

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

916 CIVIL APPLICATION NO.1593 OF 2022
IN FA/1101/2004

SHURSEN KUMUDRAO RAJE (DIED) THR LRS SHAILAJA (DIED) THR
LRS CHITRASEN @ CHANDU AND OTHERS

VERSUS

PRATAPRAO BHUPALRAO RAJE NIMBALKAR (DIED) LRS
SARVADAMAN AND OTHERS

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Mr. Rajendra S. Deshmukh, Senior Counsel, i/b Mr. Devang R. Deshmukh,
Advocate for Applicants.

Mr. S. Y. Mahajan, Advocate for Respondent.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 07th April, 2022.

PER COURT:

. Heard Mr. Rajendra Deshmukh, learned senior counsel for applicants. He invited my attention to the order passed by this Court dated 30th January, 2018 (Coram : M. S. Sonak, J.). He submits that in view of such conditional order passed by this Court, the Registry under wrong impression was pleased to dismiss the entire appeal. In fact, this Court vide order dated 30th January, 2018 was pleased to pass conditional order regarding dismissal of appeal in respect of respondent No.8, who was reported to be dead and some unserved respondents. The whole appeal cannot be dismissed for want of prosecution. He further invited my attention to the order passed by this

Court dated 6th June, 2019. He submitted that three connected appeals vide First Appeal No.998 of 2004, First Appeal No.1102 of 2004 and First Appeal No.1103 of 2004 alongwith respective civil applications came to be transferred to the District Court, Osmanabad for disposal in accordance with law in view of amendment to Section 28 (C) of the Maharashtra Civil Courts Amendment Act, 2015, regarding enhancement of jurisdiction of the District Court. He submits that this application may be allowed so that the appeal can be restored to its original position and thereafter, it may be transferred to the District Court, Osmanabad for disposal according to law since the connected appeals have been already transferred.

2 Mr. S. Y. Mahajan, learned counsel for respective respondents submits that the appeal preferred by the respondents has already been transferred to the District Court, Osmanabad.

3 Having regard to the above referred factual scenario and looking to the earlier order passed by this Court dated 6th June, 2019, the prayers made on behalf of the applicants need to be allowed so that the appeal can be restored to its original position and so that it can be transferred to the District Court, Osmanabad for decision according to law. Hence, the following order is passed:

ORDER

- I. The application is hereby allowed in terms of prayer clauses (B) to (D).
- II. After restoring the appeal to its original position, the Registry is directed to transfer First Appeal No.1101 of 2004 to the District Court, Osmanabad for disposal according to law.
- III. The Registry to intimate the District Court, Osmanabad accordingly.
- IV. Civil application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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