IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10036 OF 2026

1. Bapusaheb Shankar Rao Yadav,
Aged 58 years, Occupation : Profession
Residing at: Chaitanya Hospital, Lonand,
Taluka – Khandala, Dist. Satara – 412 521.

2. Jayashree Bapusaheb Yadav
Aged 55 years, Occupation: Business,
Residing at: Chaitanya Hospital, Lonand,
Taluka – Khandala, Dist. Satara – 412 521. ...Petitioners

Versus

1. Ramdas Dadasaheb Nigade,
Adult, Indian Inhabitant,
Having address at: - Saniya Heritage,
Saidham, Flat No. 16, "A" wing,
4th Floor, Bibewadi, Pune.

2. Sunanda Ramdas Nigade,
Adult, Occupation: Business,
Residing at: Saniya Heritage, Saidham,
Flat No. 16, "A" Wing, 4th floor,
Bibewadi, Pune – 37.

3. Chaitanya Agro Hitech Private Limited,
A Company registered under the Companies
Act, 2013 having address at : Neel Kanth
Apartment, Congress Bhavan Road, Pune. …Respondents

ARUN RAMCHANDRA SANKPAL

Digitally signed by ARUN RAMCHANDRA SANKPAL
Date: 2026.08.29 18:03:49 +0530

Mr. Devashish Godbole, for the Petitioners.
Mr. Chaitanya Nikte, with Swapnil Sangle, i/b Prajit Sahane, for Respondent Nos. 1 and 2.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 12th AUGUST 2026
PRONOUNCED ON : 29th AUGUST 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 24th March 2026 passed in Civil MA No. 1064 of 2019 whereby the said application filed for restoration of Civil MA No. 527 of 2013, preferred under Section 34 of the Arbitration And Conciliation Act, 1996 ("the Act, 1996"), came to be rejected.

3. The backgrounds facts leading to this Petition can be summarised as under:

3.1 The Petitioners, husband and wife duo, had floated a company, Chaitanya Agro Hi-Tech Private Limited-Respondent No.3.

3.2 On 1st September 2007, Respondent Nos. 1 and 2-Claimants entered into an Agreement with the Petitioners to acquire 50% shares of Respondent No.3-company for an aggregate consideration of Rs.50,00,000/-. Out of the said amount, a sum of Rs.12,50,000/- was admittedly paid by the Claimants to the Petitioners.

3.3 In the wake of the dispute over the payment of the balance amount, the Claimants invoked the Arbitration.

3.4 By an order dated 15th March 2013, Hon'ble Justice P. B. Sawant (Retd) allowed the claim of the Claimants and directed the Petitioners-Opponent Nos. 1 and 2 therein, to pay an amount of Rs.53,20,000/-, comprising principal amount of Rs.28,00,000/-, and Rs.25,20,000/- being the interest on the said amount at the rate of 18% per annum till the date of the Award, within a period of two months, failing which the Petitioners were to pay interest at the rate of 18% per annum for the Award amount of Rs.53,00,000/- from 15th March 2013 till the realisation. Claimants were further directed to deposit a sum of Rs.20,00,000/- in the Fixed Deposit in the name of Respondent No.3-company till the District Industrial Centre ("DIC") recovered it or waived the recovery. An option of furnishing a Bank Guarantee in the sum of Rs.20,00,000/- in lieu of the deposit of the said amount was also given to the Petitioners.

3.5 The Petitioners filed an Application under Section 34 of the Act, 1996 to set aside the said Award, being MA No. 527 of 2013. However, it seems, the Petitioners did not diligently prosecute the said Application.

3.6 On 24th June 2017, the Court directed the parties to file documents positively by the next date. On 9th July 2019 as well the Petitioners did not appear before the Court and, hence, the matter was posted for dismissal order. Eventually on 1st August 2019, noting that on

the previous date, i.e., 9th July 2019, the matter came to be posted for dismissal order and, yet, neither the Petitioners nor their Advocate appeared, the learned District Judge dismissed the Application for want of prosecution.

3.7 On 13th September 2019, the Petitioners preferred an Application to set aside the said dismissal order and restoration of the Application to file.

3.8 The learned District Judge was persuaded to reject the Application observing, *inter alia,* that no sufficient casue was made out to set aside the dismissal order and restore the Civil MA No. 527 of 2013 to file. The reasons ascribed in the Application did not constitute a sufficient cause. In fact, the Petitioners had made incorrect statements as regards their failure to appear before the Court. Thus, having regard to the totality of the circumstances, including conduct of the Petitioners, the District Judge rejected the Application for restoration.

