

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5430 OF 2026

Sadiq Fazal Abbas Hussein Rajkotwalla

& Ors.

... **PETITIONERS**

: VERSUS :

Dinesh Damji Gogri & Ors.

... **RESPONDENTS**

Ms. Fatima Barodawalla *a/w. Ms. Zehra Moledina, for the Petitioner.*

Ms. Harita *with Mr. Dishang Shah i/b. Mr. P.M. Shah, for Respondent Nos.1 and 2.*

CORAM : SANDEEP V. MARNE, J.

DATED : 21 APRIL 2026.

P.C :

1) The petition challenges order dated 10 April 2026 passed by the Appellate Bench of the Small Causes Court dismissing Revision Application No. 121 of 2025 for non-prosecution.

2) I have heard Ms. Barodawalla, the learned appearing for the Petitioner and Ms. Harita, the learned counsel appearing for Respondent Nos.1 and 2.

3) It appears that apart from the fact that there was default in appearance of the Advocate for the Petitioner when the Revision was

called out for hearing before the Appellate Court on 10 April 2026, the learned Advocate apparently protested against the order passed by the Appellate Bench which required the learned Judges to pass a separate handwritten order on 10 April 2026. This ought to have been avoided. Ms. Barodawalla expresses an apology for what has transpired before the Appellate Bench on 10 April 2026. The apology is accepted.

4) It appears that the Revision Application is dismissed for want of prosecution. The Petitioners are apparently holding on to possession of the suit premises for a considerable period of time. Though it was agreed under the consent decree that possession of the suit premises would be handed over in the year 1979, Ms. Barodawalla submits that after passing of the consent decree, the Plaintiff in the Suit has agreed for continuation of possession of the premises by the Petitioners/their predecessors. She submits that an opportunity be granted to prosecute the Revision Application on merits. The contention of the Petitioner about Plaintiff being granted permission to occupy the suit premises post consent decree is disputed by the learned counsel appearing for the decree holders.

5) Be that as it may. In my view, an opportunity can be granted to the Petitioners to prosecute their Revision Application on merits. However, this would be subject to imposition of exemplary costs on the Petitioners as permitting prosecution of the Revision Application on merits would entail further continuation of possession by the Petitioners in respect of the suit premises. Considering the facts of the case, it would be appropriate to impose costs of Rs.50,000/- on the Petitioners as a condition precedent for setting aside the order dated 10 April 2026.

6) I accordingly proceed to pass the following order :

(i) The order dated 10 April 2026 passed in Revision No. 121 of 2025 is set aside and Revision No. 121 of 2025 is restored on the file of the Appellate Bench of the Small Causes Court.

(ii) Petitioners shall pay to the decreeholders costs of Rs.50,000/- as a condition precedent for setting aside the order dated 10 April 2026. The amount of costs shall be paid by way of Demand Draft in the name of Dinesh Damji Gogri within a period of 1 week. It is made clear that if the Petitioners fail to pay the costs within the stipulated time, the order dated 10 April 2026 shall automatically revive.

(iii) The Appellate Bench shall proceed to dispose of Revision Application No. 121 of 2025 on its own merits in an expeditious manner. The Petitioners shall accord due co-operation to the Appellate Bench for expeditious hearing of the Revision Application without seeking unnecessary adjournments.

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

7) With the above directions, the Writ Petition is **disposed of**.

[SANDEEP V. MARNE, J.]