

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

**WRIT PETITION NO.306 OF 2024**

1. Mr. Kalpesh Haresh Doshi  
Age : 42 years, Occ : Business

2. Mr Jimesh Ramesh Shaparia  
Age : 45 years, Occu : Business.  
Both having adress at Plot No.323,  
Situating at New Tank Bunder  
Mazgaon, Reclamation Estate  
Mumbai

...Petitioners

Versus

1. The Board of Mumbai Port Trust  
A Stautory Corporation, having its office  
At Vijay Deep, SV Marg, Fort,  
Mumbai – 400 038

2. Smt Bimbladevi Tilakchand Obhan

3. Smt. Tilakchand Mangatram Obhan  
(as joint tenants) trading as M/s. Mangatram  
Bros, 5 Road, Chambur, Bombay- 400007

4. Mr. Sanjana Mukesh Wig  
Tilak Niwas, Plot No.554, 11 Road,  
Chambur, Mumbai – 400071

... Respondents

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Ms. Priyanka Bhandari a/w. Sanket Dhawan for Petitioners.  
Mr. Amit Bhawe i/b. Mr. Milan Bhise for Respondent No.1.  
Mr. Ajay G. Khaire for Respondent No.4.

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**CORAM : RAJESH S. PATIL, J.**

**DATED : 11 JANUARY 2024**

**(JUDGMENT) :**

1. RULE. Rule is made returnable forthwith. With the consent of learned counsel for the parties, Writ Petition is taken up for final hearing.

2. This Writ Petition challenges order dated 24 November 2023 passed in MARJI Application No.192 of 2023, in Obstructionists Notice No.305 of 2012.

3. The Petitioners are arrayed as obstructionist in the Lower Court proceedings. Respondent No.1 has preferred an Obstructionist Notice No.305 of 2012 against Petitioners. In the said Obstructionists Notice Affidavit in reply was filed by Petitioners. The said Obstructionists Notice No.305 of 2012 was absolute by order 5 February 2020.

4. It is submission of Petitioners that soon thereafter the pandemic started and the Supreme Court in the proceedings of the Suo Moto Petition (Civil) No.3 of 2020 passed orders directing that the period from 15 March 2020 till 28 February 2022 shall stand extended for the purpose of limitation as may be prescribed under any general or special laws.

5. It is the case of the Petitioners that they came to know

about passing of the impugned order dated 5 February 2020, somewhere in the month March of 2023, when they had been to pay rent/compensation of the suit premises in the office of Respondent No.1. It is further submitted that after Petitioners got copy of the impugned order dated 5 February 2020, they tried to contact their advocate on record.

6. Ms. Bhandari submits that Advocate on record of Petitioners was one Mr. Tahiliani. As they were not able to trace their advocate on record, after further enquiry they got knowledge that the advocate on record Mr. Tahiliani has died.

7. Ms. Bhandari further submitted that the Petitioners in such a situation, as were having papers and proceedings. They applied to the Small Causes Court registry for certified copy of all the paper and proceedings. After receiving paper and proceedings, Petitioners filed an Appeal before Appellate Court of Small Causes, along with Application for Condonation of delay in filing the Appeal.

8. The Appellate Court of Small Causes thereafter heard the condonation of delay application and by its order dated 24 November 2023, they dismissed the delay condonation application

of the Petitioners.

9. The Appellate Court has disbelieved a case of the Applicant or Petitioners that they were not able to trace their advocate and as to the fact that the said advocate had died. The Court has disbelieved the case and has further stated that the litigant has to be vigilant.

10. I have considered the documents on record and after the hearing learned counsel for Petitioner and Respondent No.1 and taking into consideration the orders passed by the Supreme Court in case of *Suo Moto Petition (civil) No. 3 of 2020*. I am satisfied a case has made out to allow this Writ Petition. Accordingly, this Writ Petition is allowed in terms of prayer clause (b). The prayer clause (b) reads as under :-

*“(b) That after perusal of the same, this Hon’ble Court be pleased to quash and set aside the Order dated 24.11.2023 passed by the Ld. Judges of Small Causes Court MARJI application No.192 of 2023 in obstructionists Notice No.305 of 2012 in L.E. & C. Suit No.371/411 of 1987. “*

The impugned order and judgment dated 24 November 2023 is quashed and set aside.

11. The Appellate Bench of Small Causes Court is hereby directed to take on record the Appeal filed by the obstructionists

and hear the same on merits.

12. Appellate Bench should try and dispose appeal of the Petitioner expeditiously. This Writ Petition is disposed of accordingly. So also the execution proceeding be stayed till the disposal of the Appeal.

**(RAJESH S. PATIL, J.)**