

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**28 WRIT PETITION NO.754 OF 2018
WITH WP/841/2018 WITH WP/1002/2018**

GOVIND RADHAKISAN MITHE THROUGH THE GENERAL
POWER OF ATTORNEY R V MITHE
VERSUS
UMARKHAN SARFERAJKHAN PATHAN AND OTHERS

...
Advocate for Petitioner : Mr. Dharurkar Chaitanya V
Advocate for Respondent Nos.1 to 5 : Mr. R.S. Deshmukh
...

**CORAM : P.R. BORA, J.
DATED : 08th JULY, 2019.**

PER COURT:-

1. Heard Shri Dharurkar, the learned counsel appearing for the petitioner and Shri Deshmukh, the learned counsel appearing for the respondents.

2. After hearing the learned counsel appearing for the parties and on perusal of the impugned order and other material placed on record, it is revealed that the main grievance of the petitioners is that without hearing them the First Appellate Court has passed the impugned order. As against it, it is the contention on behalf of the respondents that all honest efforts were made to serve the petitioners and ultimately, public notice was also issued to be on safer side and inspite of that, the petitioners did not cause

appearance in the matter. As such, the First Appellate Court has heard the respondents and passed the impugned order.

3. It appears to me that when it is the grievance of the petitioners that they were not heard, the opportunity needs to be given to them to put-forth their case before the First Appellate Court. In the circumstances, without going into the merits of the contentions raised in the matter and without entering into the controversy whether the petitioners were duly served or not, I deem it appropriate to remit the matter to the First Appellate Court to decide it afresh by giving due opportunities to the petitioners as well as to the respondents to put-forth their respective contentions.

4. The parties are directed to appear before the First Appellate Court on 15.07.2019, so no formal notice may be required to be issued by the said Court. The First Appellate Court shall hear and decide the miscellaneous civil appeal, as expeditiously as possible and preferably within the period of four weeks. All three writ petitions stand disposed of with the aforesaid order.

(P.R. BORA, J.)