

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11101 OF 2024

Vimal M. Kute

...Petitioner

V/s.

The Board of Trustees of the Port of
Bombay and Ors.*...Respondents*

Mr. Sameer R. Jagtap *i/b. M/s. Jagtap and Jagtap Associates for the
Petitioner.*

CORAM : SANDEEP V. MARNE, J.

Dated : 9 August 2024.

P.C. :

1) By this Petition, Petitioner challenges order dated 8 July 2024 passed by the Appellate Bench of the Court of Small Causes, Mumbai, dismissing M.A.R.J.I. Application No.69 of 2024 filed by the Petitioner for condonation of delay of 1821 days in challenging order dated 16 February 2019.

2) It appears that L.E. and C. Suit No.17/21 of 1988 came to be decreed *ex-parte* on 3 July 1997. 13 years later, Petitioner thought of filing of application for setting aside *ex-parte* decree in the form of Miscellaneous Application No.543 of 2010. That application remained pending for 9 long years and came to be ultimately rejected on 16 February 2019. Petitioner

once again went into deep slumber and did not adopt any remedy for challenging the order dated 16 February 2019 for 5 long years. An appeal was sought to be lodged before the Appellate Bench of the Court of Small Causes in the year 2024 and since there was delay of 1821 days in filing the appeal, M.A.R.J.I. Application No.69 of 2024 was filed.

3) Considering the above circumstances, there can be no doubt to the position that the Petitioner has been totally negligent in prosecuting the entire litigation. The suit was filed in the year 1988 and by now 36 long years have elapsed. Considering the conduct of the Petitioner, the Appellate Bench has rightly dismissed the M.A.R.J.I. Application No.69 of 2024. Order passed by the Appellate Bench does not warrant any interference in exercise of jurisdiction under Article 227 of the Constitution of India. Writ Petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]