

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

**943 CIVIL APPLICATION NO.2570 OF 2017
IN FA/180/2002**

**SHRIMANT AMRUTA LOKHANDE (DIED)
THR LRS VIJAYABAI AND ORS
VERSUS
THE STATE OF MAHARASHTRA THR COLLECTOR, LATUR**

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Advocate for Applicants : Shri Satish S Manale
AGP for Respondent- State : Shri A.M. Phule

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CORAM : PR. BORA, J.
Dated: January 17, 2019

PER COURT :

1. Heard Shri Manale, learned Counsel appearing for the applicants. First Appeal No.180 of 2002 was filed by Shreemant s/o Amrata Lokhande. Said Shreemant s/o Amrata Lokhande died on 30.01.2010, however the said fact was not reported to this Court and the legal heirs of said original appellant were not taken on record. Said First Appeal was heard and decided by this Court with First Appeal Nos.181 of 2002 and 182 of 2002 on 30.08.2016. This Court vide the aforesaid Judgment, has partly allowed First Appeal No.180 of 2002 by enhancing the amount of compensation. However, the date on which the Judgment was delivered by this Court, the appellant in First Appeal No. 180 of 2002 was no more, neither his legal

heirs were taken on record. It is thus evident that, the Judgment and decree passed in First Appeal No.180 of 2002 has been passed in favour of a dead person. It need not be stated that, the Judgment and decree passed in favour of a dead person is nullity. In the circumstances, the present application has been filed by the legal heirs of the deceased appellant for recall of the order passed by this Court in First Appeal No.180 of 2002 on 30.08.2016 and to hear the appeal afresh by taking the names of legal heirs of deceased sole appellant on record.

2. Learned Counsel Shri Manale has placed his reliance on the Judgment of this Court in the case of **Yashwant Yadav Mhase Vs. G.M. Shaha (Deceased through L.Rs) 2005 BCI 219**. On perusal of the impugned Judgment, I am convinced that, the present application deserves to be allowed and it is accordingly allowed.

3. The Judgment and order passed in First Appeal No.180 of 2002 on 30.08.16 is set aside.

4. First Appeal No.180 of 2002 thus stands restored to its original file.
5. The legal heirs as are mentioned in the present application be taken on record in the said First Appeal and the necessary amendment be carried out within a week.
6. Delay caused in filing the application is condoned.
7. The abatement is set aside.
8. List First Appeal No.180 of 2002 for final disposal after two weeks.

(**PR. BORA, J.**)

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