

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 17107 OF 2025

Motilal Babulal & Co.

...Petitioner.

V/s.

Asit Dhankumar Jhaveri & Ors.

...Respondents.

Mr. B.R. Dalal, Advocate for Petitioner.

Mr. Mohanish S. Ghatge, Advocate for Respondents.

CORAM: SANDEEP V. MARNE, J.

DATED: 23 APRIL 2026.

P.C.:

1) The Petition challenges the order dated 23rd July, 2025 passed by the Appellate Bench of Small Causes Court at Mumbai rejecting Marji Application No. 20 of 2023. The Application was filed by the Petitioner for restoration of the Appeal which is dismissed due to want of prosecution on 17th September, 2022. The Marji Application is rejected only on the ground of competency of the Petitioner to prosecute the said Application. It appears that M/s. Motilal Babulal & Co. was the tenant in respect of the suit property. After decree of eviction was passed in the Suit, appeal was filed in the name of M/s. Motilal Babulal & Co. through its sole proprietor Mr. Babulal Acchaldas Jain. During the pendency of the appeal, it appears that Babul Acchaldas has passed away and the Petitioner is his son. I therefore do not see any difficulty why Petitioner cannot prosecute Marji Application seeking condonation of delay in filing the restoration application. In that view of the matter, the order

dated 23rd July, 2025 passed by the Appellate Bench of Small Causes Court at Mumbai deserves to be set aside.

2) It appears that the possession of the suit premises was already secured by the Respondent Decree holder. However, articles of the Petitioner are still lying in the suit premises on account of interim order passed by this Court on 23rd December, 2025. It appears that the Decree holder is unable to enjoy the possession of the suit property.

3) Mr. Dalal, learned Counsel appearing for the Petitioner on instructions submits that the Petitioner shall forthwith remove all his articles from the suit premises on a condition that the Plaintiff Decree holder does not create any third party right in respect of the suit property.

4) In that view of the matter, I proceed to pass following order :

(i) The order dated 23rd July, 2025 passed by the Appellate Bench of Small Causes Court at Mumbai is set aside. Marji Application No. 20 of 2023 is restored on the file of the Appellate Bench of Small Causes Court at Mumbai who shall proceed to decide the same on its own merits.

(ii) The Petitioner shall remove all his article from the suit premises within a period of one month from today. For that purpose the Plaintiff shall open the suit premises for enabling the Petitioner to remove his articles.

(iii) The Plaintiff shall not create any third party rights in respect of the suit premises till the decision of the Marji

Application No. 20 of 2023. In the event, the appeal is restored, the Petitioner would be at liberty to request for extension of interim arrangement till disposal of the appeal.

(iv) All rights and contentions of the parties are expressly kept open.

5) With the above directions, Writ Petition is partly allowed and disposed of.

[SANDEEP V. MARNE, J.]