

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 557 OF 1996

Sou. Rose Itur Brick and anr.	..	Petitioners
vs.		
Derik Luis Murzello (deleted)		
(1(a) Placid V. Britto and ors) & ors.	..	Respondents

Mr. Y.S. Jahagirdar, Sr. Advocate a/w. Mr. P. S. Dani, Sr. Advocate i/b
Mr. Sandesh D. Patil for the Petitioners.
Mr. S.G. Karandikar for Respondent No.12.
Mr. R.S. Datar for Respondent No.12A.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 21 November 2015.
Date of Pronouncing the Judgment : 30 November 2015.

JUDGMENT :-

1] The challenge in this petition is to the orders dated 27 July 1992 made by the Sub-Divisional Officer (SDO) in Tenancy Appeal No. 17 of 1988 and the order dated 20 December 1995 made by the Maharashtra Revenue Tribunal (MRT) in Tenancy Revision Application No. 265 of 1994 (impugned orders).

2] The disputes between the parties relates to the property surveyed under 452(part) at Bhayandar ad-measuring 2 Acres 18 Gunthas (said property). In 1970, the Tahasildar, on the basis of an entry in the cultivators' column, issued notices to the parties under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act,

1948 (said Act) with a view to determination of purchase price and ascertainment of willingness for payment thereof. The consequent proceedings came to be disposed of by order dated 31 March 1970. The said order records that despite public notice as well as individual notices, the Petitioner chose not to appear in the proceedings, but the Respondents, i.e., landlords filed appearance. The said order dated 31 March 1970 also records that Gilbert Marshel Murzello, i.e., one of the landlords having interest in the said property, made a statement that the Petitioner is not tenant of said property but he has no objection to entry of Petitioner-Rose's name in the occupant's column. The landlord – tenant relationship was denied. On the basis of such statement, the Tahasildar ordered the dropping of proceedings under Section 32-G of the said Act, but went on to direct the name of the Petitioner No.1 Rose Brick should be entered as occupant in respect of said property in place of the occupants already recorded therein.

3] After about 18 years, the Respondents instituted the Tenancy Appeal No. 17 of 1988 before the SDO at Thane questioning the aforesaid order dated 31 March 1970, to the extent the same directed the record of Petitioner No.1's name in the occupant's

column, in place of existing names in regard to said property. Although, no separate application seeking condonation of delay appears to have been made, in the appeal memo itself, explanation was offered with regard to the delay involved in the lodging of the appeal. There is no record that the Petitioners filing any reply contesting the cause shown for delay in the institution of the appeal. Ultimately, the SDO by order dated 27 July 1992 has allowed the appeal and set aside the order dated 31 March 1970 made by the Tahasildar. The Tenancy Revision Application No. 265 of 1994 instituted by the Petitioners came to be dismissed by the MRT by order dated 20 December 1995. Hence, the present petition.

4] Mr. Y.S. Jahagirdar, learned senior advocate for the Petitioners, submitted that the Respondents at the time of institution of the belated Tenancy Appeal No. 17 of 1988 had not filed any separate application for condonation of delay. In absence of any such separate application and independent consideration thereof, the Appellate Authority, i.e., SDO lacked jurisdiction to entertain the appeal. In any case, the learned senior advocate submitted that the cause shown by the Respondents for condonation of delay was by no means sufficient and in any case, there is absolutely no consideration

of such cause shown, either by the Appellate Authority or the Revisional Authority and the order of condonation of delay is bereft of any reasons, which might reflect any conscious considerations of the cause shown. Reliance was placed upon the decision of the Hon'ble Apex Court in case of *Ramesh Chand Sharma Vs. Udham Singh Kamal & ors.*¹ and the decision of this Court in case of *Ballumal A. Jaisingh Vs. J.J. Builders & ors.*² to contend that in absence of any application seeking condonation of delay, the Court will have no power to condone the delay or assume any jurisdiction in the matter.

5] On the other hand, Mr. R.S.Datar and Mr. S.G. Karandikar, who appear for the Respondents, submitted that the petition as filed is required to be dismissed, as the Petitioners have suppressed the material and relevant facts and further indulged into approbation and reprobation. In this regard, the learned counsel pointed out that the Petitioner No.1 Rose Brick herself instituted Tenancy Appeal No. 4 of 1996 against the order dated 31 March 1970 made by the Tahsildar, in which, the Petitioner No.1 Rose urged that she was the tenant of the suit property. In this petition, however, the Petitioner

