

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9341 OF 2013

Smt. Hirabai K. Badade and ors. ...Petitioners.

vs.

Hiralal D.Karnavat (since deceased
through L.Rs.) ...Respondents.

Mr.M.M.Sathaye for the Petitioners.

Mr. M.S.Bhandari i/y P. Bhandari for Respondent Nos. 1A to 1D and
2A to 2F.

CORAM : M.S. SONAK, J.

DATE : 10 FEBRUARY, 2015

PC:

Rule. With the consent and at the request of the learned
Counsel for the parties Rule is made returnable forthwith.

2) This petition is directed against the order dated 25 July
2013 made by the Maharashtra Revenue Tribunal (MRT) declining to
restore the petitioners tenancy revision petition N.54/D/2013 on the
ground that there was no sufficient cause shown for the absence of the
petitioners or their Advocate on 22 December 2011.

3) At the outset, it is required to be noted that the application

for restoration came to be filed by the petitioners on or about 18 January 2013 i.e. after a delay of almost one year. The MRT however, by a separate order has condoned such delay. The order condoning delay in taking out application for restoration has not been challenged by the respondents. Therefore, the scope of the present petition is to determine whether there was sufficient cause for non appearance of the petitioners or their Advocate on 22 December 2011.

4) Mr. Sathaye, learned Counsel for the petitioners submitted that the petitioners had engaged Advocate to appear on their behalf in revision petition. The petitioners accordingly had no reason to believe that the Advocate would not appear before the MRT on the appointed date. However, the Advocate did not appear as he was held up before this Court. The petitioners thereafter came to know about the order dismissing the revision petition for default somewhere on 7 December 2012, when petitioners received intimation that respondents have applied for mutation in the survey entires, based upon the dismissal of the revision petition. Mr. Sathaye further submitted that the Petitioner N.1, who normally attends the Court proceedings herself, was advised rest for a period between 10 December 2011 and 1 February 2012, being affected with osteo arthritics. If such circumstances were to be cumulatively considered then certainly there was sufficient cause for non appearance on 22 December 2011.

5) Mr. Bhadari learned Counsel for the contesting respondents i.e. representatives of respondent Nos. 1 and 2 submitted that the conduct of the petitioners has throughout been such, as would warrant exercise of no discretion in their favour. The learned Counsel pointed out that the Roznama bears out that out of 20 occasions on which the matter was fixed before the Tribunal from 22 September 2008 till 22 December 2011, the petitioner No.1 was present on three and her Advocate on four occasions. Besides, the petitioners have been taking undue advantage by protracting the proceedings. In this regard, the learned Counsel pointed out that the petitioners have, upon the property, to which petitioners claimed agriculture tenancy, permitted several structures to come up, obviously for consideration. In this regard, the learned Counsel made reference to deposition of Petitioner No.1 in RCS No.412 of 1998 as also averments in Para 9 and 11 in the affidavit in reply, which again came to be supported by certain photographs of the property and the structures therein. For all these reasons, the learned Counsel for the said respondents submitted that this Court ought not to interfere with the exercise of discretion by the MRT, particularly, since the discretion was exercised upon the cogent and non extraneous factors.

6) Having heard the learned Counsel for the parties and perused the record, a case has been made out to set aside the

impugned order subject of course, to some conditions. This is because in the present proceedings focus of attention has to be upon the non appearance of the petitioners or their Advocate on 22 December 2011. The circumstances that on previous occasions, the Advocate for the petitioners was absent, may not be altogether relevant for the purpose of determining whether on that particular day i.e. 22 December 2011 there was reasonable cause for the absence. In the present case, the petitioners had engaged an Advocate and it is not unreasonable for them to proceed on the basis that their Advocate would attend to the proceedings before the MRT. The petitioners have stated that their Advocate did not attend on account of some engagement in this Court. The petitioners have also produced a Medical Certificate which indicates that the petitioner No.1 was indeed affected with osteo arthritics and therefore, was not in a position to attend the Court proceedings herself. Besides, there was no reason for the Petitioner No.1 to know that on the crucial date her advocate was not to attend the court proceedings.

