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

**CIVIL REVISION APPLICATION NO.76 OF 2023
WITH
INTERIM APPLICATION NO.1967 OF 2023**

Ms. Mumtaz Siddiqui (since deceased)

Through her Legal Heirs

Hannan Saleem Siddiqui

...Applicant

Versus

Smt. Hazrabai Riyazuddin (since deceased)

1(a) Mr. Shaikh Jamaluddin Riyazuddin and Ors. ...Respondents

- Mr. R.A. Thorat, Senior Advocate i/b. Minakshi Surve for the Applicants.
- Ms. Panthi Desai i/b. M/s. M.P. Vashi & Associates for Respondents.

CORAM : MADHAV J. JAMDAR, J.

DATE : 20th APRIL 2023

P.C. :

1. On the earlier occasion, I have heard Mr. Thorat, learned Senior Counsel appearing for the Applicant and Mr. Vashi, learned counsel appearing for the Respondents.

2. After hearing the matter for sometime, both the learned Senior Counsel agreed to file Minutes of Order. Accordingly, Minutes of Order are filed which are signed by the learned Advocate appearing for the Applicant and the learned Advocate appearing for the Respondents. The said Minutes of Order are taken on record and

marked 'X' for identification. Said Minutes of Order read as under :-

“MINUTES OF ORDER

1. That the Petitioner has filed the present Civil Revision Application before this Hon'ble court challenging the Judgment and Decree dated 02.01.2023 passed by the Appellate Bench of Small Causes Court at Mumbai (Bandra Branch) in 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006 and Judgment and Decree dated 12.02.2018 passed by the Small Causes Court at Mumbai (Bandra Branch) in R.A.E. Suit No. 46/102 of 2006.
2. That during the pendency of 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006, the Appellant in said Appeal/ Original Defendant No1 i.e. Mumtaz Siddiqui expired on 15.06.2020. The present Petitioner and Respondent No.4 are claiming to be her only heirs and legal representatives.
3. That the Appellant in 2A-Appeal No. 34 of 2018 expired on 15.06.2020 during pendency of the Appeal. Since the heirs and legal representatives of Original Appellant were not brought on record within the prescribed period of limitation, the 2A-Appeal No. 34 of 2018 had abated. The fact about death of the Appellant was not brought to the notice of the Appellate Bench of Small Causes Court at Mumbai (Bandra Branch) and the 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006 came to be decided on merits even though the Appeal had abated.
4. In the aforesaid circumstances, the Judgment and Decree dated 02.01.2023 passed by the Appellate Bench of Small Causes Court at Mumbai (Bandra Branch) in 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006 is quashed and set aside and the 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006 is revived and restored to the file of the Appellate Bench of Small Causes Court at Mumbai (Bandra Branch).
5. That the Petitioner and the Respondent No.4 are at liberty to

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file an appropriate application for bringing themselves on record in 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006 along with delay condonation application and for setting aside abatement of 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006.

6. That the application to be filed by the Petitioner and the Respondent No.4 in 2A-Appeal No. 34 of 2018 in R.A.E. Suit No. 46/102 of 2006 will be decided on its own merits within a period of 3 months from the date of the order.
 7. That pending the hearing of the said application to be filed by the petitioner and the respondent no.4, the petitioner and/or the respondent no.4 will not alienate, encumber, or part with possession or create third party rights in respect of the suit premises.
 8. That in case the application filed by the petitioner and the respondent no.4 for setting aside the abatement is allowed by the Appellate Bench of the small causes court at Mumbai (Bandra Branch), the respondent no.1(a) to the respondent no.1 (e) will be entitled to make an application for the deposit of compensation at market rate as per the judgment of the Supreme Court in case of Atma Ram Properties (Pvt) Ltd reported in (2005) 2 Mh.L.J.1(SC).
 9. Accordingly, the present Civil Revision Application and Interim Application No.1963 of 2023 is disposed of in the above terms.
 10. No order as to cost.”
3. In view of the Minutes of Order, the Judgment and Decree dated 2nd January 2023 passed by the learned Appellate Bench of Small Causes Court at Mumbai (Bandra Branch) in 2A-Appeal No.34 of 2018 in R.A.E. & R. Suit No.46/102 of 2006 is quashed and set

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aside.

4. Both the parties to remain present before concerned Appellate Bench at Small Causes Court at Mumbai on **12th June 2023** and the learned Appellate Court to fix the schedule of hearing.

5. Civil Revision Application is disposed of in terms of minutes of order. The learned Appellate Bench is requested to dispose of the said Appeal on or before **31st December 2023**.

6. In view of the disposal of Civil Revision Application, nothing survives in the Interim Application and the same is also disposed of.

7. All concerned to act upon an authenticated copy of this order.

[MADHAV J. JAMDAR, J.]