

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16049 OF 2025

Gaji Darbar Caterers, Through  
Proprietor Wasim Ziyaarat Khan

...Petitioner.

Versus

1. Matilda Dsilva (since deceased)  
Through Legal Heirs  
1(a). Dallas Dsilva & Ors.

...Respondents

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Mr. Shriram Kulkarni a/w Mr. Mangesh J. Nalawade & Ms. Asmita N. Rajbhar, i/b Upshot Legal, for Petitioner.

Mr. Meherram R. Irani, for the Respondents.

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CORAM: MADHAV J. JAMDAR, J.  
DATED: 08 DECEMBER 2025

P.C.:

1. 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 10<sup>th</sup> January, 2025 passed in Revision No. 75 of 2025 by the learned Appellate Bench of the Small Causes Court, Mumbai as also order dated 2<sup>nd</sup> August, 2025 passed by learned Judge, Small Causes Court, Mumbai in MARJI Application No. 4 of 2025 in Execution Application No. 9 of 2024 in RAE and R. Suit No.80/2025 of 2003.

2. Mr. Kulkarni, learned Counsel appearing for the Petitioner and Mr. Irani, learned Counsel appearing for the Respondents, state that

both the parties have agreed to set aside the impugned orders and tender the “Consent Minutes of Order”. The said “Consent Minutes of order” are signed by the respective parties and also by the respective Advocates.

3. Accordingly, “Consent Minutes of Order” are taken on record and marked “X” for identification. The said “Consent Minutes of Order” reads as under :

**CONSENT MINUTES OF THE ORDER**

- “1. The Petitioner herein is the original Defendant No.4 whereas Respondent No.1 (original Plaintiff) was the landlady (since deceased). Respondent No.1(a) to 1(d) are the Legal heirs of the original Plaintiff.
2. By present Writ Petition, the Petitioner challenged the impugned Order dated 10<sup>th</sup> November, 2025 passed in Revision Application No.75 of 2025 by Hon’ble Court of Small Causes at Mumbai, Bandra Branch (Appellate Bench) dismissing Revision Application filed by the Petitioner. The said Revision Application was filed against the Order dated 2<sup>nd</sup> August, 2025 passed in MARJI Application No.4 of 2025 by Hon’ble Court of Small Causes at Mumbai, Bandra Branch rejecting the Application for condonation of delay for setting aside *Ex parte* Decree dated 31<sup>st</sup> July, 2023 against the Petitioner (Defendant No.4).
3. By consent of the parties hereto, the said Order dated 10<sup>th</sup> November, 2025 passed in Revision Application No.75 of 2025 is hereby set aside and delay in filing MARJI Application No.4 of 2025 before Hon’ble Court of Small Causes at Mumbai, Bandra Branch is hereby condoned, subject to payment of cost of Rs.3,00,000/- (Rupees Three Lakhs

Only) to be paid by the Petitioner to one of the Plaintiffs Mr. Jordan Peter Dsilva (representing all the said Plaintiffs) in his Savings Bank Account No.37308617024, with State Bank of India, Carter Road Branch, Mumbai – 400 050 within Two Weeks from the date of this order.

4. It is clarified that the Parties shall appear before the Hon'ble Small Court at Bandra Mumbai on 06.01.2026 wherein the Hon'ble Small Causes Court at Bandra Branch, Mumbai shall hear the Application of the Petitioner to set aside the said *Ex parte* Decree dated 31<sup>st</sup> July, 2023 passed in RAE and R Suit No.80/205 of 2003 on its own merits by keeping all contentions open including issue as to whether writ of summons of the amended plaint duly served upon the Petitioner.
5. It is agreed by the parties that the said Decree dated 31<sup>st</sup> July, 2023 may be executed against the Defendant Nos.1 and 2 except to the Suit Premises of Gaji Darbar Caterers situated at 170, Miranda Chawl, Opp. Vakola Masjid, Santacruz (East), Mumbai – 400 055 which is in possession of the Petitioner (Defendant No.4). The Decree dated 31<sup>st</sup> July, 2023 and warrant of possession shall not be executed against the Petitioner (Defendant No.4) till the hearing and final disposal of Application to be taken out by the Petitioner to set aside the said Ex Parte Decree dated 31.07.2023 against the Petitioner. The Petitioner is at liberty to file appropriate Application to set aside the said Ex Parte Decree dated 31.07.2023 before Small Causes Court at Mumbai Bandra Branch in addition to any pending application for same purpose if any. The Parties are at liberty to approach this Hon'ble Court in case of any need arises.
6. Writ Petition accordingly stands disposed of in terms hereof.”

4. Mr. Kulkarni, learned Counsel appearing for the Applicant and Mr. Irani, learned Counsel appearing for the Respondents tender photographs of the suit premises. The same are taken on record and marked “X2” and “X3” for identification.
5. As sufficient reasons are given for condonation of delay and as the Petitioner has agreed for payment of cost of Rs.3,00,000/- (Rupees Three Lakhs Only), the Writ Petition is disposed of in terms of the Minutes of Order.
6. The learned Judge of the Small Causes Court, Mumbai is requested to dispose of the application which is referred in Para 5 of the “Consent Minutes of Order” expeditiously and preferably on or before 31<sup>st</sup> August, 2026.
7. Accordingly, the Writ Petition is disposed of in terms of “Consent Minutes of Order”.

**[MADHAV J. JAMDAR, J.]**