

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2880 OF 2014

IN

WRIT PETITION NO.6003 OF 2001

Mr. Suhas Arun Daravde.] ... Applicant

In the matter of :

Shri Digambar Gopiraj Mhaanubhav]
(Since Deceased, through legal heirs)] ... Petitioners

Versus

Smt. Kusum Baban Jagtap and Ors.] ... Respondents

Mr. K. P. Shah a/w Mr. P. B. Shah for Applicant.

Mr. Abhijit Kulkarni i/b DD & Abhijit Associates for Respondent Nos.1 to 7.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 02, 2015

P. C. :-

1. By this Civil Application, the legal representatives of the deceased sole petitioner Digambar Mhaanubhav seek to come on record. The petition was instituted in the year 2001. The sole petitioner expired on 01/04/2003. The applicants are the grandchildren of the deceased sole petitioner, as the petitioner's son Arun Mhaanubhav had expired on 04/02/2001. There is considerable delay. The application, which was initially blank, now concedes that the delay is of over 11 years. The explanation offered is that the applicants were unaware of the procedure with regard to bringing

themselves on record. In the additional affidavit filed by one of the applicants, further explanation offered is that this petition was connected with Writ Petition No.727 of 2000 instituted by Mr.Kanchan. The petitioner in the said petition i.e. Mr. Kanchan informed he applicants sometime in the year 2014 that his petition was posted for final hearing, along with the present petition. It is at this stage that the applicants made inquiry with their Advocate and were informed about requirement of bringing themselves on record. The learned Counsel for applicants has placed reliance upon the decision of this Court in the case of ***Appasaheb Dadasaheb Mohite (deceased through L.R.s and others V/s. Narayan Dhondiba Ghanawat (since deceased by his L.R.s and others***¹, which has taken a view that proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 ('said Act') do not abate, even legal representatives of the parties are not brought on record within any prescribed period.

2. The learned Counsel for applicants has submitted that though the delay may be substantial, the explanation offered is not only sufficient but also *bona fide*. The applicants have gained nothing from the delay. The applicants were genuinely unaware of the procedural formality to bring themselves on record. The applicants have acted with utmost dispatch after intimation from the connected petitioner Mr. Kanchan. The learned Counsel for applicants pointed out that the connected petition had been disposed of and the matter has been remanded for fresh consideration. It was also submitted that

1 2004 (4) Mh.L.J. 269 = 2004 (10) LJSOFT 26 = (2004) Bom.C.R. 716 = 2005 (1) ALL MR 94 = 2005 (1) Bom.L.R. 650

in this case, the respondents had themselves instituted an appeal against the order of the Tahsildar after delay of 36 years. For all these reasons, it was submitted that the applicants be brought on record and permitted to prosecute the present petition. The prejudice, if any, to the respondents can always be compensated by award of some reasonable costs.

3. On the other hand, Mr. Abhijit Kulkarni, learned Counsel for respondents, submitted that the application seeking condonation of delay is bereft of particulars and this, by itself, reflects upon the lack of *bona fides* on the part of the applicants. Mr. Kulkarni submitted that though Writ Petition No.727 of 2000 may have been connected in the sense that the same was against the common order made by the SDO and the MRT, the applicants in the present case, have no concern with the property which was subject matter of the said writ petition. In any case, Mr. Kulkarni submitted that there is no question of adverting to the merits of the matter at the stage of consideration of whether or not any sufficient cause has been made out in the matter of delay but extends to over 11 years in the present case. Mr. Kulkarni placed reliance on upon the decision of the Hon'ble Apex Court in the case of ***Balwant Singh (Dead) Versus Jagdish Singh and Others***² to submit that condonation, even if sufficient cause has not been shown, would amount to practically rendering all provisions under the Limitation Act or the provisions contained in Order 22 of CPC redundant and inoperative. Mr.Kulkarni submitted

² (2010) 8 Supreme Court Cases 685

that liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant to whom want of *bona fide* if imputable. In the present case, Mr. Kulkarni submitted that there is no explanation for the inordinate delay and in any case, the explanation offered can never be regarded as sufficient. For all these reasons, Mr. Kulkarni submitted that the application be dismissed.

4. Having heard the learned Counsel for parties and perused the record, it is seen that though the delay is quite substantial, there is nothing to indicate any lack of *bona fide* on the part of the applicants. This petition was admitted sometime in the year 2001 by the grandfather of the applicants. The father of the applicants had expired on 04/02/2001 i.e. even prior to the institution of the writ petition. The sole petitioner i.e. the applicant's father expired on 01/04/2003. The petition was pending and there is no reason to seriously disbelieve the averments in the Civil Application as also the additional affidavit that the applicants who are the grandchildren of the sole petitioner, were indeed unaware of the legal formalities with regard to bringing themselves on record.

