

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 866 OF 2015****ALONGWITH****CIVIL APPLICATION NO.1869 OF 2015****IN****SECOND APPEAL NO. 866 OF 2015****Madan Yashpal Khamitkar****(since deceased) through Lrs. & Ors.****..... Appellants****VERSUS****Dr.Yahwant Shivraya Mokashi & Ors.****..... Respondents**

Mr.Girish Godbole, i/b. Mr.Drupad Patil for the Appellants.

Mr.R.S.Alange for the Respondent No.1.

CORAM : R.D. DHANUKA, J.**DATED : 10th DECEMBER, 2015****P.C.**

Respondent no.1 present in person.

2. Learned counsel appearing for the respondent on instructions from the respondent no.1 who is present in court states that the respondents have no objection if the impugned order passed by the lower appellate court on 11th September, 2015 in Civil Appeal No.63 of 2015 is set aside and if the Civil Appeal No.63 of 2015 is remanded back to the lower appellate court for hearing and final disposal afresh in accordance with law. Statement is accepted.

3. In view of the statement made by the learned counsel for the respondents, I pass the following order :-

(a) By consent of parties, impugned order dated 11th September, 2015 passed by the lower appellate court in Civil Appeal No.63 of 2015 is set aside. Civil Appeal No.63 of 2015 is restored to file and is remanded back to the lower appellate court for hearing and final disposal afresh and in accordance with law.

(b) It is made clear that the learned appellate court shall decide the matter afresh without being influenced by the findings and conclusions rendered in the impugned order dated 11th September, 2015.

(c) Learned lower appellate court shall decide all the issues including the issue of maintainability of the appeal if raised by the respondents herein by passing a common order on all issues.

(d) All contentions of both the parties are kept open.

(e) Both the parties have agreed to co-operate with each other and with the lower appellate court in expeditious disposal of the appeal.

(f) Both parties are directed to appear before the lower appellate court on 6th January, 2016.

4. Second appeal is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the second appeal, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]