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

**WRIT PETITION NO. 11631OF 2014**

Appasaheb Sidramappa Hatture and Ors.

... Petitioners

**V/s.**

Popatlal Ratanchand Bhandari  
since deceased through his legal representative  
Smt. Gulabai Shantilal Bhandari

... Respondent

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Mr. Milind R. Deshpande for the Petitioners

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**CORAM : ALOK ARADHE, CJ.**

**DATE : 10 JULY 2025**

**P.C. :**

1. In this Petition under Article 227 of the Constitution of India, the Petitioners have assailed the validity of the order dated 18 November 2023, by which the Appellate Court has set aside the order dated 28 April 2004 passed by the Trial Court in refusing to set aside the abatement of the Suit and has allowed the Appeal.

2. Facts giving rise to filing of this Petition briefly stated are that the Respondent/Plaintiff has filed the Suit for recovery of possession in respect of land bearing Gat No.60/2, admeasuring 33 H. 92 R. to the extent of 45X45 sq. ft. situated at Village Majarewadi, North Solapur. During the

pendency of the Suit, the Plaintiff expired on 13 January 2003. The legal representatives of the deceased Plaintiff filed an application seeking their substitution. The aforesaid application was rejected by the Trial Court by an order dated 28 April 2004 and the Suit was held to have been abated.

3. Being aggrieved by the aforesaid order, the Respondent preferred Misc. Civil Appeal No. 71 of 2011, which has been allowed by the order dated 18 November 2013, passed by the Appellate Court. Hence this Petition.

4. The learned Counsel for the Petitioners submitted that the Appellate Court ought to have appreciated that no appeal lies against the order passed by the Trial Court and therefore, the Appeal itself was not maintainable.

5. I have considered the submission made by the learned Counsel for the Petitioners and have perused the record.

6. The Trial Court by order dated 28 April 2004, rejected the application seeking substitution of legal representatives and dismissed the Suit as having abated. An Appeal against the order refusing to set aside the abatement of dismissal of the Suit lies under Order 43 Rule (1)(k) of the Code of Civil Procedure. The Plaintiff, therefore, ought to have filed an

application under Order 22 Rule 9 of the Code of Civil Procedure instead of filing the application for setting aside the abatement, the Plaintiff filed an Appeal which was not maintainable.

7. Therefore, the impugned order dated 28 April 2004 is quashed and set aside. However, liberty is reserved to the Respondent to file an application before the Trial Court seeking setting aside of the abatement of the Suit, if so advised.

8. Accordingly, the Writ Petition is disposed of.

**( CHIEF JUSTICE )**