



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1806 OF 2019 (DECIDED)

(Union of India vs. Murlidhar s/o Kashinath Lawhare (since deceased) through LR's)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. N.P.Lambat, Advocate for the appellant.
Ms. Aastha Sharma, Advocate for respondents.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 25, 2025

CIVIL APPLICATION (F) NO.1451 OF 2024

1) Heard Ms.Aastha Sharma, learned counsel for the respondents/applicants. The argument is that the appeal against the reference will have to be dealt with in terms of Order 41 Rule 17 of the Civil Procedure Code., if the appellant failed to appear before the Court. In the present case, the appellate Court has decided the appeal on merit in absence of appellant.

2) The law is well settled that reference can not be dismissed for want of prosecution and that it has to be decided on merit. The question is whether same analogy will be applicable to the first appeal being the proceedings which can be said to be continuation of the suit. Learned counsel for the respondents/applicants submits that in such circumstances, the appellate Court will be bound by Order 41 Rule 17 of the C.P.C., meaning thereby that the appeal cannot be dismissed on merit.

3) In support of her case she has relied upon the decision of Hon'ble Supreme Court in the case of *Rajmani vs. The Collector, Raipur*, reported in *1996(5) SCC 701*.

4) Issue notice to the respondents, returnable in three weeks.

(ANIL L. PANSARE, J.)