

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4257 OF 2025

Navaid Akhtar Nakhwa	...Petitioner
<i>Versus</i>	
The Board of Mumbai Port Authority & Ors.	...Respondents

Mr. Kunal Bhanage a/w. Mr. Akshay Pawar and Ms. Priyanka Acharrya, for the Petitioner.

CORAM: MADHAV J. JAMDAR, J.
DATED : 27th MARCH 2025

P. C.:

1. Heard Mr. Bhanage, learned Counsel appearing for the Petitioner.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 23rd January 2025 passed by the learned Appellate Bench of Small Causes Court in Miscellaneous Appeal No.89 of 2024 as well as to the order dated 31st August 2024 passed by the learned Judge, Small Causes Court in MARJI Application No.275 of 2023. The said MARJI Application has been taken out by the

present Petitioner i.e. the original Obstructionist No.2 for condonation of delay of 3576 days in filing the MARJI Application under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside Judgment and Order dated 4th December 2013. The learned Trial Court has dismissed the said MARJI Application and the learned Appellate Court has confirmed the said order.

3. Perusal of the record shows that L.E. & C. Suit No.412/467 of 1985 has been filed by the Respondent No.1 against one Narayan Sona Mahajan and the same was decreed on 21st November 2003. The warrant of possession in execution has been issued on 11th July 2011. The present Petitioner and his father who is Obstructionist No.1 obstructed the execution of the decree. Accordingly, decree holder took out Obstructionist Notice No.491 of 2011. The Obstructionist i.e. the present Petitioner and the Respondent No.2 have been served in the said Obstructionist Notice. They appeared through their learned Advocate in the said Obstructionist Notice and the said Obstructionist Notice was made absolute on 4th December 2013. Thereafter, the warrant of possession has been issued on 4th August 2023 which is sought to be executed on 5th September 2023 and thereafter the said MARJI

Application No.275 of 2023 is filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 seeking setting aside said Judgment and Order dated 4th December 2013.

4. It is the submission of Mr. Bhanage, learned Counsel that the present Petitioner came to know about the said order dated 4th December 2013 on 5th September 2023 and thereafter immediately the said MARJI Application No.275 of 2023 is filed. However, both, the learned Trial Court as well as the learned Appellate Court have concurrently held that the Petitioner was knowing about the Obstructionist Notice as he had appeared in the Obstructionist Notice through his Advocate. Thus, both the Courts have concurrently held that the reasons given for delay condonation are not genuine and therefore, dismissed the said MARJI Application for condonation of delay of about 3576 days. Thus, there is no illegality or perversity in the impugned orders.

5. Accordingly, no interference under writ jurisdiction of this Court under Article 227 of the Constitution of India is warranted.

6. The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]

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