, the former suit was dismissed by the trial court for want of jurisdiction, or for default of plaintiff 's appearance, or on the ground of non-joinder of parties or misjoinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional court fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision not being on the merits would not be res judicata in a subsequent suit. But none of these considerations apply in the present case, for the Additional Civil Judge decided all the four suits on the merits and decided the issue as to title on merits against the appellant and his father. It is true that the High Court dismissed the appeals arising out of suits Nos. 77 and 91 either on the ground that it was barred by limitation or on the ground that steps had not been taken for printing the records. Even so the fact remains that the result of the dismissal of the two appeals arising from suits Nos. 77 and 91 by the High Court on these grounds was that the decrees of the Additional Civil Judge who decided the issue as to title on merits stood confirmed by the order of the High Court. In such a case, even though the order of the High Court may itself not be on the merit the result of the High Court's decision is to confirm the decision on the*

issue of title which had been given on the merits by the Additional Civil Judge and thus in effect the High Court confirmed the decree of the trial court on the merits, whatever may be the reason for the dismissal of the appeals arising from suits Nos. 77 and 91. In these circumstances though the order of the High Court itself may not be on the merits, the decision of the High Court dismissing the appeals arising out of suits Nos. 77 and 91 was to uphold the decision on the merits as to issue of title and therefore it must be held that by dismissing the appeals arising out of suits Nos. 77 and 91 the High Court heard and finally decided the matter for it confirmed the judgment of the trial court on the issue of title arising between the parties and the decision of the trial court being on the merits the High Court's decision confirming that decision must also be deemed to be on the merits. To hold otherwise would make res judicata impossible in cases where the trial court decides the matter on merits but the appeal court dismisses the appeal on some preliminary ground thus confirming the decision of the trial court on the merits. It is well-settled that where a decree on the merits is appealed from, the decision of the trial court loses its character of finality and what was once res judicata again becomes res subjudice and it is the decree of the appeal court which will then be res judicata. But if the contention of the appellant were to be accepted and it is held that if the appeal court dismisses the appeal on any preliminary ground, like limitation or default in printing, thus confirming into the trial court's decision given on merits, the appeal court's decree cannot be res judicata, the result would be that even though the decision of the trial court given on the merits is confirmed by the dismissal of the appeal on a preliminary ground there can never be res judicata. We cannot therefore accept the contention that even though the trial court may have decided the matter on the merits there can be no res judicata if the appeal court dismisses the appeal on a preliminary ground without going into the merits, even though the result of the dismissal of the appeal by the appeal court is confirmation of the decision of the trial court given on the merits. Acceptance of such a proposition will mean that all that the losing party has to do to destroy the effect of a decision given by the trial court on the merits is to file an appeal and let that appeal be dismissed on some preliminary ground, with the result that the decision given on the merits also becomes useless as between the parties. We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal."

(Emphasis supplied)

19. Furthermore, this Court, in ***Shyam Sundar Sarma*** (supra), while discussing the implication of the Explanation to Order 9 Rule 13 of CPC, held that even if an appeal is dismissed in default or as time-barred, such dismissal would still amount to a final disposal of the appeal, as the same cannot be equated with non-filing of appeal or withdrawal of the appeal. The relevant portions of the said judgment are extracted hereunder:

> ***"12.*** *Learned counsel placed reliance on the decision in Ratansingh v. Vijaysingh [(2001) 1 SCC 469] rendered by two learned Judges of this Court and pointed out that it was held therein that dismissal of an application for condonation of delay would not amount to a decree and, therefore, dismissal of an appeal as time-barred was also not a decree. That decision was rendered in the context of Article 136 of the Limitation Act, 1963 and in the light of the departure made from the previous position obtaining under Article 182 of the Limitation Act, 1908. But we must point out with respect that the decisions of this Court in Mela Ram and Sons [1956 SCR 166 : AIR 1956 SC 367] and Sheodan Singh [AIR 1966 SC 1332 : (1966) 3 SCR 300] were not brought to the notice of Their Lordships. The principle laid down by a three-Judge Bench of this Court in Mela Ram and Sons [1956 SCR 166 : AIR 1956 SC 367] and that stated in Sheodan Singh [AIR 1966 SC 1332 : (1966) 3 SCR 300] was, thus, not noticed and the view expressed by the two-Judge Bench, cannot be accepted as laying down the correct law on the question. Of course, Their Lordships have stated that they were aware that some decisions of the High Courts have taken the view that even rejecting an appeal on the ground that it was presented out of time is a decree within the definition of a decree obtaining in the Code. Thereafter, noticing the decision of the Calcutta High Court above-referred to, Their Lordships in conclusion apparently agree with the decision of the Calcutta High Court. Though the decision of the Privy Council in Nagendra Nath Dey v. Suresh Chandra Dey [(1932) 59 IA 283 : AIR 1932 PC 165] was referred to, it was not applied on the ground that it was based on Article 182 of the Limitation Act, 1908, and there was a departure in the legal position in view of Article 136 of the Limitation Act, 1963. But with respect, we must point out that the decision really conflicts with the ratio of the decisions in Mela Ram and Sons [1956 SCR 166 : AIR 1956 SC 367] and Sheodan Singh [AIR 1966 SC 1332 : (1966) 3 SCR 300] and another decision of this Court rendered by two learned Judges in Rani Choudhury v. Lt.-Col. Suraj Jit Choudhury [(1982) 2 SCC 596] . In Essar*