7) The MRT, in its impugned Judgment, has closely analyzed the medical certificate produced by and on behalf of the petitioner No.1. This does not seem to be appropriate. The MRT also surmises and conjectures as to why the petitioner No.1 did not suitably make arrangement with her Advocate for non appearance on the crucial

date. This is also does not seem to be appropriate. Ultimately, in such matters, there is no question of adoption of any technical view. More so, since the MRT has condoned the delay almost a year in taking out the motion for extension. Once such delay is condoned and there is no challenge to the order of condonation, there is no question to refer to the very same reasons for the purpose of declining to restore the matter.

8) Though case has been made out for restoration in the facts and circumstances of the case, such restoration obviously cannot be unconditional. From the record., which is borne out from the Roznama, it does appear that the petitioners have been indolent and to a certain extent negligent in the matter of prosecution of revision petition before the MRT. Besides, there is prima facie material on record which indicates that the petitioners have been drawing some mileage from out of the delay in the disposal of the proceeding before the revisional Court. In the affidavit in reply filed by and on behalf of the contesting respondents categorical statements have been made with regard to construction being permitted to be put up by the respondents upon the property which is the subject matter of the revision petition. The statement is backed by deposition of the petitioner No.1 in RCS No.412 of 1998. There are photographs which also prima facie suggest that the structures have come up in the property in question. Learned

Counsel for the petitioner further submits that the deposition of the Petitioner No.1 has not been annexed to the affidavit in reply and photographs can always be fabricated. This is hardly an effective manner of dealing with allegations and averments made in the affidavit in reply. It is to be noted that the petitioners applied for time to file affidavit in rejoinder and such time was granted. However, no affidavit in rejoinder has been filed. In these circumstances, it cannot be said that the petitioner applies for and obtains discretionary relief without any condition.

9) Incidentally, it is to be noted that even this petition was dismissed for want of prosecution. All these may not be strictly relevant for the decision as to whether or not there was any justification for the petitioners and their Advocate to remain absent on 22 December 2011. However, all these circumstances are indeed relevant, in the matter of exercise of discretion and grant of discretionary relief.

10) Therefore, looking to the aforesaid circumstances, in my Judgment although case has been made out by the petitioner to set aside the impugned order, the same shall be subject to the petitioners depositing before the MRT costs of Rs.1.00 lac within a period of four weeks from today. If such costs are deposited, then tenancy revision

petition No.54/D/2013 shall stand restored, However, contesting respondent No.2F shall be entitled to withdraw such costs unconditionally and he shall receive the same on behalf of the other contesting responders.

11) In case the costs as aforesaid are deposited within a period of four weeks and the matter is restored, then MRT is directed to dispose of the revision petition within a period of three months from the date of restoration. The petitioners to co-operate in the matter of expeditious disposal including by way of not seeking adjournments, unless cause is absolutely grave.

12) Learned Counsel for the petitioners, on instructions and without prejudice made a statement that in the last 2 years no new structures have been permitted to come up in the property in question. It is however, directed that hereafter i.e. during the pendency of revision petition, the petitioners shall ensure that no new structures or alienations are effected in and upon the property in question.

13) Rule is made absolute to the aforesaid extent. In view of the directions of deposit of costs before the MRT, there shall be no order of costs in this petition.

14) At this stage the learned Counsel for the petitioners orally applied for reduction in the amount of costs. The learned Counsel for the respondents submitted that from the deposition of petitioner No.1, it transpires that way back in 1998-99, the petitioner No.1 has earned an amount over Rs.2 Million by way of permitting structures to come up on the property. Statement made by the learned Counsel for the petitioners, on instructions, relates to only the last two years. In this view of the matter, request for reduction of costs cannot be acceded.

15) In view of the aforesaid, Civil Application St. No.31542/2014 stands disposed of.

(M.S. SONAK, J.)