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

**APPEAL FROM ORDER (ST) NO.30284 OF 2015
WITH
CIVIL APPLICATION NO.172 OF 2016
IN
APPEAL FROM ORDER (ST) NO.30284 OF 2015**

Amit Ruparel ... Appellants.

V/s.

Ballerina Meyers and ors ... Respondents

Mr. Piyush Raheja and Ms. Nupur Desai and Ms.
Anchal Jawani, i/by Makrand Gandhi & Co., for the
Appellant.

Mr. Santosh Chowdhary i/by Hariani & Co., for
respondent Nos. 7 to 10.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th JANUARY, 2019.

P.C. :

1] Heard learned counsel for the appellants and respondent
Nos. 7 to 10.

2] It is submitted by learned counsel for the appellant that by
the impugned order, the trial Court has abated the suit against
defendant No.6 as his legal heirs were not brought on record within
the stipulated period of 90 days. It is submitted that the Chamber
Summons filed by the appellant for setting aside the abatement order
and to bring the names of defendant Nos. 7 to 10, who are already on

record, as legal heirs of defendant No.6 was not entertained by the trial Court. Hence the instant appeal is preferred by the appellant.

3] Considering that the names of respondent Nos. 7 to 10 who are the legal heirs of defendant No.6 were already on record, it was not proper on the part of the trial Court to abate the suit against defendant No.6 especially when the Chamber Summons to that effect was tendered by the appellant on that day itself.

4] In view thereof, Appeal is allowed.

5] The impugned order passed by the trial Court is set aside. The trial Court to entertain the Chamber Summons and decide it on its merits.

6] In view of disposal of Appeal itself, pending Civil Application therein becomes infructuous and the same is disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]