

Arjun

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

WRIT PETITION NO.5737 OF 2023

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Shri. Jagdish Mohanlal Desai ...Petitioner

V/s.

Shri. Harshad Kantilal Patel & Ors. ...Respondents

Ms. Eventa A. Gonsalves a/w Mr. Reyden L. Gonsalves,
for the Petitioner.

Mr. Kapil Shah i/b MK Juris Associates, for Respondent
No.1.

**CORAM : MADHAV J. JAMDAR, J.
DATED : APRIL 27, 2023**

P.C.:

1. Heard Ms. Gonsalves, learned counsel appearing for the
Petitioner and Mr. Shah, learned counsel appearing for
Respondent No.1.

2. By order dated 31st January, 2020 passed below
Application bearing Exhibit 28 in R.A.E & R. Suit No.168/293
of 2013, the defence of the Petitioner i.e. Defendant was
struck off under Order XI Rule 21 of the Code of Civil
Procedure, 1908. The said order dated 31st January, 2020 is
challenged by filing Appeal before the Division Bench of the

Small Causes Court at Mumbai (Bandra Branch). As there is delay in filing the Appeal, the MARJI Application No.57 of 2022 was filed on 17th August, 2022. The said MARJI Application No.57 of 2022 was dismissed by order dated 29th March, 2023 passed by the learned Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch). In the present Writ Petition the challenge is to the legality and validity of the said order dated 29th March 2023.

3. The impugned order in the said Appeal was order dated 31st January, 2020. It is the contention of the learned counsel appearing for the Petitioner that the Petitioner applied for the certified copy of the impugned order on 1st February 2020 and the same was delivered on 12th February 2020. Therefore, 30 days period for filing the Appeal expired on 12th March 2020. She submits that during said period of Covid-19 pandemic citizens' movements were restricted. The Supreme Court has suspended the limitation period from 15th March 2020 till 28th February 2022. In the MARJI Application No.57 of 2022, the Petitioner has set out the reasons for delay including that on account of his health, the Petitioner went to Gujrat and, thereafter, due to Covid-19

pandemic lockdown was imposed from 21st March, 2020. It has been mentioned in the MARJI Application that, the Petitioner returned back to Mumbai in August, 2022 and, thereafter, the Appeal has been filed. The perusal of the impugned order dated 29th March, 2023 shows that, the learned Appellate Court has observed that, before the declaration of lockdown, period of limitation has lapsed and as the Supreme Court has suspended the limitation till 28th February, 2022 and the Application is filed on 18th August, 2022, therefore, there is delay.

4. As far as the contention raised by the Petitioner that he returned back to Mumbai from Gujrat in August, 2022, it is observed by the learned Appellate Court that the Petitioner has not explained that why he could not return back to Mumbai immediately after February, 2022 for filing of the Appeal.

5. It is the settled legal position that, as far as the delay condonation is concerned, the approach of the Court should be liberal. The age of the Petitioner is 77 years. The Petitioner has given reasons in paragraphs 4 to 6 in MARJI Application, which reads as under :-

- “4. I say that, on account of my health, I was required to travel to Gujarat from time to time in the year 2018, 2019 and 2020. My son, the Respondent No.3/Original Defendant No. 1, was handling the matter and was in contact with the Advocates in respect of the matter. My son the Respondent No. 3 was in employment and was required to travel out of India on account of his employment professional commitments and hence, was unable to give instructions to my Advocates. Thereafter, COVID 19 struck the whole of India and Nation wide lockdown was imposed from 21.3.2020. On account of my health, I was required to stay in Gujarat and my son, the Respondent No.3 who was taking care of the matter was unable to travel back to India to give necessary instructions and/or to keep track of the above matter.
5. In the month of August, 2022 I returned to Mumbai and I contacted my Advocate Ms. Eventa Gonsalves to find out the status of the suit. I was informed by my advocate that, the Defences filed by the Applicant/Appellant and the Respondents Nos.2 to 8 had been struck off, by Order dated 31.1.2020, passed below Exhibit ‘28’, filed by the Respondent. Hereto annexed and marked **EXHIBIT ‘A’** is the copy of the Order dated 31.1.2020, passed below Exhibit ‘28’.
6. I was constrained to stay in Gujarat on account of my health, and as my son the Respondent No.3 was unable to follow up with the Advocate, on account of his professional commitments, the Order dated 31.1.2020 went unnoticed by me and the Respondents Nos.2 to 8.”
6. A perusal of the reasons set out in the said MARJI

Application shows that the same are bonafide reasons. Nothing is pointed out to indicate that the delay is for malafide purpose. As sufficient reasons are given, the order dated 29th March, 2023 passed by the learned Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch) in MARJI Application No.57 of 2022 in Appeal No.____of 2022 in Exhibit 28 of 2022 in R.A.E. & R. Suit No.168/293 of 2013 is quashed and set aside and the said MARJI Application No.57 of 2022 is allowed. Resultantly, the said Appeal challenging order below Exhibit 28 in R.A.E. & R. Suit No.168/293 of 2013 dated 31st January, 2020 is restored to the file of the Appellate Court of the Small Causes Court at Mumbai (Bandra Branch).

7. The learned Appellate Court is requested to dispose of the said Appeal expeditiously.

8. Till the disposal of the said Appeal, the trial in the said R.A.E. & R. Suit No.168/293 of 2013 shall remain stayed.

9. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]