

2. The matter is taken today on production board in view of the following circumstances :-

i. On 10th October 2025, this Court passed the following order:

“1. Respondent No.1 Hitesh Tiwari is personally present in Court and seeks time.

2. Accordingly, stand over to 10th November 2025. Till next date, eviction decree shall not be executed.”

Thus, by order dated 10th October 2025, it is recorded that the Respondent No.1 was personally present in Court and sought time and accordingly, the matter was adjourned to 10th November 2025.

ii. It is required to be noted that on 10th October 2025, the matter reached at about 06:40 p.m. i.e. after the Court working hours and therefore, Ms. Shelake, learned Counsel appearing for the Respondent No.1 was not present and therefore request was made to adjourn the matter. However, thereafter Ms. Shelake, learned Counsel mentioned the matter immediately on 14th October 2025 and submitted that on 8th October 2025 after hearing the Civil Revision Application, the Applicant was asked to take

instructions regarding withdrawal of the Civil Revision Application and time to vacate the suit premises and therefore, the matter was adjourned to 9th October 2025 and as on 9th October 2025, the matter did not reach and therefore, the same was placed on 10th October 2025.

iii. As already noted on 10th October 2025 the matter reached at 6:40 p.m. and kept on 10th November 2025 in the above circumstances. On 10th October 2025 it was not pointed out to this Court that the matter was heard on 8th October 2025 and kept on 9th October 2025 to take instructions regarding withdrawal of the Civil Revision Application. Although the matter is kept today the same is not placed on the board. Therefore the Civil Revision Application has been taken today on the production board.

3. Mr. Banerjee, learned Counsel for the Applicants submitted that he has instructions to argue the matter and not to withdraw the Civil Revision Application.

4. Heard Mr. Banerjee, learned Counsel appearing for the Applicants and Ms. Shelake, learned Counsel appearing for the Respondents.

5. The challenge in the Civil Revision Application is to the order dated 10th October 2024 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Marji Application No.77 of 2023 in Appeal filed challenging the Judgment and Decree dated 3rd September 2016 passed in R.E.E. and R. Suit No.213/408 of 2009. As far as Marji Application No.77 of 2023 is concerned, the same is filed for condonation of delay of about 1803 days in filing the said Appeal as the same was filed on 17th August 2023 challenging the Judgment and Decree dated 3rd September 2016.

6. It is the submission of Mr. Banerjee, learned Counsel appearing for the Applicants that in fact, the Applicants' father had initially filed the Marji Application seeking condonation of delay. The said Marji Application has been rejected. Thereafter, the father passed away on 12th June 2020 and therefore, further proceedings could not be filed. He submits that thereafter present Marji

Application No.77 of 2023 is filed. He submits that therefore, although technically delay is of 1803 days, however, there is short delay and therefore, Marji Application be allowed.

7. On the other hand, Ms. Shelake, learned Counsel appearing for the Respondents states that the delay is exorbitant and deliberate and submits that even the said Marji Application is not maintainable as the Marji Application filed by the father has already been dismissed and the Misc. Appeal challenging the same has been withdrawn.

8. Before considering the rival contentions, it is necessary to set out certain relevant factual aspects :-

i. The R.A.E. & R. Suit No.213/408 of 2009 has been filed on 24th April 2009 by the Respondents against the father of the present Applicants. In the said suit the Original Defendant i.e. the father of the present Applicants appeared and filed Written Statement on 27th April 2011.

ii. The issues in the said Suit were framed on 28th September 2011.

iii. The Original Plaintiff - Maniram Ramprasad Tiwari, examined himself as the PW-1. However, thereafter, the father of the Applicants i.e. Original Defendant has not appeared and therefore, the Original Defendant has not cross examined the PW-1 and not led any evidence of the Defendant.

iv. The said suit has been decreed ex-parte by the Judgment and Decree dated 3rd September 2016.

v. Thereafter, the father of the Applicants i.e. original Defendant has filed Marji Application No.13 of 2017 on 19th January 2017 seeking setting aside *ex-parte* decree dated 3rd September 2016.

