

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

CIVIL REVISION APPLICATION NO.538 OF 2019

Mr. Soharab Abdul Sattar Gujar and Ors. ..Applicants
Versus
Mr. Aquib Saquib Nachan ..Respondent

Ms. Gauri Godse, for the Applicants.
Mr. Shariq Nachan a/w Mr. Azeem Shaikh & Maaz Syed i/by
Judicare Law Associates, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th JANUARY, 2022

PC.

1. I have perused the order passed below Exh.1 dated 28th March, 2019 which is impugned in the present revision application.
2. Admittedly, the suit was dismissed as the legal heirs of the plaintiff were not brought on record, consequently, the order of abatement and dismissal of the suit came to be passed.
3. It appears that vide impugned order contrary to the scheme of Order XXII Rule 9 of CPC while setting aside order of abatement the Trial Court has restored the suit and proceeded to decide an application for setting aside abatement thereafter which, in my opinion, is not permissible in law unless order of abating the proceedings is set aside the suit cannot be restored as Court, in my

opinion, will not get jurisdiction to deal with the trial of the suit.

4. That being so, petition stands allowed. Order impugned dated 28th March, 2019 passed below Exh.1 is hereby quashed and set aside. Application moved by the respondent/proposed plaintiff for setting aside abatement and restoration of the suit is directed to be decided afresh in tune with the scheme of Order XXII of CPC expeditiously.

5. As such, petition stands disposed of.

6. Needless to clarify the necessary consequences of the present order shall follow in the present proceedings.

[NITIN W. SAMBRE, J.]