

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO. 4 OF 2015
IN
CIVIL APPLICATION NO. 1632 OF 2013
IN
FIRST APPEAL NO. 937 OF 1994**

Mr. Zoru Darayus Bhathena ... Petitioner

IN THE MATTER BETWEEN

Prasad S/o Mahadeo Pabrekar ... Appellant
V/s.

Anthony Pais & Ors. ... Respondents

Mr. Zoru Darayus Bhathena, appellant in person.
None for the respondents.

**CORAM :A.P. BHANGALE, J.
DATE : 27th March, 2015.**

P.C.

1. The applicant has prayed for review of the order passed by this court on 30th August 2013 in Civil Application No. 1632/2013 in First Appeal No. 937/1994, whereby this court observed that appeal stands abated against respondent nos. 1 and 2, as the abatement is automatic. It is also observed in the order that the party aggrieved by the abatement has remedy to move an application for setting aside the abatement.

2. It appears that the order under review was also passed at the instance of present applicant who stated that respondent nos. 3 to 11 are duly served and affidavit of service is filed by him.

According to him, he is a landlord of a old building; there was a suit against tenants and sub-tenants being RAD No. 2028/1978 and after death of tenants appeal has already abated. Respondent no. 3 to 11 are not contesting parties but are formal parties. When the appeal has abated against the tenant the suit had also abated automatically against persons claiming under the tenant who died long back. Therefore, First Appeal No. 937/1994 stood abated after death of original tenants unless abatement is set aside.

3. In the absence of any application filed by any party interested claiming under formal tenant in respect of the premises, the proceeding in First Appeal No. 937/1994 could not survive. It is clarified accordingly. Review application is partly allowed accordingly.

(A.P. BHANGALE, J.)