

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

WRIT PETITION NO.18108 OF 2024

Rohit Ramniklal Doshi

....Petitioner

V/S

The Board of Mumbai Port Authority & Ors.

....Respondents

Dr. Uday P. Warunjikar i/b Mr. Shashank P. Borade *for the Petitioners.*

Mr. Shanay Shah and Ms. Meehal Wadhwa i/b M/s. Th Law Point *for Respondent No.1.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 18 DECEMBER 2024.**

P.C.:

1. The challenge in the present Petition is to the order dated 3 September 2024 passed by the Appellate Bench of Small Causes Court rejecting the MARJI Application No.186 of 2024 filed by the Petitioner seeking condonation of delay of 1589 days in filing Appeal against the judgment and order dated 7 February 2020 passed by the Small Causes Court in Obstructionist Notice No.26 of 2005.

2. I have heard Dr. Warunjikar, the learned counsel appearing for the Petitioner and Mr. Shah, the learned counsel appearing for the Respondent No.1/Plaintiff.

3. After having heard the learned counsel appearing for parties, it appears that there was a proposal for settlement of issue of possession of the Petitioner qua suit premises and the legal assistant of the Plaintiff/Trust had filed Reply to Reply in the Obstructionist Notice indicating that the proposal of the Petitioner for regularization of occupation of suit premises by him was being placed before the higher authorities for the purpose of considering adoption of a Board resolution. Dr. Warunjikar has invited my attention to certain payments made in pursuance of the settlement proposal being made (Rs.8,70,434/- plus Rs.64,235/- in addition to Rs.1,00,000/-) in the year 2011 towards fructification of the settlement proposal. He would however complain that while the Petitioner was expecting that his occupation was being regularized by the Plaintiff-Trust, and that nothing would survive to be adjudicated on merits in the Obstructionist Notice, the proceedings came to be decided on merits by the learned Judge of the Small Causes Court by order dated 7 February 2020 by which the Obstructionist Notice came to be made absolute. It is the complaint of Dr. Warunjikar that the Advocate of the Petitioner was neither present when order dated 7 February 2020 was passed nor did he apprise the Petitioner about the position that Obstructionist Notice was taken up for hearing on merits by ignoring the settlement proposal which was pending before the Plaintiff-Trust. Mr. Shah would contest this position by submitting that the firm engaged by the Petitioner was not only present during the course of hearing on 7 February 2020 but also advanced arguments on

behalf of the Petitioner. Mr. Shah would therefore dispute the position that the Petitioner was unaware about passing of the order dated 7 February 2020.

4. Even if it is assumed for the sake of arguments that the Petitioner was aware about passing of order dated 7 February 2020, it is the matter of fact that restrictions on account Covid-19 outbreak were imposed from 15 March 2020 and the same continued till 28 February 2022. By various orders passed by the Apex Court from time to time, the period from 15 March 2020 to 28 February 2022 has been suspended for computing the periods of limitation. Therefore the period from 15 March 2020 to 28 February 2022 is required to be excluded while considering the delay in filing the Appeal. This still leaves substantial delay of more than two years as MARJI Application No.186 of 2024 was filed only on 25 July 2024.

5. Dr. Warunjikar would submit that the Petitioner acquired knowledge about passing of order dated 7 February 2020 by the Small Causes Court in November 2023.

6. Be that as it may. The Petitioner needs to be granted an opportunity to prosecute his Appeal particularly considering the fact that Plaintiff-Trust had filed specific Reply to the Application filed by the Petitioner for settlement in the year 2011 in which far from denial any proposal for settlement, the Reply

reflected that the proposal of the Petitioner was being placed before the appropriate authorities for adoption of Board resolution. Mr. Shah would clarify the position that no Board resolution has adopted sanctioning the settlement proposal of the Petitioner. Be that as it may. This is something with the Appellate Court would consider while deciding the Appeal on merits.

7. At the same time the Petitioner continues to occupy possession of the suit premises and he is obstructing execution of the decree passed in LE & C Suit No.167/175 of 1986 which was decreed on 5 December 2000. By now it has been 24 long years since the Plaintiff-Trust is unable to execute the decree possibly on account of the obstruction presented by the Petitioner. In that view of the matter, coupled with the conduct exhibited by the Petitioner, grant of an opportunity to him to prosecute the Appeal cannot be without consequences. Even if the contention of the Petitioner that the Plaintiff-Trust is likely to regularize his occupation is considered as correct, Petitioner will have to make payment of substantial amount to the Plaintiff-Trust for recognition of his alleged rights. In that view of the matter, it would be appropriate to put a condition of deposit of an amount of Rs.20,00,000/- by the Plaintiff in the Small Causes Court as a condition precedent for grant of opportunity to prosecute the Appeal.

8. In order to obviate any further litigation between the parties it would also be appropriate to go a step ahead and protect the Petitioner from execution of the eviction decree during pendency of the Appeal, hearing of which can be expedited by requesting the Appellate Court to take up the same for expeditious decision.

9. I accordingly proceed to pass the following order:

i) Order dated 3 September 2024 passed by the Appellate Bench of the Small Causes Court in MARJI Application No.186 of 2024 is set aside.

ii) Appeal filed by the Petitioner challenging the judgment and order dated 7 February 2020 in Obstructionist Notice No.26 of 2005 be numbered and decided on merits as expeditiously as possible preferably within a period of one year.

iii) Petitioner shall deposit an amount of Rs.20,00,000/- in the Small Causes Court on or before 28 February 2025.

iv) Deposit of the amount as directed above shall be condition precedent to the condonation of delay in filing of the Appeal, in the event, Petitioner fails to deposit the amount within the

stipulated time, the order dated 3 September 2024 shall automatically revive.

v) The Appellate Bench of the Small Causes Court shall decide the Appeal on its own merits without being influenced by any of the observations made in the present order.

vi) During the pendency of the Appeal, execution of the decree passed in LE & C Suit No.167/175 of 1986 shall remain suspended.

10. With the above directions, Writ Petition is **disposed of**.

(SANDEEP V. MARNE, J.)

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by SUDARSHAN
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