

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

909 APPEAL FROM ORDER NO.3 OF 2021

KAUTIK BARSU CHOPADE DECEASED THROUGH PRABHAKAR KAUTIK
CHOPADE (DIED) AND OTHER
VERSUS
KISHOR KAUTIK CHOPADE AND OTHER

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Advocate for Petitioners : Mrs. Seema Pawar h/f Mr. Ajay G. Talhar

Advocate for respondent no. 1 : Mr. P. P. More

Advocate for respondent nos. 3/A to 3/C : Mr. Girish V. Wani

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CORAM : RAJESH S. PATIL, J.

DATE : OCTOBER 13, 2022

PER COURT : -

1. This Appeal from Order is filed under Section 104 r/w Order 43 of the Code of Civil Procedure, challenging the order passed below Exh. 1 dated 18.10.2019 by *Ad hoc* District Judge-1, Bhusawal in Regular Civil Appeal No. 508/2014, thereby allowing the application moved by the respondents seeking abatement of the appeal filed by the appellants. The appeal before the District Court was filed by the legal heirs of original defendant no. 2, namely, Prabhakar Kautik Chopade. During the pendency of the appeal before the District Court, appellant no. 2C – Leena Rajendra Bhagat died, however, the advocate for the appellants was not quite diligent to bring on record the legal heirs of the said appellant no. 2C, who died on 15.01.2017. Considering the submissions advanced by the parties, the District Judge, Bhusawal

passed the impugned order thereby abating the appeal. Hence, the appellants, being aggrieved with the impugned order, approached this Court by filing the present Appeal from Order.

2. At the preliminary stage itself, the advocates appearing for respondents have raised an objection about maintainability of the present appeal from order. It is the case of the respondents herein that the appellants should have preferred an application before the District Court for setting aside the impugned order of abatement of appeal in view of the provisions of Order 43 Rule (1) (k) of the CPC.

3. Learned counsel appearing for the appellants submits, on instructions, that she may be permitted to withdraw this appeal from order with liberty to file an application before the District Judge, Bhusawal for setting aside the abatement.

4. In view of above, the following order is passed.

ORDER

[i] The Appeal from Order is disposed of as withdrawn with liberty to the appellants to prefer an application before the District Judge, Bhusawal for setting aside the abatement within a period of four (04) weeks from the date of this order.

- [ii] The order passed below Exh. 1 dated 18.10.2019 by *Ad hoc* District Judge-1, Bhusawal in Regular Civil Appeal No. 508/2014, is set aside.

[RAJESH S. PATIL]
JUDGE