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

CIVIL APPLICATION NO. 4718 OF 2009

IN

FIRST APPEAL (ST.) NO. 27207 OF 2007

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The State OF Maharashtra

... Applicant

V/s.

M/S. S.S. Dhotre and Bros.,

Through its. Partners

Shetty S. Dhotre, deceased,

Thr. LR.s. & Ors.

... Respondents

Ms. Tanaya Goswami, AGP for the applicant/State.

Mr. Bharat Gadhavi with Mr. Pratik Sabrad i/by Tejesh
Dande & Associates for respondent nos.1a and 1b.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 23, 2023

P.C.:

- 1.** The civil application is for recall of orders dated 13th January 2009 and 3rd February 2009.
- 2.** This Court by said orders dismissed first appeal against respondent no.2. The reason for passing of order was that the claimant was not alive on the date of passing of the impugned Award. The second reason is that on the date of filing of first appeal, respondent no.2 was not alive.
- 3.** On perusal of the record, it appears that the suit was filed by

partnership firm along with partners. One of the partner (respondent no.2) died during the pendency of the suit. The application by legal representatives of respondent no.2 filed for bringing themselves on record was rejected by the Trial Court. In those circumstances, suit was decided in absence of respondent no.2.

4. Considering the aforesaid reasons, appellant cannot be blamed for filing appeal when respondent no.2 had died prior to the filing of first appeal.

5. Therefore, the order dated 13th January 2009 needs to be recalled.

6. The order dated 3rd February 2009 is a consequential order based on order dated 13th January 2009 first appeal stood dismissed against respondent no.2.

7. In view of recall of order dated 13th January 2009, consequential order dated 3rd February 2009 needs to be recalled.

8. For the aforesaid reasons, the civil application is allowed in terms of prayer clauses (b) to (d). No costs.

9. List the first appeal for **admission** on **9th March 2023**.

(AMIT BORKAR, J.)