3.10 Being aggrieved the Petitioners have preferred this Petition.

4. I have heard Mr. Devashish Godbole, the learned Counsel for the Petitioners, and Mr. Chaitanya Nikte, the learned Counsel for the Respondent Nos. 1 and 2, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5. Mr. Devashish Godbole, the learned Counsel for the Petitioners, submitted that the learned District Judge has taken a very hyper-

technical view of the matter. The Application for restoration of the main Application was filed under 42 days of the dismissal. Thus there was no lack of bonafide on the part of the Petitioners. The learned District Judge was swayed by the events that had transpired during the pendency of MA No. 527 of 2013 and thus lost sight of the justifiability of the reasons ascribed in the Application.

6. At any rate, Mr. Godbole would urge, the Petitioner cannot be made to suffer the consequences of the delay, inadvertence, or for that matter, negligence on the part of the Advocate to whom the Petitioners-Applicants had entrusted the brief. Inviting the attention of the Court to very orders, which were referred to by the learned District Judge in the impugned order, Mr. Godbole would urge that, on none of the dates the Advocate appointed by the Petitioners did appear before the Court. In that view of the matter, according to Mr. Godbole, since it was a case of inadvertence or negligence on the part of the Advocate, the Petitioners cannot be made to suffer the adverse consequences on account of the acts and omissions on the part of the Advocate.

7. Per contra, Mr. Chaitanya Nikte, the learned Counsel for Respondent Nos. 1 and 2, would submit that the learned District Judge was fully justified in rejecting the Application for restoration of the Petition after noticing the conduct of the Petitioners, as emerged from the record. Secondly, Mr. Nikte would urge, the Application for

restoration is bereft of any reasons which could be termed as demonstrating a sufficient cause for non-appearance of the Petitioners.

8. Mr Nikte would submit, at best, in paragraphs 2 to 4 of the Application, it was asserted that certain additional documents were required to be procured for the purposes of hearing. That the Applicants, being Doctors by profession, were busy in their avocations and despite adjournments having been sought by the Petitioners, the Court had dismissed the Application for non prosecution. None of these reasons, Mr Nikte would urge, qualify as a sufficient cause for non-appearance on the scheduled date of hearing of the matter when the matter was already stood over for dismissal order.

9. I have given careful consideration to the submissions canvassed across the bar and perused the material on record.

10. To begin with, it is necessary to keep in view the fact that the Award in question was passed by Arbitral Tribunal on 15th March 2013. The Award is yet to be executed. By the instant Petition the Petitioners seek restoration of the Application under Section 34 of the Act, 1996 and again put the executability of the Award in contest. This time-lag of for more than 13 years in the enforcement of the Award passed on 15th March 2013 deserves to be borne in mind.

11. From the perusal of the order dated 1st August 2019, it becomes evidently clear that MA No. 527 of 2013 was dismissed for the reason

that there was persistent non-appearance of the Applicants in the said Application. In fact, on the previous date, i.e., 9th July 2019, the Court had directed that the matter be posted for dismissal order, yet, none appeared for the Petitioners. Thus it can hardly be urged that, the learned District Judge passed the order dated 1st August 2019 in a haste.

12. This takes me to the pivotal issue of the justifiability of the cause ascribed by the Petitioners for non- appearance on the date on which the Application under Section 34 of the Act, 1996, came to be dismissed for want of prosecution.

13. This Court was anxious to appreciate the reasons ascribed in the Application to account for non-appearance on 1st August 2019. The Court finds the Application for restoration singularly lacked reasons or the circumstances on account of which the Petitioners could not appear before the Court on 1st August 2019.

14. Mr. Nikte was justified in canvassing a submission that, at best, the assertions in paragraphs 2 to 4 of the Application can be construed as the reasons purportedly ascribed by the Petitioners. They read as under:

> "2. It is further submitted that present matter was posted for argument however some additional important documents of the applicants was not coming from the applicants, which is necessary and important for adjudication of matter and to decide the controversy.

> 3. That as the Applicants are Doctor by profession and was busy in their hospital for long period of time due to that of there was delay to search the documents which are vital to decide the matter on merits.
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> 4. It is further submitted that it being so Appellants had filed the Application and thereby prayed that due to the above said reasons Appellants may please be given adjournment, however in spite of the same Hon'ble Court pleased to dismiss the said Civil MA for non-prosecution"

15. Even if maximum latitude is given to the Petitioners and the aforesaid assertions in the Application are construed rather generously in conformity with the principle of liberal consideration, yet, I am afraid the aforesaid assertions spell out any reason for non-appearance of the Petitioners on 1st August 2019. Paragraph 2 simply refers to the fact that some additional documents were required to be tendered for the purpose of adjudication but those documents were not forthcoming from the Petitioners themselves. Paragraph 3 refers to the profession the Petitioners were engaged in and that caused delay in procuring the documents. Paragraph 4 adverts to the fact that despite the Application for adjournment having been filed, the Court had dismissed the Application for non-prosecution.