Constructions v. N.P. Rama Krishna Reddy [(2000) 6 SCC 94] brought to our notice, two other learned Judges of this Court left open the question. Hence, reliance placed on that decision is of no avail to the appellant.

13. *In the context of the Explanation to Order 9 Rule 13 of the Code, the question was squarely considered by this Court in Rani Choudhury case [(1982) 2 SCC 596] . The High Court, in our view, has rightly held that the decision of this case is directly covered by that decision. Therein, the plaintiff, the wife, obtained an ex parte decree for divorce against the husband, the defendant. The husband preferred an appeal in the High Court against the decree and also made an application under Section 5 of the Limitation Act for condoning the delay in filing that appeal. The High Court dismissed the appeal as being time-barred. The husband, the defendant, then filed a petition under Order 9 Rule 13 of the Code for setting aside the ex parte decree along with an application under Section 5 of the Limitation Act. The trial court dismissed the application holding that no sufficient cause was made out for condoning the delay in filing the petition under Order 9 Rule 13 of the Code. The husband filed a civil miscellaneous appeal in the High Court challenging the said order of the trial court. The High Court took the view that the Explanation to Order 9 Rule 13 of the Code did not create a bar to the maintainability of the petition under that rule as the appeal against the ex parte decree had been dismissed not on merits but on the ground of limitation by not accepting the application for condonation of delay which meant that no appeal was preferred in the eye of the law. This view of the High Court was challenged in appeal before this Court. It was argued that the High Court has misunderstood the scope and ambit of the Explanation to Order 9 Rule 13 of the Code and that in the circumstances, the High Court should have held that the petition under Order 9 Rule 13 of the Code would not lie. This Court accepted that contention. This Court held that where there has been an appeal against an ex parte decree and the appeal has not been withdrawn by the appellant and had been disposed of on any ground, the application under Order 9 Rule 13 of the Code would not lie and should not be entertained. Hence, even though the appeal against the ex parte decree was disposed of on the ground of limitation and not on merits, the Explanation to Order 9 Rule 13 of the Code was attracted and hence no petition under Order 9 Rule 13 of the Code would lie. On the scope of the Explanation, it was stated that the disposal of the appeal as contemplated in the Explanation was not intended to mean or imply a disposal on merits resulting in the merger of the decree of the trial court with a decree, if any, of the appellate court on the disposal of the appeal. The disposal of the appeal may be on any ground and though the withdrawal of an appeal by an appellant is also to be considered a disposal of the appeal, the same has been expressly exempted by the Explanation. It was also observed that the legislative intent incorporated in the Explanation to Order 9 Rule 13 of the Code was to confine the defendant to a single course of action and to discourage the prolonging of the litigation on the ex parte*

decree, namely, by preferring an application to the trial court under Order 9 Rule 13 of the Code for setting aside the decree and by filing an appeal to a superior court against it. If he did not withdraw the appeal filed by him or allowed the appeal to be disposed of on any other ground, he was denied the right to apply under Order 9 Rule 13 of the Code. The Court also clarified that by the introduction of the Explanation, the area of operation of the doctrine of merger was enormously extended. By virtue of the Explanation, the disposal of the appeal on any ground whatever, apart from its withdrawal, constituted sufficient reason for bringing the bar into operation. In the light of this, it was held that though in that case the appeal filed by the husband against the ex parte decree was dismissed on the ground of it being barred by limitation, it was a disposal of the appeal and the petition under Order 9 Rule 13 of the Code was hit by the Explanation. In P. Kiran Kumar v. A.S. Khadar [(2002) 5 SCC 161] this Court followed the decision in Rani Choudhury [(1982) 2 SCC 596] and held that the dismissal of the appeal against an ex parte decree as barred by limitation, prevented the trial court which passed the ex parte decree, from exercising its power under Order 9 Rule 13 of the Code in view of the Explanation.

