

HARSHADA H. SAWANT  
(P.A.)

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

**INTERIM APPLICATION NO.1001 OF 2024**  
**IN**  
**WRIT PETITION (L) NO.35137 OF 2015**

Nizamuddin Nazir @ Nassiruddin Shaikh  
(Chunnu) .. Applicant

**Versus**

Kailash Niranjani Modi .. Respondent

- .....  
• Mr. Mahendra R. Jhakde, Advocate for Applicant.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : FEBRUARY 23, 2024**

**P.C.:**

- 1.** Heard Mr. Jhakde, learned Advocate for Applicant.
- 2.** The present Application seeks restoration of dismissed Civil Writ Petition (L) No.35137 of 2015 which came to be dismissed for non-removal of office objections in view of the conditional order dated 17.11.2016.
- 3.** Admittedly, substantial time and opportunity was granted after filing of the Writ Petition to the Petitioner / Applicant, but the office objections were not removed.
- 4.** Application for revision of order dated 17.11.2016 is filed for the first time on 08.01.2024 and it is seen that Applicant has pleaded medical reasons due to his ailments and having undergone treatment with Sir JJ group of Hospital and P. D. Hinduja Hospital,

due to which he was not in a position to communicate instructions to the Advocate handling the matter.

**5.** It is contended by the Applicant that from October-2016 to October-2022, the Applicant was undergoing treatment in the Government run hospital as also private hospital and medical centres in Mumbai.

**6.** In support of these submissions and reasons for delay, substantial documentary evidence has been appended from page No.15 (Exhibit-B collectively) to page No.88 of the Interim Application, *inter alia*, referring to the various medical records of the Applicant having undergone treatment.

**7.** In that view of the matter, delay of 2605 days is sought to be condoned. The Writ Petition challenges the order dated 12.04.2011 passed by the District Court in Miscellaneous Civil Appeal. I have perused the Interim Application and the Annexures attached thereto which are all medical records of the Applicant during the aforementioned period of delay.

**8.** Even otherwise though delay as contemplated by Applicant is of 2605 days, the Applicant would otherwise be entitled to exemption of the period from 15.03.2020 to 28.02.2022 for the COVID-19 Pandemic lock-down period as per the Supreme Court order in *suo motu* Petition No.4 of 2020 and hence, the actual delay would

be much less than 2605 days.

**9.** Considering the reasons mentioned in the Interim Application and the Annexures to the Application, I am inclined not to disbelieve the case of the Applicant in so far as his medical condition was concerned which eventually led to substantial delay in filing the present Application. I give the benefit of doubt to the Applicant since substantial medical documentary evidence is appended to the Interim Application.

**10.** But allowing such an Application unconditionally would not be possible. Hence, delay of 2605 days or any other delay stands condoned subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand Only) to the Kirtikar Law Library, High Court, Bombay within a period of three weeks from today. Copy of receipt of costs shall be paid on filing of the Writ Petition. In view of the above, order dated 17.11.2016 stands revoked, quashed and set aside and Writ Petition (L) No.35137 of 2015 stands restored to the file.

**11.** The objection shall also be removed by the Applicant within a period of six weeks from today, if there are any. Mr. Jhakde would submit that he has a copy of Writ Petition and he has therefore drawn my attention to the order dated 16.02.2024. In view of the directions contained in the order, Registry has prepared two reports dated 20.02.2024 and 21.02.2024. It is seen that entire record of Writ

Petition (L) No.35137 of 2015 has been destroyed in May, 2020 as per the Rules 3, 3A, 4 and 8 of Chapter XV of Bombay High Court Appellate Side Rule, 1960. In that view of the matter, Registry has stated in the report that concerned party i.e. Applicant herein would have to be directed to lodge true copies of original record for reconstruction of the Writ Petition as provided by Clauses (3) to (5) of the Practice Note No.47 issued by Prothonotary and Senior Master, High Court (O.S.) Bombay and Registrar (Judicial-1) High Court, (Appellate Side) Bombay.

**12.** In view of the above, Applicant is directed to comply with the provisions of Practice Note No.47 for reconstruction of brief in Writ Petition (L) No.35137 of 2015 after payment of costs and producing receipt of such payment to the Registry.

**13.** With the above directions, Interim Application is allowed and disposed.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

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