

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

WRIT PETITION NO.11716 OF 2016

**Bipinbhai Amarchand Doshi
(Since deceased through his legal heirs)
Pravina Bipin Doshi and others**

..Petitioners

Versus

Reena Devang Padrakar and others

..Respondents

**Shri. Surel S. Shah a/w Shri. Rajan Yadav i/by Kiran Jain & Co., for
the Petitioners.**

**Shri. J. V. Parmar a/w Shri. O. S. Kamwal for the Respondent Nos.1 to
3.**

CORAM : R. M. SAVANT, J.

DATE : 5th APRIL, 2017

PC.

1 The order dated 30.06.2016 passed by the Appellate Bench of the Small Causes Court rejecting the application Exh.20 for being permitted to lead additional evidence by taking recourse to Order 41 Rule 27 of the Code of Civil Procedure (For short "CPC") is taken exception to by way of the above Petition. The said application has been rejected on the ground that the right of the Appellants i.e. Petitioners herein to argue the Appeal was forfeited by order dated 21.07.2016. The said forfeiture has been set aside and the Appellants have been permitted to argue the Appeal. It seems that the said appeal has appeared on board from time to

time for the said purpose. In my view, since the right to argue the Appeal now stands reinstated, the basis of the impugned order dated 30.06.2016 does not exist, the interest of justice would be met if the impugned order dated 30.06.2016 is set aside and the application Exh.20 is directed to be heard and decided by the Appellate Bench of the Small Causes Court within a particular time frame. Hence the following directions :-

- I) The impugned order dated 30.06.2016 rejecting the application Exh.20 stands set aside. The application Exh.20 stands restored to file.
- II) The Appellate Bench of the Small Causes Court to hear and decide the said application Exh.20 either alongwith Appeal or prior thereto. If it is prior thereto, decide the same within two weeks from date by giving an opportunity to the Respondents to file their reply.
- III) Needless to state that the contentions of the parties on the merits of the application Exh.20 are kept open for being urged before the Appellate Bench of the Small Causes Court.
- IV) The Appellate Bench of the Small Causes Court would decide the application Exh.20 on its own merits and in

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accordance with law.

2 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]