1 1999 (8) SCC 304

2 2003(3) Mh.L.J.238

Rose Brick, on oath, has made statements that she is not the tenant of the suit property, but that she is the owner of the suit property. Such conduct, according to the learned counsel for the Respondents, amounts to both suppression as well as approbation and reprobation. That apart, the learned counsel for the Respondents pointed out that there is no requirement of separate application for condonation of delay, even though, such separate application is generally filed alongwith memo of appeal. In this case, sufficient cause was indicated in the memo of appeal itself and the same having been considered by the Appellate Authority and such consideration having not faulted by the Revisional Authority, there is no warrant to interfere with the exercise of discretion in the matter of such condonation of delay. The learned counsel for the Respondents, further pointed out that the order dated 31 March 1970, was in fact, a nullity, inasmuch as the Tahsildar, after having dropped proceedings under Section 32G of the said Act had no jurisdiction whatsoever to direct the inclusion of the name of the Petitioner No.1 in the occupant's column, as such a direction is not at all contemplated under the legislative scheme of Section 32-G of the said Act. For all these reasons, the learned counsel for the Respondents, submitted that this petition be dismissed with costs.

6] The rival contentions now fall for determination.

7] Although it is true that no separate application seeking condonation of delay may have been filed, in the appeal memo itself, cause was shown and the condonation of delay was applied for. In proceedings, under the said Act, where informality is to be expected, it is not possible to accept the Petitioners' contention that the Appellate Authority lacked jurisdiction to entertain the appeal merely because there was no separate application seeking condonation of delay and the cause for delay was indicated in the memo of appeal itself. The decisions upon which the Petitioners have placed reliance are distinguishable. The decision in case of *Ramesh Sharma (supra)* was in the context of provisions contained in Section 21(3) of the Administrative Tribunals Act, 1985. In the said case, the original applications came to be filed before the Administrative Tribunal after a period of three years, without there being any explanation for delay. The explanation was sought to be offered for the first time before the Hon'ble Apex Court. Further, the Tribunal, without adverting to the issue of limitation had proceeded to dispose of the original applications on merits. It was in this context that the

Hon'ble Apex Court held that the original applications filed before the Tribunal after expiry of three years could not have been admitted and disposed of on merits, in view of statutory provisions contained in Section 21(1) of the Maharashtra Administrative Tribunals Act, 1985. Similarly, the decision of this Court in case of *Ballumal Jaisingh (supra)*, is in the context of lodging of objection under Section 30 of the Arbitration Act, 1940 beyond the prescribed period of limitation and without offer of any explanation before the Court in the matter of such delay. In the said case, the Trial Court, without adverting to the issue of delay had proceeded to dispose of the objections on merits. The fact situation in the two decisions offer no parallel to the fact situation in the present case. Although, the Respondents had not filed any separate application for condonation of delay, cause was indeed shown before the Appeal Court itself and condonation of delay was also applied for. Such cause has been accepted as sufficient by the Appeal Court and Revisional Court. Accordingly, it is not possible to accept the contention of the Petitioners that the Appeal Court lacked jurisdiction to entertain the appeal in absence of separate application for condonation of delay.

8] Besides in paragraph '4' of the memo of appeal instituted by

the Respondents, the Respondents have made a categorical statement that they were neither served with proper notices of the proceedings before the Tahasildar nor was the order made therein communicated to them. The Respondents have stated that they came to know about the order on 4 January 1988 after which they immediately applied for certified copy, which was delivered on 12 January 1988. In these circumstances, it was the case of the Respondents that the appeal as instituted is within time. In any case, the Respondents had urged that this should be considered as sufficient cause for not preferring the appeal within the prescribed period of limitation and the delay, if any, should be condoned. In the said paragraph, the Respondents had also urged that the impugned order being void *ab-initio*, the question of limitation does not arise, particularly since on the basis of such void order, the right of the Respondents to their immovable property was being seriously jeopardized. As noted earlier, there is no record of any reply filed by the Petitioners contesting the statements in paragraph '4' of the memo of appeal relating to sufficient cause. On the contrary, the Petitioner No.1 Rose, chose to institute Tenancy Appeal No. 4 of 1996 to question the very order dated 31 March 1970, made by Tahasildar after period of 26 years. To such appeal, no separate

application for condonation of delay was appended. The Petitioner No. 1 had urged that since the order dated 31 March 1976 is not legal and proper, the issue of limitation does not arise and in any case, delay is liable to be condoned in the interest of justice. In these circumstances, it is not possible to accept the contention of the Petitioner that the Respondents had failed to show any cause explaining the delay or that the Appellate Authority and the Revisional Authority have not applied their mind to the issue of delay in the institution of appeal. Although, the reasoning of the Appeal Court may not be elaborate, the impugned order makes specific reference to delay involved in the institution of the appeal and proceeds to condone such delay. The exercise of positive discretion by the Appeal Court has not been disturbed by the Revisional Court, i.e., MRT. In exercise of supervisory jurisdiction under Article 227 of the Constitution of India, it is not possible to interfere with such positive exercise of discretion.

