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

WRIT PETITION NO. 3673 OF 2025

Pratap Balasaheb Jadhav and anrPetitioners

Vs.

Udaykumar M Patil and anrRespondents

Mr. Tejas Dande for the petitioners
Ms. Prabha Badadare for respondent no. 1
Mr. Ruturaz Pawar for respondent no. 2

CORAM : GAURI GODSE, J.

DATE : 2nd JULY 2025

ORDER:

1. This petition is filed by the defendants in a suit filed under Section 6 of The Specific Relief Act, 1963. By the impugned order, the defendants were directed to hand over possession of the suit property to the plaintiff and were restrained from creating any third party interest or changing the nature of the property. This order passed by the Trial Court is confirmed by the Appellate Court. Hence, this petition by the defendants.

2. On 27th June 2025, learned counsel for respondent no. 1

tendered an affidavit making a grievance that the petition was affirmed on 7th March 2025 by petitioner no. 1 by playing fraud as the petitioner no. 1 was in police custody on 7th March 2025 and was released on bail only on 10th March 2025. Learned counsel for the petitioners tendered an affidavit on behalf of petitioner no. 1 seeking leave to withdraw the petition. The affidavit contained an explanation that, inadvertently, the petition was affirmed at a later date. There is no dispute that the petitioner no. 1, who affirmed the petition, was in police custody at Kolhapur on 7th March 2025, i.e. the date of affirmation before the Notary in Mumbai.

3. On 27th June 2025, learned counsel for the petitioners had submitted on behalf of petitioner no. 1 that the impugned order shall be complied with within 48 hours. Learned counsel for the petitioners had also submitted that the necessary affidavit of the concerned Notary would also be filed.

4. Pursuant to the earlier order dated 27th June 2025, learned counsel for the petitioners has tendered the affidavits of petitioner no. 1 and the advocate for the petitioners. The affidavits are taken

on record. Learned counsel for respondent no. 1 has also tendered an affidavit. Learned counsels on instructions confirm that possession of the suit property is restored to respondent no. 1. However, learned counsel for respondent no. 1 makes a grievance that the property is damaged by removing the roof.

5. The affidavit of the advocate for the petitioners states that the petition was kept ready and signed by the advocate identifying petitioner no. 1 on 2nd March 2025; however, the petition was notarised only on 7th March 2025. The affidavit confirms identifying petitioner no. 1, who signed the petition. The concerned Notary Shivai Namdev Dhanage has tendered an affidavit of apology. The affidavit states that the Notary knew the petitioner no. 1 as he is a practising advocate and often visits his office for work of affirmation. The affidavit further states that petitioner no. 1 intimated the Notary on 2nd March 2025 about the notarization; however, since the Notary was not available on 2nd March 2025, the same could not be notarized. The affidavit further states that since the notary knew petitioner no. 1, he notarized the petition in the absence of petitioner no. 1 in view of the conversation on 2nd

March 2025. In paragraph 7 of the affidavit, the Notary has accepted his mistake and tendered an unconditional apology. The Notary has further given an undertaking that he will not commit such a mistake in future.

6. Considering the affidavits filed on behalf of the petitioners, their advocate and the concerned Notary, learned counsel for the petitioners submits that the unconditional apology be accepted and the petitioners be permitted to withdraw the petition.

7. It is important to note that the act of notarization is considered a solemn one. Notarization involves a notary public attesting to the identity of the deponent and the understanding of the contents of the document, on an oath or affirmation. This process is solemn because it involves a formal declaration and carries legal consequences if the information is not truthful. Thus, it is unacceptable that the Notary carries out work of affirmation in the absence of a party without following the due procedure. However, considering the unconditional apology and the assurances and undertakings given by the concerned Notary, the mistake committed can be condoned, by accepting the

undertaking. The assurance and the undertaking of the Notary recorded in the affidavit is accepted as an assurance and undertaking to the court. However, in the facts of the case, it would be appropriate that for the mistake committed on behalf of the Notary as well as the advocates for the petitioners in getting the petition notarised in the absence of the deponent, a cost be imposed upon them. The amount of costs is quantified as Rs. 50,000/- each by Advocates for the Petitioners and the Notary, to be paid to the Advocates' Aid Fund of the Bar Council of Maharashtra and Goa. The account details are as under:

Account Name: Bar Council of Maharashtra and Goa Advocate
Aid Fund

Bank Name: State Bank of India

Branch Name: Mumbai Main Branch

Account No: 10996711937

IFS Code: SBIN0000300

Type of A/c: Saving A/c.

8. Cost shall be paid within two weeks from today.

9. In view of the aforesaid, the petitioners are permitted to

withdraw the petition. The Writ Petition is disposed of as withdrawn, subject to compliance with the aforesaid directions.

10. Respondent no. 1 would be at liberty to raise all possible contentions permissible in law in the pending suit, regarding the status of the property prior to and after the possession is restored to respondent no. 1.

11. All the rival contentions of the parties on the merits in the suit are kept open.

[GAURI GODSE, J.]