

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 607 OF 2008
IN
CONTEMPT NOTICE OF MOTION NO. 906 OF 2008
WITH
CIVIL APPLICATION NO. 462 OF 2015
AND
APPEAL FROM ORDER NO. 606 OF 2008
IN
NOTICE OF MOTION NO. 732 OF 2008
WITH
CIVIL APPLICATION NO. 672 OF 2015**

Shri. Mangare Chottu Choudhari ..Appellant
Vs.
Shri. Mohammed Shafi S/o. Jangbahadur Khan ...Respondent

Mr. Rajendra Yadav for Appellant.
Mr. Shubham Mishra with Mr. Ravishankar Mishra i/b. Mr. Vijay Mishra
for Respondent.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 11, 2023**

P.C.:

1. Heard Mr. Yadav, learned counsel for the appellants.
2. This Court on 13 March, 2012 had passed the following order on
the present appeals from order:-

“ Learned Counsel for the appellant states that the sole appellant in both the Appeals has expired on 18.10.2010. He further states that in the pending suit before the City Civil Court, on behalf of the appellant, Chamber Summons is taken out for bringing heirs and legal representatives of the sole appellant on record.

2. Having regard to the fact that the sole appellant in both the appeals has expired on 18.10.2010, the Appeals are abated.”

3. The present application for setting aside the abatement order has been filed on 16 March, 2015.

4. Learned counsel for the respondent has drawn the Court’s attention to an order dated 15 January, 2019 passed by a Co-ordinate Bench of this Court on a companion Appeal from Order No.606 of 2008 wherein Civil Application No.463 of 2015 which was filed for setting aside the order of abatement was dismissed by the following order:-

“1] Heard Learned counsel for the applicant.

2] This application is preferred for condonation of delay of 2 years and 307 days in preferring the present application, for setting aside the order of abatement dated 13.3.2012, passed by this Court, in Appeal from Order No.606 of 2008.

3] Considering that the appeal is preferred against the order dated 7.5.2008, passed in Notice of Motion No.732 of 2008 and, there is delay of about 3 years in preferring this Application even after abatement order was passed, no case is made out for condonation of delay. The appellant can very appear before the trial Court and argue the matter. Hence the application stands dismissed.”

5. After hearing learned counsel for the parties and having perused the record, in my opinion, there is no scope for a different opinion arrived at by the Court in dismissing the present civil application as taken in the above order passed by a Co-ordinate Bench of this Court in the companion appeal as noted above. This application is accordingly

dismissed for the same reasons as set out in the said order dated 15 January, 2019 (supra).

6. Dismissed. No costs.

7. It is however clarified that all contentions of the parties in the pending suits are expressly kept open.

8. Needless to observe that in view of dismissal of the civil application, that an order dated 16 June, 2016 whereby the City Civil Court was directed not to proceed further stands forthwith vacated.

[G.S. KULKARNI, J.]