

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

**CIVIL APPLICATION NO.162 OF 2019
IN
REVIEW PETITION (STAMP) NO.12859 OF 2019
IN
SECOND APPEAL NO.742 OF 1992
WITH
REVIEW PETITION (STAMP) NO.12859 OF 2019
IN
SECOND APPEAL NO.742 OF 1992**

Narayan Babaji Chavan since
deceased through his heirs and legal
representatives,
1a. Mr. Pandurang Narayan Chavan
and Ors.

...Petitioner
(orig. Respondent)

Versus

Datta Keshav Chavan @ Ishwara Aba
Chavan since deceased through his
legal heirs and legal representatives-
1A) Mrs. Gangubai w/o. Ishwara
Chavan and Ors.

...Respondents
(Orig. Appellant)

.....

Mr. Tanaji Mhatugade for the Applicant/Petitioner.
Mr. Surel S. Shah for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th JUNE, 2019.

P.C.:-

Having considered the reasons stated in paragraph 6 of the
application, which in my considered view constitute sufficient cause,

delay of 49 days in filing the review petition is condoned. Review petition be registered. The Civil Application No.162 of 2019 stands disposed of. Mr. Surel Shah, the learned counsel waives service on behalf of the Respondents.

2. The Respondent herein had filed an appeal under Section 100 of Civil Procedure Code challenging the judgment and decree dated 7th August, 1992. In the course of the hearing Mr. Surel Shah, the learned counsel for the Respondent herein had made a statement that the first appellate court had disposed of the appeal without passing any order on the application under Order XXXXI, Rule 27 of the CPC. The said statement was not disputed or controverted by the learned counsel for the Petitioner. Hence, by order dated 4th February, 2019, this Court had allowed the appeal and remanded the matter with directions to decide the application under Order XXXXI, Rule 27 of the Civil Procedure Code.

3. Mr. Mhatugade, the learned counsel for the Petitioner submits that after the remand order the Petitioner herein has learnt that the application under Order XXXXI Rule, 27 of the CPC was already dismissed by order dated 7th August, 1992. Mr. Shah, the

learned counsel for the Respondent, also concedes that the appeal as well as the application under Order XXXXI, Rule 27 was disposed of on 7th August, 1992. He states that he had made the said statement on the basis of the erroneous instructions given by the party as well as by the Advocate on record. He has tendered his apology for making a wrong statement. Since the directions to dispose of the application under Order XXXXI Rule 27 of the CPC were given on an erroneous statement, said directions are stayed till the next date of hearing.

4. Stand over to **18/6/2019**.

(SMT. ANUJA PRABHUDESSAI, J.)