

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

935 CIVIL APPLICATION NO. 11986/2018 IN SA/672/1992

SADASHIV YADU HARDE AND OTHERS
VERSUS
NARAYAN YADU HARDE LRS NANA AND OTHERS

...
Advocate for Applicants : Mr. P. P. Kohari h/f. Mr. Satyajit S. Bora
Advocate for Respondents 1/A to C : Mrs. Rekha Mahale h/f.
Mr. S.S. Choudhary
...

CORAM : V.L. ACHLIYA, J.
DATE : 28th SEPTEMBER, 2018.

PER COURT:

It is submitted by learned Advocate representing the applicants that while passing the order dated 23.6.2017, inadvertently, statement of the Advocate representing the appellant came to be recorded that both the appellants have expired. Due to incorrect statement made, this court passed an order of dismissal of appeal as abated.

2. In this background, learned counsel for appellants submits that in view of the factual position that the appellant No.1 is still alive and right to prosecute the appeal survives, the order dated 23.6.2017 be modified.

3. The learned counsel for the respondent submits that in the facts and circumstances appropriate orders may be passed.

4. Having regard to the submissions advanced, in the light of order dated 23.6.2017 passed in the matter, it appears that inadvertently it is recorded that both the appellants have expired and appeal came to be dismissed as abated. In fact, the appellant No.2 - Sampat Sadashiv Harde,

died on 29.6.2002 and his legal heirs were not brought on record. The appeal abated to the extent of appellant No.2. It appears that due to some mistake, a wrong statement came to be made on the part of learned advocate representing the appellants that both the appellants have expired which leads to passing of order of dismissal of appeal.

5. Since the appellant No.1 is alive, the appeal cannot said to be abated against and the right to prosecute the appeal survives for the appellant No.1. Therefore, the application deserves to be allowed in terms of prayer clause (b). Accordingly, civil application is allowed in terms of prayer clause (b). The order stands modified in terms of prayer clause (b). Necessary corrections be carried out in the order. The appeal stands restored to file.

7. Civil application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE.

grt/-