

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11615 OF 2025

Bank of Baroda (Old Dena Bank)

...Petitioner

Versus

Jayesh Thakorbhai Desai & Ors.

...Respondents

WITH

WRIT PETITION NO.10083 OF 2025

Bank of Baroda (Erstwhile Dena Bank)

...Petitioner

Versus

Jayesh Thakorbhai Desai & Ors.

...Respondents

Mr. Jernold Xavier a/w Gauri Jadhav, Raj Ambekar & Anushka Kamble,
for the Petitioner in both WPs.

Mr. Vishal Thaker a/w Anjali Trivedi & Mulanshu Vora i/b V Thakers'
Advocates, for Respondent No.1.

Adv. Kashvi Ail, for Respondent No.5.

CORAM: MADHAV J. JAMDAR, J.

DATED: 13 JANUARY 2026

P.C.:

1. Heard Mr. Xavier, learned Counsel appearing for the Petitioner
and Mr. Thaker, learned Counsel appearing for Respondent No.1.

2. In Writ Petition No.11615 of 2025, the challenge is to the legality
and validity of the Order dated 19th April 2025 passed by the learned
Appellate Bench of the Small Causes Court at Mumbai in Marji
Application No.109 of 2024 in Appeal in Mesne Profits Application
No.19 of 2013 in TE & R Suit No.35/50 of 2006 (“**impugned Order**”).
By the impugned Order, the said Marji Application was dismissed.

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3. Perusal of the record shows that the said Marji Application was filed seeking condonation of delay of 83 days. In Marji Application, various reasons are set out, including that the Advocate who was looking after the matter had left the concerned Solicitor Firm.

4. As the delay is of only 83 days, Mr. Thaker, learned Counsel for Respondent No.1, on instructions, states that, by consent, the impugned Order be quashed and set aside.

5. He points out that the Appeal No.42 of 2023 filed by Respondent No.1, challenging the Order passed in Mesne Profit Application whereby Rs.50,000/- per month has been granted by the learned Trial Court and the same has been enhanced to Rs.65,000/- per month by Order dated 2nd January 2025 passed in said Appeal by the learned Appellate Court. He submits that the Respondents be allowed to raise contentions regarding the said Order in the Appeal filed by the present Petitioner including the point regarding res-judicata/constructive res-judicata.

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

- i. Order dated 19th April 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai in Marji Application No.109 of 2024 in Appeal in Mesne Profits Application No.19 of 2013 in TE & R Suit No.35/50 of 2006 is quashed and set aside and the said Marji Application No.109 of 2024 seeking

condonation of delay in filing the said Appeal is allowed, on the condition that the Petitioner - Bank of Baroda pays an amount of Rs.1,00,000/- as costs to Respondent No.1 - Jayesh Thakorbhai Desai. The said costs is to be paid within a period of 15 days from today.

- ii. It is clarified that this Court has not considered the merits of the Appeal filed by Bank of Baroda and all contentions in that behalf are expressly kept open.
- iii. In the Appeal filed by Bank of Baroda, the Respondent No.1 is at liberty to raise the contention that the decision dated 2nd January 2026 passed in Appeal No.42 of 2023 by the learned Appellate Bench of the Small Causes Court will operate as res judicata and/or constructive res judicata. The contentions to be raised by both parties in that behalf are also expressly kept open.

7. Accordingly, Writ Petition No.11615 of 2025 is disposed of in above terms.

8. As far as Writ Petition No.10083 of 2025 by which the challenge is to the legality and validity of the Judgment and Decree dated 2nd January 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai in M. Appeal No.42 of 2023 in Mesne Profits Application No.19 of 2013 in TE & R Suit No.35/50 of 2006, both the

parties agree that the said Writ Petition to be heard after the disposal of the Appeal filed by the Bank of Baroda before the Appellate Bench of the Small Causes Court at Mumbai.

9. Accordingly, the hearing of Writ Petition No.10083 of 2025 is adjourned to 11th January 2027.

10. Liberty to the parties to apply after the disposal of the said Appeal filed by Bank of Baroda.

[MADHAV J. JAMDAR, J.]