

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

APPEAL FROM ORDER 1455 OF 2013

Smt. Shantabai Shankar Gangurde & Ors. .. Appellants
Vs.
Mr. Kacharu Vithoba Pawar & Ors. .. Respondents

...

Mr. Rameshwar N. Gite for Appellants.
Mr. Rajesh Kanojia i/b RES Juris for Respondent No.4.

**CORAM : A.A.SAYED, J.
DATE : 25 APRIL 2017.**

P.C. :

1. The challenge in this Appeal is to an order dated 2 July 2013 passed in Review Petition No.06/2012. The said Review Petition was filed under Section 114 and Order 47 of Code of Civil Procedure, 1908 seeking review of the order passed by the Motor Accident Claim Tribunal, at Niphad, Dist. Nashik. It is admitted position that though the issue of maintainability of Review Petition was specifically raised, there is no positive finding recorded by the Trial Court that the Review Petition was maintainable and unless this finding is first recorded the Trial Court ought not to have been gone into the merits of the case. In these circumstances, since it is not in dispute that without recording a finding as regards the maintainability of the Review Petition, the Trial Court has decided the Review Petition on merits, by consent of the

learned Counsel for the parties, the following order is passed :

O R D E R

- a) The impugned order dated 02.07.2013 passed in the Review Petition No.6/2012 is set aside;
- b) The matter is remitted back to the Maharashtra Accident Claims Tribunal at Niphad, Dist. Nashik to decide a Review Petition afresh.
- c) The Trial Court shall in the first instance decide the issue of maintainability of the Review Petition and only if it arrives at a finding that the Review Petition is maintainable, go into merits of the matter.
- d) The Review Petition to be decided expeditiously and in any event before the end of the year 2017.

2. The Appeal from Order is disposed of in the aforesaid terms.

(A.A.SAYED, J.)