

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16636 OF 2025

Meena Sunderlal Desai

...Petitioner

Versus

Jayantilal Jethmal Kothari & Anr.

...Respondents

Mr. Sagar Batavia, for the Petitioner.

Mr. Kantilal Kanojia a/w Jyoti Kanojia & Harshala Khopkar, for
Respondent No.1.

Mr. Bapusaheb Dahiphale, AGP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 12 DECEMBER 2025

P.C.:

1. Heard Mr. Batavia, learned Counsel appearing for the Petitioner and Mr. Kanojia, learned Counsel appearing for Respondent No.1.
2. The challenge in this Writ Petition filed under Article 227 of the Constitution of India is to the Order dated 13th November 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai, in Marji No.248 of 2025 ("**impugned Order**"). By the impugned Order the said Marji No.248 of 2025 was rejected.
3. It is the submission of Mr. Batavia, learned Counsel for the Petitioner that the Suit is of the year 2011 and the same was diligently prosecuted by the Petitioner i.e. Defendant and she had engaged an

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Advocate and the Advocate was looking after the Suit. The written statement has also been filed in the said Suit. He submits that unfortunately the present Petitioner's i.e. Defendant's Advocate passed away on 14th September 2021 and thereafter the Suit proceeded and decreed on 8th August 2022.

4. It is his submission that after the death of the learned Advocate of the Petitioner i.e. Defendant, the Court has not issued any notice and therefore the Petitioner was not aware that her Advocate had passed away. He submits that when the Bailiff visited the suit premises for the purpose of execution of the said eviction decree on 28th September 2025, the Petitioner came to know that the Suit has been decreed and thereafter on her inquiries she came to know that her Advocate died on 14th September 2021 and thereafter the Suit proceeded without she being represented by any Advocate.

5. In view of these contentions, Mr. Kanojia, learned Counsel for Respondent No.1, on instructions of Respondent No.1 - Jayantilal Jethmal Kothari, who is personally present in the Court, states that by consent the impugned Order dated 13th November 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai, in Marji No.248 of 2025 be quashed and set aside and the said Marji No.248 of 2025 be allowed.

6. Accordingly, by consent of the parties, the following Order is passed:

- i. The Order dated 13th November 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai, in Marji No.248 of 2025 in Appeal No.____ of 2025 in R.A.E. & R. Suit No.946/1527 of 2011, is quashed and set aside.
- ii. Resultantly, the said Marji No.248 of 2025 is allowed in terms of prayer clause (a). Accordingly, the delay in filing the said Appeal is condoned, on the condition that the Petitioner pays cost of Rs.5,000/- to the Respondent No.1 within a period of 2 weeks.
- iii. The Petitioner - Tenant who is personally present in Court states that arrears of rent will be deposited before the learned Appellate Court on or before 9th January 2026.
- iv. As the delay in filing the said Appeal is condoned, the Appellate Court to consider the said Appeal on merits.
- v. Both the parties to appear before the Appellate Court on 12th January 2026 for fixing the schedule of hearing of the said Appeal for admission as also consideration of interim relief.
- vi. Till the stay application filed in the said Appeal is heard, the eviction decree shall not be executed.
- vii. The Appellate Court is requested to decide the Appeal expeditiously and preferably on or before 31st December 2026 as

the Suit is of the year 2011.

viii. It is clarified that this Court has not considered the merits of the said Appeal and the contentions of both the parties are expressly kept open.

7. The Writ Petition is disposed of in above terms.

[MADHAV J. JAMDAR, J.]