

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

WRIT PETITION NO.10464 OF 2024

Natwarlal H. Mistry & Bros

....Petitioner

V/s.

Konti Infrapower & Multiventures
Pvt. Ltd. and Ors.

....Respondents

WITH

WRIT PETITION NO.10465 OF 2024

Vanmalidas H. Mistry & Bros.

....Petitioner

V/s.

Konti Infrapower & Multiventures
Pvt. Ltd. and Ors.

....Respondents

Mr. Kishor Patil *i/b. Mr. Pratik B. Rahade for the Petitioners.*

Mr. Amit A. Patil *i/b. M/s. A. & P Partners for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Dated : 28 August 2024.

P.C. :

1. Challenge in the present Petitions is to the orders dated 10 May 2024 allowing M.A.R.J.I. Application Nos.202 of 2023 and 203 of 2024 filed by the Obstructionists seeking condonation of delay in filing their respective execution appeals.

2. I have heard Mr. Kishor Patil, the learned counsel appealing for Petitioners and Mr. Amit Patil, the learned counsel appearing for Respondent No.1 in both the Petitions.

3. Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Obstructionist notice taken out by the Plaintiff-decree holder was made absolute by Executing Court on 17 November 2021. The Obstructionists filed applications on 30 March 2022 seeking recall of orders dated 17 November 2021 on the ground that the same were passed in absence of their Advocates. During pendency of the said recall applications, the decrees came to be executed and possession of the suit premises was secured by Petitioners on 8 August 2024. Thereafter the Executing Court allowed the applications seeking condonation of delay in filing the recall applications by order dated 21 October 2022. The decree holder challenged orders dated 21 October 2022 before the Appellate Bench and the appeals were allowed on 18 March 2023 thereby rejecting the applications for condonation of delay in seeking recall of order dated 17 November 2021. Since the Obstructionists are denied the remedy to seek recall of order dated 17 November 2021 they have decided to file substantive execution appeal against the said order dated 17 November 2021. Thus, the delay in challenging the orders dated 17 November 2021 is essentially on account of pendency of the proceedings filed by the Obstructionists seeking recall before the Executing Court. The delay therefore does not appear to be intentional. The Appellate Bench has rightly condoned the delay in filing the Execution Applications. Condonation of delay by the Appellate Bench does not otherwise cause any prejudice to the Petitioners-decree holder. They have already secured possession of the suit premises from the Obstructionists. The Execution Appeals would be prosecuted and decided by the Appellate Bench while the decree holders continue to remain in possession of the suit premises. In that view of the matter, I do not find any reason to interfere in the

orders dated 10 May 2024 passed in M.A.R.J.I. Application Nos.202 of 2023 and 203 of 2024. Writ Petitions are accordingly rejected.

[SANDEEP V. MARNE, J.]