

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL APPLICATION NO. 281 OF 2019****IN****FIRST APPEAL NO. 1791 OF 2007****ALONGWITH****FIRST APPEAL NO. 1791 OF 2007**

**Purushottam Shankar Shetye,
Since deceased through his
legal heirs and representatives
Smt.Vasundhara @ Mandakini
Purshottam Shetye & Anr.**

**..... Appellants/
Applicants**

VERSUS

**Smt.Malti Rajaram Parshetye,
Deceased through her
legal heirs and representatives
Abhay Shridhar Shetye**

..... Respondent

Mr.R.A.Thorat, Senior Advocate, a/w. Mr.Kishor S. Patil for the Applicants/Appellants.

Mr.U.S.R.Singh, a/w. Mr.C.M.Lokesh for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 8th NOVEMBER, 2019

P.C.

By this civil application, the applicants prays that the issue as to whether Mr.Abhay Shridhar Shetye is legal representative of the deceased Ms.Malti Parshetye be adjudicated and decided first before proceeding with the hearing of the first appeal on merits and for other consequential relief.

2. Mr.Thorat, learned senior counsel for the applicants invited my attention to the order dated 15th December,2017 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 23473-23474 of 2017. Learned

counsel for the legal representative of the original respondent also placed reliance on the said order passed by the Hon'ble Supreme Court.

3. A perusal of paragraph (iii) of the said order clearly indicates that the Hon'ble Supreme Court has made it clear that the legal representative of the respondent no.1. has been brought on record, the first appeal shall be heard on merits.

4. The issue thus now sought to be raised by the appellants in the civil application that that issue whether Mr. Abhay Shridhar Shetye is legal representative of the original respondent or not has to be adjudicated upon before deciding the first appeal on merits does not survive. I am thus not inclined to grant any relief in this civil application in view of the order already passed by the Hon'ble Supreme Court on 15th December, 2017.

5. The question as to whether the original respondent no.1 was entitled to be granted any relief by the trial court which is subject matter of this first appeal or not, the said issue would be touching the merits of the matter. Both the parties are entitled to raise all objections permissible in law and such objections would be considered by this court by hearing the first appeal as per clarification by the Hon'ble Supreme Court in the order dated 15th December, 2017 and more particularly in paragraph (iv) of the order. Civil application is rejected with the aforesaid clarification. No order as to costs.

6. Place the first appeal on board for hearing and final disposal on **22nd November, 2019.**

[R.D.DHANUKA, J.]