

Jvs.

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

WRIT PETITION NO. 2517 OF 2019

JAYANT
VISHWANATH
SALUNKE

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Fatima Mahammadkasim Shaikhpatil } Petitioner
versus
Tajoddin Sharfoddin Shaikhpatil } Respondent

Mr. Anand S. Kulkarni for petitioner.

Ms. Sonali K. i/b. Mr. Vikas Mahengare for respondent.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 31, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the validity of the order dated 22nd February 2018 passed by the Trial Court, by which, the application for amendment of Miscellaneous Application No.17 of 2016, i.e., application seeking restoration of the suit, has been dismissed.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the petitioner had filed civil suit seeking relief of mandatory injunction. The aforesaid civil suit was dismissed for want of appearance of the petitioner. The petitioner, thereupon, filed an application seeking restoration of the aforesaid civil suit. However, the application for restoration of the civil suit was barred by 7 days. The said averment was not incorporated in the application seeking restoration of the civil suit. The

petitioner, therefore, filed an application for amendment of the application seeking restoration of the civil suit. The aforesaid application has been rejected by the impugned order on the ground that the proceedings of the Miscellaneous Application No. 17 of 2016 are posted for recording evidence.

3. I have heard learned counsel for the parties at length and perused the record.

4. It is trite law that an application for amendment cannot be rejected solely on the ground of delay. The Trial Court has taken a hyper-technical approach of the matter. The impugned order exhibits non application of mind and suffers from an error apparent on the face of the record, which is, hereby quashed and set aside.

5. In the result, the writ petition is allowed.

6. Let a copy of this order be forwarded to the Trial Court forthwith.

(CHIEF JUSTICE)