9] The Hon'ble Apex Court, in case of *N. Balakrishnan Vs. M. Krishnamurthy*³, had also held that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the Court in

3 (1998) 7 SCC 123

different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rule of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The condonation of delay is a matter of discretion of the Court. Length of delay is no matter, acceptability of the explanation is the only criterion. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is a reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. There is no presumption that delay in approaching the Court is always deliberate. The expression '*sufficient cause*' should receive a liberal construction so as to advance substantial justice.

Further, in paragraph '9', the Hon'ble Apex Court, in the context of interference with exercise of discretion in a positive manner, i.e., condoning delay, has observed thus:

9. *It is axiomatic that condonation of delay is a matter of discretion of the court. [Section 5](#) of the Limitation Act*

does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

[Emphasis supplied]

10] In this case, there is merit in the contention of the Respondents that the Petitioners have indulged into approbation and reprobation. The relevant disclosures were also lacking. The Petitioner No.1, was duty bound to make disclosure about Tenancy Appeal No. 4 of 1996 instituted by her to challenge the Tahsildar's order dated 31 March 1970. The Tenancy Appeal No. 4 of 1996, from the copy of memo of appeal annexed alongwith returns filed by the Respondents appears to have been lodged on 2 February 1996 before the SDO Thane. This petition may have been instituted on 22 January 1996, but Rule was issued on 6 February 1996. Therefore,

at least at the stage of issuance of Rule in the matter, the Petitioner No.1 was duty bound to make a disclosure with regard to institution of Tenancy Appeal No. 4 of 1996, particularly, since the stance taken by the Petitioner No.1 in Tenancy Appeal No. 4 of 1996 is at total variance with the stance taken by her in the present petition. In the present petition, the Petitioners have asserted on oath that Petitioner No.1 is the holder, occupier and owner of the suit property. The Petitioner No.2, a construction firm, has also asserted that it has purchased the suit property from the Petitioner No.1, who is the holder, occupier and owner of the suit property. In contrast, the case of Petitioner No.1 in the Tenancy Appeal No. 4 of 1996 is that she is the agricultural tenant in respect of the suit property. This clearly constitutes approbation and reprobation.

11] Faced with this difficulty, Mr. Jahagirdar, learned senior advocate for the Petitioners, made a submission that this is a fit case for remand of the matter to the Tahasildar to decide the proceedings under Section 32-G of the said Act. At this stage, it is not possible to accede to such a request. In this petition, the Petitioners have repeatedly asserted that Petitioner No.1 is the holder, occupier and owner of the suit property. In paragraph '3' of the petition, the

Petitioner No.1 has categorically asserted that she was not the tenant in respect of the suit property. Such averments have been verified. On basis of this plea, the Petitioner No. 1 has purportedly sold the said property to Petitioner No. 2, a Construction Company. If there was any merit or subsistence in the tenancy claim, such sale to a construction company would possibly be void. That apart, Petitioner No.1 chose to unconditionally withdraw the Tenancy Appeal No. 4 of 1996 instituted by her, in which, she had belatedly claimed that she was the tenant in respect of suit property. At this stage, therefore, there is no question of any remand to the Tahsildar.

12] The learned counsel for the Respondents are right in their submission that the Tahasildar, whilst exercising jurisdiction under Section 32-G of the said Act has limited powers. The Tahasildar or that the Agricultural Lands Tribunal, as the case may be, is required to issue notices, individually to tenant and landlord calling upon them to appear before it on the date specified in the public notice. The Tribunal is then to record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant. If the tenant fails to make a statement that he is not willing to purchase the land, the Tribunal

shall by an order in writing declare that such tenant is not willing to purchase the land that the purchase is ineffective. If the tenant is willing to purchase, the Tribunal, after afford of opportunity to the tenant, landlord and other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with provisions of Section 32-H and 63A. Under the scheme of Section 32-G, therefore, there is no provision to direct the inclusion of name of a person in occupants or holders column, particularly after record of finding that proceedings under Section 32-G need to be dropped. In such circumstances, the Appeal Court and the Revisional Court were right in interfering with the order dated 31 March 1970 to the extent it had directed inclusion of the Petitioner No. 1's name in occupants column.

13] In view of the aforesaid discussion, there is no case made out to interfere with the impugned orders. This petition is, therefore, dismissed. The interim relief stands vacated.

14] The Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

15] At this stage, the learned counsel for the Petitioners applies for continuance of the interim relief, which is already in operation, for a period of eight weeks from today. The request is reasonable and therefore, the interim relief already in operation, shall operate for a further period of eight weeks from today. However, it is clarified that the parties shall be at liberty to apply before the Civil Court at Thane, where civil suit instituted by the parties is pending, for appropriate orders in relation to their respective grievances.

(M.S. SONAK, J.)