



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6804 OF 2024

M/s. Mark Constructions and Anr.

...Petitioners

V/s.

Narendra Ganpatlal Dave and Ors.

...Respondents

Ms. G.S. Godbole, *Senior Advocate with Ms. Pooja Yadav for the Petitioners.*

Mr. Vivek K. Gupta *with Ms. Uttara Sarkar for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATED: 22 APRIL 2026.

P.C.:

1) Writ Petition was disposed of by order dated 20 January 2025, which reads thus:-

1. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the Order dated 11th April 2023 passed by the learned Judge, Small Causes Court, Mumbai, below Exhibit-1 in MARJI Application No.117 of 2022 in L.E. & C. Suit No.58/65 of 2014. The said MARJI Application has been filed seeking condonation of delay in filing MARJI Application for setting aside ex-parte decree dated 14th August 2021 passed in L.E. C. & Suit No.58/65 of 2014. The said MARJI Application No.117 of 2022 admittedly has been filed on 23rd May 2022.

2. Mr. Godbole, learned Senior Counsel, appearing for the Petitioner, submits that the Supreme Court by Order dated 10th January 2022 passed in the Sua Motu Writ Petition (C) No.3 of 2020 has directed that the period from 15.3.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Learned

Senior Counsel further states that in cases where the limitation would have expired during the period between 15.3.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. It has been further clarified that in the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days then, that longer period shall apply.

3. Mr. Godbole, learned Senior Counsel states that thus MARJI Application filed on 23rd May 2022 for setting aside ex-parte decree dated 14th August 2021 was within limitation. He therefore submits that the MARJI Application seeking condonation of delay has been filed on misconception that there is a delay in filing the MARJI Application seeking setting aside ex-parte decree dated 14th August 2021.

4. In view of the direction of the Supreme Court, Mr. Godbole, learned Senior Counsel, on instructions, seeks withdrawal of the MARJI Application No.117 of 2022 filed for condonation of delay in filing MARJI Application for setting aside ex-parte decree dated 14th August 2021.

5. As MARJI Application No.117 of 2022 itself is withdrawn, as there was no delay in view of the Order of the Supreme Court, Order dated 11th April 2023 passed by the learned Judge, Small Causes Court, Mumbai, in MARJI Application No.117 of 2022 as well as Order dated 21st September 2023 passed by the Division Bench of Small Causes Court, Mumbai, in Revision Application No.160 of 2023 are quashed and set aside.

6. Consequently, the MARJI Application filed seeking setting aside ex-parte decree dated 14th August 2021 passed in L.E. & C. Suit No.58/65 of 2014 is restored to file and the same be decided on merits.

7. It is clarified that this Court has not considered the merits as far as MARJI Application seeking setting aside ex-parte decree is concerned and all contentions of both the parties in that behalf are expressly kept open.

8. The Writ Petition is disposed of in above terms with no order as to costs.

2) Order dated 20 January 2025 was challenged by Respondent Nos.1 and 2 by filing SLP (c) No.7698 of 2025 before the Hon'ble

Supreme Court, which has remanded the Petition for fresh decision by passing the following order:-

- 1) Leave granted.
- 2) Assailing the order dated 20.01.2025, passed by the Bombay High Court disposing the Writ Petition No.6804 of 2024 filed by the respondents, the appellants have approached this Court.
- 3) The facts ensuing the present appeal are that against ex-parte decree dated 14.08.2021 passed in favour of the appellants (original plaintiffs) in L.E.&C. Suit No. 58/65 of 2014 and against the respondents (original defendants), application for setting aside of the ex parte decree was filed by defendant No.2 along with an application seeking condonation of delay (MARJI Application No. 117 of 2022). The trial Court vide order dated 11.04.2023 rejected the same and in appeal (Revision Application No. 160 of 2023), the appellate Court vide order dated 21.09.2023 maintained the said order of the trial Court. Both these orders were assailed before the High Court in Writ Petition No. 6804 of 2025.
- 4) By the impugned order, in para 5, the Court observed that MARJI Application No. 117 of 2022 which is for condonation of delay has been withdrawn in view of the order passed by the Supreme Court in *Suo Motu Writ Petition (C)No.3 of 2020* granting extension of limitation due to COVID-19 period. Consequent to the said observations, the High Court restored the Application filed for setting aside ex- parte decree dated 14.08.2021 passed in Suit No.58/65 of 2014 which was filed before the trial Court and to be decided on merits.
- 5) After hearing learned counsel for the parties, we are of the view that in case, the High Court was of the view that there was no delay and the application for condonation was not required to be filed then, in that situation, an opportunity of hearing ought to have been allowed to the parties prior to restoring the application for setting aside ex-parte decree before the trial Court.
- 6) In view of the aforesaid, we are inclined to set aside the observations as made in para 6 of the impugned order and restore the Writ Petition before the High Court, for fresh decision affording opportunity to both the parties.
- 7) We make it clear that the parties are at liberty to raise all the objections as may available to them and the High Court shall decide those objections independently.

8) In the present case, while issuing notice on 28th March, 2025, the operation of the impugned order was stayed. In consequence, possession was restored to the appellants, which shall be subject to final outcome.

9) The civil appeal stands disposed of. Pending application(s), if any, shall stand disposed of.

3) Accordingly, the Petition is taken up for fresh decision. As the hearing of the Petition progressed, the learned counsel appearing for Respondent Nos.1 and 2 fairly admits the position that direction No. 5(III) of the order passed by the Hon'ble Supreme Court on 10 January 2022 *in RE: Cognizance for Extension of Limitation*¹ would apply to the present case. He fairly admits that for filing Application under Order IX Rule 13 of the Code of Civil Procedure, 1908, the Petitioner had time of 90 days from 1 March 2022. He admits that since the Application was filed on 23 May 2022, the same was within limitation.

4) In view of the fair stand taken by the learned counsel appearing for Respondent Nos.1 and 2, it is seen that the Application under Order IX Rule 13 of the Code is filed by the Petitioner within the prescribed period of limitation.

5) The learned counsel appearing for Respondent Nos.1 and 2 submits that a direction be given to the Small Causes Court to decide the Application under Order IX Rule 13 of the Code in a time bound manner, since the Petitioners have enjoyed possession of the licensed premises without paying license fee/compensation for a considerable period.

¹ (2022) 1 SCC (L&S) 501

- 6) Accordingly, I proceed to pass the following order:-
- (i) Order dated 11 April 2023 passed in M.A.R.J.I. Application No.117 of 2022 and order dated 21 September 2023 passed in Revision Application No.160 of 2023 are set aside.
 - (ii) It is held that the Application filed by the Petitioners/original Defendant Nos.1 and 2 for setting aside decree dated 14 August 2021 under provision of Order IX Rule 13 of the Code (which is subsequently registered as M.A.R.J.I. Application No.46 of 2025) is within the period of limitation.
 - (iii) The Small Causes Court shall proceed to decide the Application under Order IX Rule 13 of the Code in an expeditious manner, preferably, within a period of three months.
 - (iv) All rights and contentions of the parties are left open.
- 7) With the above directions, the Writ Petition is **disposed of**.

[SANDEEP V. MARNE, J.]