

VKS

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

**APPEAL FROM ORDER NO.527 OF 2018**  
**WITH**  
**CIVIL APPLICATION NO.705 OF 2018**

Jatin P. Khanna .... Appellant

V/s.

State of Maharashtra and ors .... Respondents

Mr. Sunil C. Patel, for the Appellant

Mr. Y. Y. Dabke, AGP for the Respondent No.1 State.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 22<sup>nd</sup> OCTOBER, 2018.**

**P.C. :**

1] Heard learned counsel for the appellant and learned AGP for the State.

2] This appeal is directed against the order dated 23.01.2018, passed by City Civil Court, Mumbai, thereby dismissing the Chamber Summons No.97 of 2018, filed in B. C. C. Suit No. 111499 of 1972, on the ground that appellant and his advocate were absent and hence they are not interested in proceeding with the suit.

3] The said Chamber Summons was filed to set aside the abatement by condoning delay, in order to enable the appellant to bring

on record the legal heirs of deceased appellant No.1.

4]                Considering that the Chamber Summons is dismissed in default, only by way of indulgence, in order to serve substantive cause of justice, the said order is set aside.

5].                The Appeal is allowed. The trial Court is directed to decide the Chamber Summons afresh on its own merits.

6]                In view of dismissal of Appeal from Order, pending Civil Application therein no more survives and the same is disposed off accordingly.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**