vi. The said Marji Application No.13 of 2017 was dismissed by order dated 11th December 2019. It is an admitted position that the said Order dated 11th December 2019 passed in Marji Application No.13 of 2017 has not been challenged by the father of the Applicants in his life time who passed away on 12th June 2020.

vii. The Marji Application bearing No.77 of 2023 concerned in the present Civil Revision Application has been filed challenging the said ex-parte decree dated 3rd September 2016 on 17th August 2023 i.e. after a period of about 1803 days. The said Marji Application has been dismissed by the impugned order dated 10th October 2024.

viii. In the meanwhile, Marji Application No.7 of 2024 has been filed on 4th December 2024 seeking condonation of delay in filing Misc. Appeal seeking to challenge Order dated 11th December 2019 passed in said Marji Application No.13 of 2017 in R.A.E. & R. Suit No.213/408 of 2009. The said Marji Application No.7 of 2024 along with said Misc. Appeal has been withdrawn on 2nd August 2025.

ix. The present Civil Revision Application has been filed on 16th August 2025.

9. At the outset, it is required to be noted that earlier Marji Application No.13 of 2017 has been filed by the Original Defendant i.e. father of the present Applicants seeking setting

aside ex-parte decree dated 3rd September 2016 and the said Marji Application has been dismissed on 11th December 2019. The said Order is not challenged by the Original Defendant. The Applicants i.e. heirs and legal representatives of the original Defendant have challenged the said order dated 11th December 2019 by filing Miscellaneous Appeal before the Appellate Court and also seeking condonation of delay in filing said Misc. Appeal by filing Marji Application No.7 of 2024 and the said Miscellaneous Appeal along with Marji Application No.7 of 2024 has been withdrawn on 2nd August 2025.

10. In view of the above position, it is the submission of Ms. Shelake, learned Counsel appearing for the Respondents that the subject Marji Application No.77 of 2023 which has been filed by the legal heirs and representatives of the Original Defendant is not maintainable.

11. It is required to be noted that the original Defendant has already filed Marji Application No.13 of 2017 seeking setting aside of ex-parte decree and condonation of delay and the said Marji Application has already been dismissed by the order dated 11th

December 2019. The position on record also shows that the Misc. Appeal belatedly filed challenging the same alongwith application for condonation of delay being Marji Application No.7 of 2024 has been withdrawn on 2nd August 2025. In this background of the matter, it is required to be noted that as per the settled legal position the principles of *res judicata* apply to the different stages of the same proceedings. The said principle is set out in the decision of the Supreme Court in the case of ***Satyadhyan Ghosal vs. Deorajin Debi***¹ The said legal position is reiterated by the Supreme Court in various subsequent judgments including in the case of ***Bhanu Kumar Jain vs. Archana Kumar***² and recently in the case of ***Sulthan Said Ibrahim vs. Prakasan***³. Thus, there is substance in the contention that the said Marji Application No.77 of 2023 itself is not maintainable.

12. In any case, as far as merits of the said Marji Application No.77 of 2023 are concerned, admittedly, the eviction decree has been passed on 3rd September 2016. The Marji Application filed by the original Defendant i.e. father of the present Applicants was

1 AIR 1960 SC 941

2 (2005) 1 SCC 787

3 2025 SCC OnLine SC 1218

dismissed on 11th December 2019 and the present Marji Application has been filed on 17th August 2023. There is no explanation whatsoever for such an inordinate delay.

13. Although, it is the contention of the Applicants that they have come to know about the passing of the ex-parte Judgment and Decree on 9th August 2023 and therefore, they applied for Certified Copy on 13th August 2023, however, the learned Appellate Court has recorded that even the said explanation is also false as the present Applicants have applied for the Certified Copy of the Judgment and Decree on 20th December 2022 and day given for taking copy of the same was 2nd January 2023 and the Certified Copy was received by the Applicants. Thus, the said explanation is found to be false by the learned Appellate Court.

14. Thus, in the facts and circumstances, no interference in the impugned order is warranted.

15. The Civil Revision Application is dismissed with cost of Rs.15,000/- to be paid to the Respondents within a period of 8 weeks from today.

16. As the Civil Revision Application is dismissed, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]