

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

CIVIL WRIT PETITION NO. 376 OF 2022

Rama Arjun Sonwane since deceased
Through Legal Heirs.

..Petitioners.

Versus

Tukaram Sahadu Deore since deceased
Through Legal Heirs.

..Respondents

Mr. Jayendra D. Khairnar for Petitioners.

CORAM : SARANG V. KOTWAL, J.

DATE : 20 MARCH 2023

PC :

1. The Petitioners are the original Plaintiffs in R.C.S.No.231 of 2000 before the Civil Judge, J.D., Satana. That suit was dismissed. The Petitioners preferred Civil Appeal No.56 of 2009 before the District Judge-2, Malegaon. That Appeal was dismissed on 23/08/2016 observing that no steps were taken to secure presence of the legal representatives of the original respondents. The Petitioners filed Civil M.A.No.61 of 2016 for restoration of that Appeal.

2. Learned counsel for the Petitioners invited my attention

to the order dated 25/02/2020 passed by District Judge-1 Malegaon in Civil M.A.No.61 of 2016, in which, it was observed that the Respondents were served with the notice and the matter was to proceed against them ex-parte. After that the impugned order was passed on 24/06/2021 rejecting the application for restoration of R.C.A.No.56 of 2009. It was observed in paragraph-10 of the impugned order that the Petitioners had avoided providing correct address of the Respondents for service of summons. Learned counsel for the Petitioners submitted that, this observation is directly contrary to the observations made on 25/02/2020 and, therefore, the impugned order is not sustainable.

3. Considering these submissions, issue notice to the Respondents, returnable on 10/07/2023.

4. Stand over to 10/07/2023.

(SARANG V. KOTWAL, J.)