

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1023 OF 2014

Shri Mahadu Sadhu Raykar
(since deceased) through
Legal Heirs Shri Vitthal Mahadu
Raykar & Ors. .. Petitioners
vs.
Smt. Gopikabai Sadu Raykar & Ors. .. Respondents

Mr. Abhishek Deshmukh with Mr. Sanjiv Sawant for Petitioners.
Mr. Vijay Patil i/b. Mr. Nikhil Chavan for Respondent Nos. 1 to 3.
Ms P. S. Cardozo – AGP for Respondent Nos. 5 to 8.

CORAM : M. S. SONAK, J.
DATE: 13 JANUARY 2015

P.C. :-

1] Rule, with the consent of and at the request of the parties, the Rule is made returnable forthwith.

2] Mr. Abhishek Deshmukh, learned counsel for the petitioners points out that inspite of the specific order made by this Court on 29 July 2013 in writ petition no. 5192 of 2013 directing the Sub Divisional Officer to determine whether there was sufficient cause to condone delay of almost 20 years in challenging the entries in the revenue records, in the impugned order dated 12 December 2013, there is virtually no consideration on this aspect.

3] Mr. Patil, the learned counsel for respondent nos. 1, 2 and 4 raised objection to the maintainability of this petition on the ground that the petitioners have an alternate remedy by way of preferring a revision petition. Mr. Patil further pointed out that the impugned order does touch the aspect of sufficient cause, though briefly. In any case, Mr. Patil points out that in the application made by the said respondents seeking condonation of delay, sufficient cause was shown for filing the appeal beyond the prescribed period of limitation. Mr. Patil urged that in case this Court wishes to entertain the present petition, then it is only appropriate that the cause shown in the application seeking condonation of delay be condoned by this Court itself.

4] Having heard the learned counsel for the petitioners, I find that despite specific directions in the order dated 29 July 2013, the SDO has not at all dealt with the aspect of sufficient cause in filing an appeal, almost 20 years beyond the prescribed period of limitation. There is virtually no reference to the cause, if any, as pleaded by respondent nos. 1, 2 and 3. There is no discussion as to whether such cause, indeed constitutes sufficient cause. In such circumstances, it would be appropriate if the impugned order dated 12 December 2013 is quashed and set aside and the matter is remanded to the SDO for fresh consideration of the application

seeking condonation of delay. On this occasion, it is not just expected, but directed that the SDO takes into consideration the cause shown by and on behalf of respondent no. 3 as well the opposition raised by and on behalf of the petitioners and thereafter determine whether indeed any sufficient cause has been shown for condoning the delay of 20 years in preferring the appeal. This, the SDO shall do as expeditiously as possible and in any case within a period of three months from the date of this order.

5] It is true that there is an alternate remedy available to the petitioners by way of preferring the revision petition. However, in the gross facts of the present case, it would not be appropriate to relegate the petitioners to the said alternate remedy. More so, because in this case the SDO in making the impugned order has observed the directions of this Court in its order dated 29 July 2013, only in breach. For this reason, the objection with regard to entertainment of this petition on grounds of availability of alternate remedy is over ruled.

6] The parties to appear before the SDO on 2 February 2015, in order to obtain further directions with regard to the disposal of the application for condonation of delay.

7] It is made clear that this Court has made no observations on the merits or demerits of the matter. Accordingly, all issues are kept open. Rule is made absolute to the aforesaid extent. In the facts and circumstances of this case, there shall be no order as to costs.

8] Parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka