



C.M.P.No.20626 of 2018
in S.A.No.119 of 1999

P.T.ASHA, J

This petition is filed seeking to recall the judgement dated 21.01.2015, which was dismissed as withdrawn.

2. A perusal of the records would show that the petitioners/appellants on coming to know about the judgment dated 21.01.2015, have taken steps to get the return of the papers and change of vakalat from the erstwhile counsel. However, it appears that the erstwhile counsel had not immediately entrusted the brief back to the party nor given his consent for change of vakalat. The petitioners were therefore constrained to file a petition in C.M.P.No.1447 of 2016 to revoke the vakalat given to the erstwhile counsel. For 2 years, the petition was pending and ultimately on 04.09.2018, consent was given by the erstwhile counsel and the same was reported to the Court and the C.M.P was dismissed as not pressed. This was immediately followed by the present petition seeking to recall the order of dismissal, which is the subject matter



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3. Considering the reasons cogently set out, this Court is now inclined to allow the petition in order to render justice. No doubt, the respondents have taken out a defense that appellants 1 and 3 died even before the suit was dismissed as not pressed. From a perusal of the affidavit filed in support of C.M.P.No.20626 of 2018, it appears that the learned counsel has not taken steps to implead the legal heirs of the deceased appellants 1 and 3, though the information was given to him about the death of the deceased .

4. Be that as it may, the legal representatives have now been brought on record in C.M.P. Since the Court is convinced by the reasons set out in the affidavit which is corroborated by the notes of proceeding, the petition is allowed. The appellants are directed to file necessary applications to bring on record the legal representatives of the deceased 1, 2 and 3 appellants immediately, as the appeal was dismissed as abated as against these appellants. The respondents have filed a Memo dated 01.07.2019 stating that the second appellant has not been heard of, since 24.04.2018. Post on 28.02.2023.



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08.02.2023

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