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15. *We are not impressed by the argument of learned counsel for the appellant that the decision in Rani Choudhury case [(1982) 2 SCC 596] requires reconsideration. On going through the said decision in the light of the objects and reasons for the introduction of the Explanation to Order 9 Rule 13 and the concept of an appeal as indicated by the Privy Council and this Court in the decisions already cited, the argument that an appeal which is dismissed for default or as barred by limitation because of the dismissal of the application for condoning the delay in filing the same, should be treated on a par with the non-filing of an appeal or the withdrawal of an appeal, cannot be accepted. The argument that since there is no merger of the decree of the trial court in that of the appellate court in a case of this nature and consequently the Explanation should not be applied, cannot also be accepted in the context of what this Court has earlier stated and what we have noticed above."*

(Emphasis supplied)

20. The Judgment Debtor's reliance on the two-Judge Bench judgment in ***Ratansingh*** (supra) is erroneous as the said judgment has already been overruled by a three-Judge Bench of this Court in ***Shyam Sundar Sarma*** (supra), which clarified that ***Ratansingh*** does not lay down the correct law.

21. The upshot of this discussion is that an appeal is intrinsically a continuation of the suit and thus, even if an appeal against an order or decree of the Trial Court is dismissed on any preliminary or technical ground, such as limitation or non-prosecution, rather than the merits of the case, it still gives rise to a fresh starting point for the limitation period for execution of such order or decree. The original decree of the Trial Court cannot be deemed as "final" as long as the appeal against the same remains pending. Thus, the order of dismissal of the appeal finally disposes of the matter and confirms the decree of the Trial Court, even if such dismissal is for reason of non-prosecution.

22. The order dated 25.11.2004, which dismissed the appeal in default, was thus a "final order" as it finally confirmed the decree of the Trial Court and disposed of the appeal. Therefore, the limitation period for execution of the decree dated 03.12.1999 accrued on the date of dismissal of the appeal i.e. 25.11.2004 and the execution application filed on 04.12.2015 was within time, if we compute the period of 12 years from 25.11.2004.

23. Courts should avoid adopting a hypertechnical approach in matters of limitation. A layperson, unfamiliar with the letter of law, may mistakenly believe that execution proceedings can only commence once an appeal against the decree has been finally disposed

of. Even lawyers under a *bonafide* belief, may advise their clients to initiate execution proceedings only after final disposal of all appellate proceedings. In such circumstances, courts are expected to adopt a more liberal and pragmatic stance, ensuring that substantive rights are not defeated by rigid adherence to procedural rules, thereby striking a fair balance between justice and procedure.

24. It also becomes imperative to note that no party can take advantage of its own wrong. The appeal was dismissed in default only due to the constant absence of the Judgment Debtor and thus, he cannot be allowed to gain benefit out of such dismissal.

25. In view of the said discussion, this appeal succeeds. The judgment dated 03.02.2025 passed by the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No. 565 of 2024, is set aside and order dated 31.10.2023 passed by the Court of Civil Judge, Junior Division, Motala is hereby restored.

26. Pending application(s), if any, also stand disposed of.

……, J.
(RAJESH BINDAL)

……, J.
(VIJAY BISHNOI)

NEW DELHI;
MARCH 18, 2026.

ITEM NO.23 COURT NO.15 SECTION IX-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20405/2025

[Arising out of impugned final judgment and order dated 03-02-2025 in WP No. 565/2024 passed by the High Court of Judicature at Bombay, Bench at Nagpur]

GAJANAN Petitioner(s)

VERSUS

PRALHAD Respondent(s)

(FOR ADMISSION and I.R.
IA No. 176337/2025 - EXEMPTION FROM FILING O.T.)

Date : 18-03-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE VIJAY BISHNOI

For Petitioner(s) :
Mrs. Sudha Gupta, AOR
Mr. R. S. Rathi, Adv.
Ms. Kusum, Adv.

For Respondent(s) :
(Through V.C.) Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Vijay Singh Mehra, Adv.
Mr. Shrirang Katneshwarkar, Adv.
Mr. Dipak Vidhate, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application shall also stand disposed of.

(ANITA MALHOTRA) (MANOJ KUMAR)
AR-CUM-PS COURT MASTER
(Signed order is placed on the file.)