16. The alleged inaction, inadvertence or negligence on the part of the concerned Advocate, which was sought to be canvassed forcefully by Mr. Godbole to drive home the point that a litigant should not be

made to suffer on account of inadvertence and negligence on the part of the Advocate, is conspicuous by its absence in the Application. The submissions canvassed before this Court professing to lay the blame on the door steps of the Advocate is simply not borne out by the assertions in the Application and thus has no factual foundation.

17. The law enunciated by the Supreme Court in the case of **Rafiq And Anr Vs Munshilal and Anr,**[1] on which reliance was placed by Mr. Godbole, is of no assistance to the Petitioners. In that case, the Supreme Court indeed considered the question whether it was proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent and observed that the answer obviously was in the negative. The Supreme Court went on to observe that, the Court cannot be party to an innocent party suffering injustice merely because his chosen advocate defaulted.

18. However, in the absence of any foundation in the Application, the desperate attempt by Mr Godbole to bank upon the aforesaid decision, in the considered view of this Court, does not merit countenance.

19. The Supreme Court explained the import of the decision in the case of **Rafiq And Anr (Supra)** in a subsequent decision in the case of **Salil Dutta Vs T. M. And M. C. Private Ltd,**[2] as under:

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1 (1981) 2 SCC 788.

2 (1993) 2 SCC 185.

"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set a side a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is not such abso lute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the Court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hewing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they 'chose to non-cooperate with the court. Having adopted such a stand towards the Court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it. out as if they were totally

unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted."

(emphasis supplied)

20. This position was reiterated in the case of **Rajneesh Kumar Vs Ved Prakash,**[3] in the following words:

"10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief."

(emphasis supplied)

21. A profitable reference can be made to the decision in the case of **Nitin Mahadeo Jawale and Ors Vs Bhaskar Mahadeo Mutke,**[4] wherein the Supreme Court has again cautioned against condoning the delay or setting aside the dismissal order by placing entire blame on the Advocates. Paragraphs 6 to 8 are material and hence extracted below:

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3 2024 SCC OnLine SC 3380.

4 2024 INSC 902.

> "6. We have noticed over a period of time the growing tendency on the part of the litigants in throwing the entire blame on the head of the advocate. Not only this, we have come across cases where the concerned advocate has filed an affidavit in favour of his client(s) saying that he was unable to attend the proceedings due to some personal reasons difficulties thereby facilitating the litigant to get the delay condoned.
>
> 7. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.
>
> 8. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief."
>
> (emphasis supplied)

22. In the case at hand, thus the endeavour of Mr. Godbole to seek restoration of Civil MA No. 527 of 2013 on the ground that there was inadvertence or negligence on the part of the Advocate cannot be readily acceded to. On the contrary, on the own showing of the Petitioners, on the very next day of the dismissal of Civil MA No. 527 of 2013, the concerned Advocate had filed an Application for certified

copy of the proceeding in the said Civil MA No. 527 of 2013 and the same Advocate had filed the Application for restoration.

23. The situation which thus obtains is that the reasons ascribed in the Application for restoration are not sought to be pressed into service and one that was sought to be urged before this Court, was not pleaded before the District Court.

24. Even otherwise, the Application for restoration, is bereft of any cause, much less a sufficient cause, for setting aside the dismissal order and restoration of the Civil MA No. 527 of 2013.

25. It is true, ordinarily the Court leans in favour of the determination of the lis on merit rather than on technicalities. However, the nature of the underlying proceeding cannot be lost sight of. In effect and substance, the Petitioners seek restoration of an Application to set aside the Award which has been passed prior to 13 years. The material on record indicates that the Petitioners did not diligently prosecute the Application for over five years. Multiple orders were passed by the District Court to make the Petitioners expeditiously prosecute the said Application. The Application for restoration is bereft of cause for non-appearance.

26. In the backdrop of these facts, this Court is of the considered view that, the object of the Act, 1996 to achieve inexpensive, expedite and swift resolution of the disputes, would be completely negated if the

restoration Application to set aside an Award passed on 15th March 2013 is entertained at this juncture.

27. For the forgoing reasons, the Petition deserves to be dismissed.

28. Hence, the following order:

: O R D E R :

Petition stands dismissed.

Rule discharged.

No costs.

[N. J. JAMADAR, J.]