5. There is no question of any serious prejudice as such to the respondents, because this petition was tagged along with Writ Petition No.727 of 2000. The challenge in Writ Petition No.727 of 2000 was to the common order made by the SDO and the MRT in cases concerning Shri N. D. Kanchan and the petitioner in the present

petition. The petition came up for final disposal sometime in the year 2014. In the additional affidavit filed, it is stated that Mr. Kanchan, the petitioner in the connected writ petition, informed the applicant about pendency of the present petition. Thereupon, the applicants made inquiries with their Advocate and sometime in September 2014 were apprised of the requirement of bringing themselves on record. In the case of *Balwant Singh (supra)* upon which reliance has been placed by Mr. Kulkarni, it is held that the words 'sufficient cause' should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of *bona fides*, deliberate inaction or negligence on the part of the appellant.

6. The Hon'ble Apex Court, upon consideration of its previous decisions, has held that in considering the reasons for condonation of delay, the Courts are more liberal with reference to applications for setting aside abatement, than other cases. The Courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement. The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation. The extent or degree of leniency to be shown by a Court depends on the nature of application and facts and circumstances of the case. For example, courts view

delays in making applications in a pending appeal more leniently than delays in the institution of an appeal itself. Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. By way of illustration, the Hon'ble Apex Court has observed that where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. In this case, no sooner the applicants were intimated that their petition was on board for final hearing by the petitioner in the connected petition, the applicants have taken steps. This is not a case of any lack of *bona fide* or case of adoption of any dilatory strategy.

7. Although Mr. Kulkarni is right in the submission that at this stage, there is no question of adverting to the merits of the matter, reference to the disposal of the connected writ petition in favour of the petitioner therein, is not an entirely irrelevant circumstance in the facts and circumstances of the present case. Besides, the challenge in this petition is basically to the order made by the MRT upsetting the orders made by the Tahsildar in favour of the applicants predecessor-in-title way back in the year 1959. The SDO, in fact, dismissed the appeal instituted after 30 years, but the MRT, in exercise of revisional jurisdiction, has reversed the SDO without adverting to the issue of delay involved in filing of the appeal. This petition challenges the order of the MRT.

8. This Court, in the case of Appasaheb Mohite (supra), relying upon earlier decision of the Division Bench of this Court in the case of **Keshav Dnyanu Gorambekar Vs. Dnyanu Rama Patil**³, has held that appeal under the provisions of the said Act does not abate on ground of failure to bring legal representatives on record. In para 4 of the said decision, this Court has observed thus :-

*“4. Having considered the rival submissions, I have no hesitation in rejecting the argument that the appeal preferred by the tenants before the Appellate Authority had abated due to failure to bring on record the heirs and legal representatives of the deceased Respondent. This view is fortified by the exposition in the decisions of the Division Bench of our High Court in **Keshav Dnyanu's** case (supra reported) and **Dhondi Santu Karande's** case (supra unreported). As mentioned earlier, the decision in the case of Keshav Dnyanu has referred to the earlier decision in the case of Dhondi Santu Karande. In the later case, the question that arises for our consideration, was directly put in issue. In **Dhondi Karande's** case, during the proceedings of the appeal one of the party died and no steps were taken to bring on record the heirs and legal representatives of the deceased party within time. In spite of that position, this Court observed, considering the relevant provisions of the Bombay Tenancy and Agricultural Lands Act as well as Mamlatdars Courts Act and the*

³ 1963 Mh.L.J. Note 37 = 1963 (LXV) Bombay Law Reported 525

Maharashtra Land Revenue Code, that there is no provision with regard to the abatement of cause in appeal unlike the express provision with regard to the application.”

9. Therefore, upon cumulative consideration of the aforesaid facts and circumstances, this Civil Application is made absolute in terms of prayer clauses (a), (b), (c) and (d) subject to the applicants paying costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the respondent no.1 within a period of four weeks from today. The necessary amendment to be carried out within a period of four weeks from the date of payment of costs. In case, the costs are not paid/deposited within a period of four weeks from today, this Civil Application shall be deemed to have been dismissed.

10. In case the costs are paid/deposited and the legal representatives are brought on record, place the main petition for final disposal on 02/02/2016 (on Supplementary Board – at 3.00 p.m.).

11. Civil Application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)