

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

WRIT PETITION NO.11977 OF 2015

Babasaheb Abdul Mulani (Since Deceased)	]	
Through legal heirs and representatives,	]	
1. Shamshad Babasaheb Mulani	]	
2. Sameer Babasaheb Mulani	]	
3. Shahnaj Babasaheb Mulani	]	
4. Jameer Babasaheb Mulani	]	
5. Shakira Babasaheb Mulani	]	.. Petitioners
Vs.		
Fakeer Mohmmad Suleman Kasab	]	.. Respondent

Mr. Amitkumar D. Sale for the Petitioners.

None for the Respondent.

CORAM : VALMIKI SA MENEZES, J.

DATE : 18TH NOVEMBER, 2022.

P.C. :

1. This Writ Petition, under Article 227 of the Constitution of India, takes exception to the order dated 15th September 2014 passed by the Adhoc District Judge-1, Sangli, dismissing an application at Exhibit-37 of its file, for recall of the order dated 7th April 2014 by which Regular Civil Appeal No.300 of 2008 was dismissed for default.

2. The petitioner herein - Babasaheb Abdul Mulani is the original appellant in Regular Civil Appeal No.300 of 2008, in which challenge is

thrown to the Judgment and Decree dated 31st January 2007 passed by the IInd Joint Civil Judge, Senior Division at Sangli, in Regular Civil Suit No.840 of 2000, granting a money decree in the sum of Rs.63,746/- along with interest thereon, to the respondent herein - Fakeer Mohammad Suleman Kasab, the original plaintiff in Regular Civil Suit No.840 of 2000.

3. Notice in this petition was issued to the respondent on 15th October 2016 indicating that the petition would be finally disposed of at the stage of admission. No appearance has been put in by the respondent though served. Today, when the matter was called out twice, no one appeared for the respondent. Hence, the petition was heard and disposed of at the stage of admission itself.

4. Heard learned counsel for the petitioners. Perused the record of the petition.

. The learned Advocate Mr. Amitkumar Sale submits that, while it may be true to some extent that there were certain delays attributable to the original petitioner – original appellant before the District Court in hearing of the appeal and its expeditious disposal, however the appeal at the relevant stage was ripe for final hearing and written notes of arguments were also placed on record by both the parties to the appeal. The learned counsel for the petitioner further submits that the appeal was dismissed for default only for the fact that the Advocate for the appellant has sought an adjournment

through an application sent along with his party. Consequently, the appeal was dismissed for default. From the record, it appears that the District Court has not disposed of the appeal on merits, even though the entire evidence was before it and Written Notes of Arguments had been filed.

5. Considering the reasons stated in the order dated 15th September 2014, passed by the Adhoc District Judge-1 Sangli on the application below Exhibit-37 in Regular Civil Appeal No.300 of 2008, and considering that the appeal was not disposed of on merits and only dismissed due to default of the Advocate, the legal representatives of the original petitioner, who is now deceased, should not be made to suffer the consequences without they being heard on merits. Considering this aspect of the matter, I am of the considered view that this is a fit case to exercise the supervisory jurisdiction vested in this court, under Article 227 of the Constitution of India, in setting aside the impugned order dated 15th September 2014 passed on the application below Exhibit-37. Accordingly, I pass the following order :-

- (i) Rule is made absolute in terms of prayer clause (a) of the petition, subject to payment of costs of Rs.10,000/-, to be paid to the respondent. The costs shall be deposited by the petitioners before the District Court, Sangli on or before 12th December 2022 as a condition precedent for proceeding with the hearing of Regular Civil Appeal No.300 of 2008.

- (ii) Order dated 15th September 2014 passed by the Adhoc District Judge-1, Sangli, on the application below Exhibit-37 in Regular Civil Appeal No.300 of 2008, is hereby quashed and set aside.
- (iii) Consequently, the order dated 7th April 2014, passed by the District Court, Sangli, dismissing Regular Civil Appeal No.300 of 2008 for default, is also set aside. Regular Civil Appeal No.300 of 2008 is restored to the file of the District Judge, Sangli.
- (iv) Accordingly, the parties shall appear before the District Judge, Sangli on 19th December 2022 at 10:30 a.m. It is made clear that under no circumstances the petitioners shall seek any further adjournment and the District Court shall proceed to dispose of the appeal as expeditiously as possible and in any event within a period of three months from the date of receipt of writ of this court.
- (v) The trial court shall issue notice to the respondent in the appeal - Fakeer Mohammad Suleman Kasab, notifying the respondent of the date fixed for hearing Regular Civil Appeal No.300 of 2008.

- (vi) The appellants-petitioners herein are directed to pay necessary process fees in the registry of the District Court at Sangli, to enable the registry to issue fresh notice to the respondent.
- (vii) Writ Petition is disposed of in the above terms.

[VALMIKI SA MENEZES, J.]