

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4468 OF 2022
WITH
INTERIM APPLICATION NO.12566 OF 2024

Ramdas Bala Padwal

.. Petitioner

Versus

Muktiyarkhan Mohamad Salimkhan And Anr.

Respondent.

- Mr. Rajesh More, Advocate for Petitioner.

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 10, 2025

P.C.:

- 1.** Heard Mr. More, learned Advocate for Petitioner.
- 2.** I have perused Affidavit-of-service dated 12.06.2025 whereby Respondent No.1 has been served through substituted service and all details are reflected therein. Accordingly Respondent No.2 has been served as stated in the office report which is filed in the record of the Petition.
- 3.** Today when the Petition is called out, none of the Respondents are present. Mr. More persuades the Court to hear the matter for final hearing. After hearing Mr. More I am inclined to hear the Petition finally in view of the timeline in the matter.
- 4.** By virtue of the impugned order dated 17.09.2021 passed below Exhibit-1 in MACP M.A. No.2 of 2016 which is appended at

page No.26 of the Petition, application filed by Petitioner seeking restoration of the original MACP No.8 of 2014 (Old MACP No.324 of 2013) came to be dismissed by default and for want of prosecution. The Applicant filed application for condonation of delay of 151 days, *inter alia*, giving explanation for the delay. The learned Tribunal has considered the explanation offered by Applicant in great detail in paragraph Nos.3 and 10 of the impugned order, but rejected the same.

5. There is admittedly a delay of 151 days in filing the Application for setting aside the order of dismissal for default explaining the delay. In the explanation offered, Petitioner has placed reliance on the doctor's certificate which has been referred to by the learned Tribunal.

6. What is intriguing is the fact that Petitioner has been cross-examined with respect to reasons given in the Application regarding his illness. However interpreting the illness of Petitioner and restricting it to only three days between 13.03.2016 and 17.03.2016 and not giving benefit to the Petitioner about the doctor's advice to him to take rest, the same has been held against the Petitioner. The learned Trial Court has also expressly commented upon the doctor's certificate stating that by virtue of the said certificate, the illness was restricted only to the aforesaid period and thereafter Applicant was permitted to resume his duties and that has been held against

Petitioner holding that he could have duly contacted his Advocate during that time.

7. It needs to be distinguished that when doctor's certificate are placed for the purpose of employment, they have to expressly state the period of illness and the period from which the employee can resume duties. The said certificate has been unnecessarily gone into extensive detail by the learned Trial Court, which in my opinion was not necessary especially when Petitioner was examined by the learned Trial Court after he filed his affidavit of evidence below Exhibit-18. Benefit of doubt needs to be given to the Petitioner.

8. A substantive claim of the Petitioner stands negated in view of the dismissal order due to default. Application and proceedings which got dismissed for default are the primary responsibility of the Advocate who files Vakalatnama on behalf of Petitioner. Post the default, the delay of 151 days has been held against Petitioner by virtue of the impugned order. I am not inclined to accept the reasons which are given in paragraph No.10 of the said impugned order after placing reliance on Article 122 which gives a time frame of 30 days for restoration in the fact and circumstances of the present case which are also enumerated in paragraph No.3 of the said order.

9. For the reasons stated hereinabove, the impugned order dated 17.09.2021 stands quashed and set aside. Resultantly allowing

the Application filed below Exhibit-1. The proceeding MACP No.8 of 2014 (Old MACP No.324 of 2013) stands restored to the record and file before the Tribunal for prosecution.

10. A server copy of this order without insisting on certified copy of this order shall be placed before the Tribunal on 12.11.2025 at 11:00 a.m.

11. After taking cognizance of this order, learned Tribunal is directed by this Court to immediately place the proceedings before itself and according to its convenience proceed with the same in accordance with law and dispose of the same as expeditiously as possible and in any event within a period of four months from today.

12. In view of the above, the delay of 151 days stands condoned.

13. With the above directions, Writ Petition is allowed and disposed. In view of disposal of Writ Petition, pending Interim Application is also disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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