

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5279 OF 2026

AND

WRIT PETITION NO. 5412 OF 2026

Kailashpati Arjundas Gupta

...Petitioner

V/s.

Lalitkumar Ganeshmal Jain And Ors

...Respondent

Mr. Shailendra S. Kanetkar *with Mr. Asad Bukhari and Hiral Bhatia for Petitioner.*

Mr. Satyavan N. Vaishnav *with Ms. Nupur J. Mukherjee and Mr. Armaan Grewal i/b M/s. N. N. Vaishnawa and Co., for Respondent No. 1.*

CORAM: SANDEEP V. MARNE, J.

DATED: 28 APRIL 2026.

P.C.:

1) These two Petitions are filed challenging order passed by Appellate Bench of Small Causes Court in appeal lodged by the Respondents/Original Defendant No. 3 against eviction decree passed in R.A.E. Suit No. 1778 of 2014.

2) Writ Petition No. 5279 of 2026 challenges order dated 9 March 2026 passed in Miscellaneous Application (M.A.R.J.I.) No. 160 of 2025 by which the Appellate Bench has condoned delay of 61 days in lodging the Appeal against the eviction decree dated 22 April 2025. Writ Petition No. 5412 of 2026 is filed challenging order dated 15 April 2026

passed by the Appellate Bench by which stay is granted to execution of decree by way of *pro tem* arrangement till decision of Application filed by the Petitioner questioning maintainability of the Appeal.

3) I have heard, Mr. Kanetkar, the learned counsel appearing for the Petitioner and Mr. Vaishnav, the learned counsel appearing for Respondent No. 1/original Defendant No. 3.

4) So far as the order dated 9 March 2026 passed in M.A.R.J.I. Application No. 160 of 2025 is concerned, the same condoned delay of only 61 days in lodging the Appeal by imposing cost of Rs. 20,000/-. The order is challenged by the Original Plaintiff contending that an Application citing the same reasons for setting aside ex-parte decree has been rejected by the Trial Court on 7 February 2026. According to the Petitioner when the Trial Court has refused to condone delay of only 19 days in filing Application for setting aside ex-parte decree under Order IX Rule 13 of the Code, the Appellate Bench could not have considered the very same reasons for condoning delay of 61 days in filing the substantive Appeal. It is contended that Revision preferred by Original Defendant No. 3 against order dated 7 February 2026 has been dismissed by the Appellate Bench.

5) In my view, the consideration for deciding Application for condonation of delay in filing Application for setting aside ex-parte decree would be entirely different than the considerations for deciding Application for condonation of delay in filing the substantive Appeal. It appears that one of the reasons why the Trial and the Appellate Courts

have refused to condoned delay in filing Application under Order IX Rule 13 of the Code is that the decree itself is not ex-parte. The original Defendant No. 3 can simultaneously exercise both the remedies of seeking setting aside of the ex-parte decree as well as filing of substantive Appeal. Merely, because the Trial Court has refused to condone the delay in filing Application under Order IX Rule 13 of the Code it does not mean that the Appellate Court has also refused to condone the delay in filing the substantive Appeal. In the present case the Appellate Court has exercised discretion in condoning delay of only 61 days in filing the substantive Appeal. The Appellate Court has also imposed cost on the original Defendant No. 3 while condoning delay of 61 days.

6) No case is made out for concluding that the discretion exercised by the Appellate Court while passing impugned order dated 9 March 2026 is arbitrary or that the discretion is exercised with material irregularity. I am therefore not inclined to interfere in order dated 9 February 2026 and Writ No. 5279 of 2026 deserves to be dismissed.

7) So far as Writ Petition No. 5412 of 2026 is concerned, the same challenges order dated 15 April 2026 by which the Appellate Court has granted stay to the execution of decree till the next date of hearing. It appears that the Original Plaintiff has taken out Application questioning maintainability of the Appeal. Till the Appellate Court decides the said Application, a mere *pro tem* arrangement is made for stay to the execution of decree. It is complained by the Petitioner/Original Plaintiff that the effect of order dated 15 April 2026 is

such that Respondent No. 1 as well as his inductees would continue to enjoy possession of the Suit premises without any consequences. Considering this objection and with a view to prevent any further litigation between parties, it would be appropriate to fix interim compensation payable in respect of the Suit premises during pendency of the Appeal. Fixation of interim compensation by this court will quell filing of any further proceedings by the parties for fixation of interim compensation before the Appellate Court.

8) The suit premises admeasures 350/400sq.ft located on second floor of the building at Bhuleshwar, Mumbai. Considering the nature of the place the building is without lift. In my view therefore, it would be appropriate to fix interim compensation in the range of Rs. 200/- per Sq.Ft. per month. Considering the fact that the suit premises admeasured 350 Sq.Ft on lower side, it would be appropriate to fix interim compensation in respect of suit premises at Rs. 70,000/- per month. This is the only modification that needs to be made to the order dated 15 April 2026.

9) With a view to prevent any further delay in decision of the Appeal, Mr. Kanetkar, on instructions makes a statement that the Petitioner shall withdraw Application questioning maintainability of the Appeal. He further submits that the stay to execution of decree can continue during pendency of Appeal subject to the Respondent No. 1 depositing interim compensation and subject to Respondent No. 1 not creating any further third party rights in respect of the suit Premises.

The Appellate Court is requested to decide the Appeal in an expeditious manner.

10) I accordingly, proceed to pass the following order:-

- (i) Writ Petition No. 5279 of 2026 is dismissed.
- (ii) Writ Petition No. 5412 of 2026 is partly allowed by modifying order dated 15 April 2026.
- (iii) The Respondent No. 1/Original Defendant No. 3 shall pay interim compensation of Rs. 70,000/- per month, which shall be deposited from the date of eviction decree i.e. 22 April 2025 before the Appellate Court.
- (iv) The arrears of compensation from 22 April 2025 till 31 May 2026 shall be deposited on or before 30 June 2026.
- (v) The Respondent No. 1 shall thereafter continue to deposit the interim compensation so fixed during pendency of the Appeal.
- (vi) The stay to the execution of decree shall continue throughout pendency of Appeal subject to Respondent No. 1 regularly depositing interim compensation and subject to Respondent No. 1 not creating any further third party rights in respect of the suit premises. Respondent No. 1 shall file an undertaking before Appellate Bench of Small Causes Court for not creating any further third party rights in respect of the Suit premises within a period of two weeks.

10) All question on merits as well as maintainability of the Appeal are expressly kept open to be decided by the Appellate Bench of Small Causes Court.

11) With the above directions both the Petitions are **disposed of** .

[SANDEEP V. MARNE, J.]