

Vaibhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6804 OF 2024

M/s. Mark Constructions & Anr.

...Petitioners

Versus

Narendra Ganpatlal Dave & Ors.

...Respondents

Mr. G. S. Godbole Senior Advocate i/b Ms. Pooja Yadav, for Petitioners.

Mr. Vinaykumar Dinanath Tripathi, for Petitioner No.2.

Mr. V. S. Kapse a/w Mr. Freddy Bhodha, for Respondent Nos. 1 & 2.

CORAM: MADHAV J. JAMDAR, J.

DATED: 20 JANUARY 2025

P.C.:

1. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the Order dated 11th April 2023 passed by the learned Judge, Small Causes Court, Mumbai, below Exhibit-1 in MARJI Application No.117 of 2022 in L.E. & C. Suit No.58/65 of 2014. The said MARJI Application has been filed seeking condonation of delay in filing MARJI Application for setting aside *ex-parte* decree dated 14th August 2021 passed in L.E. C. & Suit No.58/65 of 2014. The said MARJI Application No.117 of 2022 admittedly has been filed on 23rd May 2022.

2. Mr. Godbole, learned Senior Counsel, appearing for the Petitioner, submits that the Supreme Court by Order dated 10th January 2022 passed in the Suo Motu Writ Petition (C) No.3 of 2020 has directed that

the period from 15.3.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Learned Senior Counsel further states that in cases where the limitation would have expired during the period between 15.3.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. It has been further clarified that in the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days then, that longer period shall apply.

3. Mr. Godbole, learned Senior Counsel states that thus MARJI Application filed on 23rd May 2022 for setting aside *ex-parte* decree dated 14th August 2021 was within limitation. He therefore submits that the MARJI Application seeking condonation of delay has been filed on misconception that there is a delay in filing the MARJI Application seeking setting aside *ex-parte* decree dated 14th August 2021.

4. In view of the direction of the Supreme Court, Mr. Godbole, learned Senior Counsel, on instructions, seeks withdrawal of the MARJI Application No.117 of 2022 filed for condonation of delay in filing MARJI Application for setting aside *ex-parte* decree dated 14th August 2021.

5. As MARJI Application No.117 of 2022 itself is withdrawn, as

there was no delay in view of the Order of the Supreme Court, Order dated 11th April 2023 passed by the learned Judge, Small Causes Court, Mumbai, in MARJI Application No.117 of 2022 as well as Order dated 21st September 2023 passed by the Division Bench of Small Causes Court, Mumbai, in Revision Application No.160 of 2023 are quashed and set aside.

6. Consequently, the MARJI Application filed seeking setting aside *ex-parte* decree dated 14th August 2021 passed in L.E. & C. Suit No. 58/65 of 2014 is restored to file and the same be decided on merits.

7. It is clarified that this Court has not considered the merits as far as MARJI Application seeking setting aside *ex-parte* decree is concerned and all contentions of both the parties in that behalf are expressly kept open.

8. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]