

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

WRIT PETITION NO. 13940 OF 2023

Smt. Narmada Jyotiram Ghanwat ...Petitioner
Versus
Ismail Suleman Mulla And Anr ...Respondents

**WITH
Writ Petition NO. 14051 OF 2023**

Sachin Sadashiv Wagh ...Petitioner
Versus
Ismail Suleman Mulla And Anr ...Respondents

**WITH
Writ Petition NO. 14052 OF 2023**

Anil Ramchander Rakshe ...Petitioner
Versus
Ismail Suleman Mulla And Anr ...Respondents

Mr. Akil Kupade for Petitioner in all the Petitions
Mr. Nilesh Pandey for Respondents.

CORAM : RAJESH S. PATIL, J.

DATED : 12 FEBRUARY 2024

P.C.:

1. RULE. Rule made returnable forthwith and heard by consent of learned counsel for the parties.
2. These Writ Petitions challenges the impugned order dated 13 October 2023 passed by the Appellate Bench of Court of the Small Causes, thereby MARJI Application seeking condonation of delay in filing the Revision Application was rejected.

3. The Petitioner herein is the Original Defendant/Tenant. The Respondent-Landlord had filed eviction suit during the pandemic period against the Petitioner-Tenant. During the pandemic period summons were served on the Defendant. After the service of Summons, the Defendant preferred an Application to take on record their written statement along with the application to condone the delay in filing the written statement.

4. Mr. Kupade, learned counsel appearing for the Petitioner-Tenant informs that in fact there was no delay in filing the written statement as the defendant was served with the summons during the pandemic period and the written statement with an application to take on record the written statement was filed during the pandemic period. He further submits that in view of the order passed by the Supreme Court in *Suo Moto Writ Petition (C) No.3 of 2020* the limitation period between 15 March 2020 till 28 February 2022 stand excluded for the purposes of limitation as prescribed under any laws in respect of all judicial or quasi judicial proceedings and further in cases where limitation period would have expired during the said period between 15 March 2020 till 28 February 2022, notwithstanding the actual balance period of limitation remaining, further limitation period of 90 days from 01.03.2022 shall apply. Paragraph No.5 (i) and 5 (iii) of order dated 10 January 2020 passed in *Suo Moto Writ Petition (C) No.3 of 2020* is reproduced hereinbelow :-

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be

prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.”

“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

(Emphasis supplied)

5. In the present proceedings, since the Trial Court rejected the Condonation of delay application, the original defendant preferred an application to set aside the order passed by the Trial Court rejecting the delay condonation application in filing the written statement. The Trial Court rejected even the second application filed by the Defendant. Therefore, the defendant preferred a revision application before the Appellate Bench of Court of the Small Causes along with the delay condonation application.

6. It appears that in the delay condonation application filed in the revision application in paragraph No.2 a specific ground has been taken that the Supreme Court in Suo Moto Writ Petition (C) No. 3 of 2020 have excluded for the purpose of limitation the period for 15 March 2020 till 28 February 2022. However, even the Revisional Court did not consider the judgment of Supreme Court. The Revisional Court by its order dated 13 October 2023 rejected the delay application filed in revision application.

6. I have considered the documents on record the

impugned orders passed by both the Courts, and the directions of by the Supreme Court issued in Suo Moto Writ Petition (C) NO.3 of 2020. I am satisfied that a case is made out to allow this Writ Petition. The present Writ Petition is allowed in terms of prayer clause (b) (c) and (d). the prayer clauses (b) (c) and (d) reads as under :-

“b) This Hon'ble Court may be pleased to issue writ of certiorari or any other appropriate writ, order or direction in the like nature, further, this Hon'ble Court may be pleased to examine the legality, validity and propriety of the impugned order dated 13/10/2023, passed by Ld. Appellate Court, Small Cause Mumbai, whereby the Marji Application bearing No. 75 of 2022 preferred for seeking condonation of delay of 186 days caused in filing Revision Application has been rejected, AND, after examining the same, this Hon'ble Court may be pleased to quash and set aside the same;

c) This Hon'ble Court may be pleased to issue writ of certiorari or any other appropriate writ, order or direction in the like nature, further, this Hon'ble Court may be pleased to examine the legality, validity and propriety of the impugned order dated 16/04/2022 AND 17/09/2022, passed by Ld. Trial Court, Small Cause Mumbai, whereby the delay application in filing written statement has been rejected, AND, after examining the same, this Hon'ble Court may be pleased to quash and set aside the same.

d) That this Hon'ble Court after examining the legality, validity and propriety of the impugned orders dated 13/10/2023, 17/09/2022 and 16/04/2022, be pleased to direct the Ld. Trial Court of Small Cause, Mumbai to take on record the written statement dated 24/03/2022 filed by the Petitioner/Original Defendant.”

7. The Court of Small Causes Court at Mumbai is directed to take on record the written statements and proceed further with the trial of the suit.

(RAJESH S. PATIL, J.)