

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

WRIT PETITION NO.18020 OF 2024

Madhukant Jayantilal Shah & Anr.

....Petitioners

V/S

The Board of Trustees of the Port of
Mumbai & Ors.

....Respondents

Mr. Gauraj Shah i/b Mr. Omar Khaiyam Shaikh *for the
Petitioners.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 09 DECEMBER 2024.**

P.C.:

1. The Petitioner is aggrieved by rejection of MARJI Application No.262 of 2022 filed in Obstructionist Notice No.813 of 2011. The said Marji Application is rejected on the ground that the person through whom the same was filed viz. Sadananad Ishwar Poojari did not have authority to file the same on behalf of the Applicants/Petitioners Madhukant Jayantilal Shah and Jagdish Kantilal Dharia. It appears that no power of attorney was produced to prove that Madhukant Jayantilal Shah had appointed Sadananad Ishwar Poojari as his attorney. So far as Jagdish Kantilal Dharia is concerned, the power of attorney dated 3 October 2022 is found to be faulty in which Sadanand Ishwar Poojari is in fact described as the

granter of the power of attorney. Thus on account of lack of authority on the part of Sadanand Ishwar Poojari to file Marji Application, the Small Causes Court has rejected the same by order dated 1 August 2024, which order is upheld by the Appellate Bench of Small Causes Court.

2. After arguing the Petition for sometime, Mr. Shah, the learned counsel appearing for the Petitioners would submit that instead of spending any further time in demonstrating before this Court that Marji Application No.262 of 2022 was correctly filed, he would seek liberty to file fresh Marji Application for condonation of delay in applying under provisions of Order 9, Rule 13 of the Code of the Civil Procedure, 1908 (**the Code**) for setting aside ex-parte decree/order dated 20 February 2021. Accordingly the Writ Petition is **disposed of** granting liberty to the Petitioners to file a fresh application seeking condonation of delay in filing an application under Order 9, Rule 13 of the Code for setting aside ex-parte decree/order dated 20 February 2021. If such application is properly filed by the Petitioners, the same shall be decided on its own merits by the Small Causes Court, without being influenced by any of the observations made in the orders dated 1 August 2024 and 21 October 2024.

(SANDEEP V. MARNE, J.)

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