

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10625 OF 2015
WITH
CIVIL APPLICATION NO.839 OF 2016

Shri Ramu Bala Yadav
Since deceased through his heirs
and legal representatives
1A Ranjana Hambirrao Desai and Ors. .. Petitioners

vs.

Smt. Kusum Hambirrao Mandlik .. Respondent

Mr.Harish Pawar i/b Mr.Mahesh Y. Dhuri for the applicant

Mr.Chetan G. Patil for the petitioner

CORAM : K. K. TATED, J.
DATE : SEPTEMBER 1, 2016

PC.:

- 1 Heard the learned counsel for the parties.
- 2 By this petition under Article 227 of the Constitution of India the Petitioner is challenging the order dated 15.4.2015 passed by Maharashtra Revenue Tribunal, Pune rejecting petitioner's application for condonation of delay of 125 days in filing restoration application for restoration of Revision Application No.TNC/REV/35/99/KP
- 3 Civil Application No.839 of 2016 is preferred by applicant

org.respondent in Writ Petition for recalling the order dated 26.10.2015 and 17.12.2015 passed by this court directing parties to maintain status quo in respect of the suit property i.e. agricultural land admeasuring 1 H 25 R bearing GAT No.664 situate at – VILLAGE KALE, TALUKA – PANHALA, DISTRICT – KOLHAPUR.

4 In the present proceeding, the petitioner's Revision Applicant filed Revision Application under section 76 of the B.T. & A.L. Act, 1948 before the Maharashtra Revenue Tribunal, Pune Bench at Pune for setting aside the judgment and order passed by Sub-Divisional Officer, Karveer, Sub Divn. Kolhapur in Tenancy Appeal No.2 of 1994 dated 30.12.1998.

5 That Revision Application No.35 of 1999 stands dismissed for default vide Reg. 19(1) of the MRT Regulation, 2013.

6 Hence, the petitioner preferred Restoration Application on 4.7.2014 as per Section 20 of the said Act and also preferred application for condonation of 125 days in filing the said application.

7 Maharashtra Revenue Tribunal by impugned order dated 15.4.2015 rejected petitioner's application for condonation of delay. Hence, the present Writ Petition.

8 The learned counsel for the petitioner submits that learned Member Maharashtra Revenue Tribunal, Pune failed and neglected to consider the fact that petitioner made out sufficient cause for condonation of 125 days in filing Restoration Application. He submits that petitioner no.1 Ranjana Hambirrao Desai used to look after the

litigation. During that period she was busy to take care of her father in law who was not keeping well. He submits that other petitioners are either household wives or agriculturist. He that when the matter was transferred from Kolhapur to Pune Bench, it remained on the part of their advocate to inform the petitioners about transfer of matter for hearing.

9 The learned Counsel for the petitioner submits that as soon as they learnt about the dismissal of their Revision Application by order dated 25.2.2014, they immediately contacted their advocate and filed application for restoration as well as for condonation of delay. He submits that because of financial crises and want of knowledge, it remained on their part to take appropriate steps. He further submits that even petitioners' advocate failed to inform them about the transfer of matter from one place to another place and the date of hearing at Pune. He submits that petitioner has good chance of success in the present matter. He submits that in the interest of Justice this Hon'ble Court be pleased to condone the delay in filing application for restoration and said application be heard on its own merits.

10 The learned counsel for the petitioner submits that though the respondent in their Civil Application No.839 of 2016 pleaded that they obtained the possession of the suit premises on 5.5.2015 same is denied by the petitioners. He submits that as on today petitioner is in possession of the suit property. Hence, pending the hearing and final disposal of the petitioners' Revision Application as well as the application for setting aside the ex-parte decree, this Hon'ble Court be pleased to restrain the respondents from disturbing the petitioners' possession in respect of the suit property. He submits that if present

Writ Petition is not allowed, irreparable loss will be caused to the petitioner.

11 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that petitioner failed to make out sufficient cause for condonation of 125 days in filing application for restoration of Revision Application No.35 of 1999. He submits that there are in all more than 14 petitioners. They failed and neglected to show sufficient cause. He submits that the reason given by the petitioner in their application for condonation of delay is only in respect of petitioner no.1A, Ranjana Hambirrao Desai. He submits that petitioners in their application for condonation of delay has not given any reason and or cause why the other petitioners have not preferred the application immediately for setting aside the ex-parte decree. Even the reason given by the respondent petitioner in her application for condonation of delay cannot be considered as sufficient cause for allowing her application. Hence, there is no substance in the present Writ Petition and same be dismissed with costs.

12 The learned counsel for the respondent (Applicant in Civil Application) submits that after passing the order dated 25.2.2014 by learned Member, Maharashtra Revenue Tribunal Pune in Revision Application No.TNC/REV/35/99/KP, the respondent filed application for possession of the suit land. He submits that concerned Circle Officer along with the panchas visited the suit property and prepared panchnama of handing over possession to the respondent. He submits that Circle Officer also directed the respondent to deposit sum of Rs.60,000 towards the standing for cross. The said amount was

deposited by the respondent with the Government Treasury through Tahsildar, Panhala. In support of this contention, the respondent relies on the Challan which is on page 18 Exhibit-D of the Civil Application. He submits that Circle Officer has handed over the possession of the suit land to the respondent on 5.5.2015 and since then the respondent is in possession of the same. Hence, the respondent preferred the Civil Application No.839 of 2016 for recalling the status quo order passed by this court on 26.10.2015 and 17.12.2015. On the basis of these submissions, the learned counsel for the respondent submits that Writ Petition be dismissed with costs and Civil Application No.839 of 2016 be allowed.

13 Heard the learned counsel for the parties at length. The main contention raised by the petitioner challenging the impugned order dated 15.4.2015 passed by learned Maharashtra Revenue Tribunal is that the Tribunal failed to consider the reasons given by the petitioners in their application for condonation of delay. He submits that when the matter was transferred from Kolhapur Bench to Pune Bench the Tribunal has not served the notices as required by law.

14 It is to be noted that whenever matter is transferred from one court to another court and or Tribunal then it is necessary to serve the notices on all the contesting parties. In the present proceeding, notices were issued but only, some of the petitioners were served. Apart from that, there was delay of 125 days. Considering the fact that petitioners are residing in Village doing agricultural work and are daily workers, I am of the opinion that the reason given by the petitioner no.1 for condonation of delay of 125 days is sufficient.

15 It is to be noted that the Apex Court in the matter of **N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

“12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, 1969 SC 575 and *State of West Bengal v. The Administrator, Howrah Municipality*, AIR 1972 SC 749.”

“13. It must be remembered that 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 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. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

16 Considered the reason disclosed by the petitioner in their application for condonation of delay and the law declared by the Apex Court in the matter of **N.Balkrishnan Vs. M. Krishnamurthy** (Supra), I am satisfied that petitioner has made out case for condonation of delay.

17 It is to be noted that in the present proceeding, respondent obtained possession of the suit land after following due process of law. He placed on record possession receipt as well as panchnama duly singed by the Circle Officer Taluka Panhala District Kolhapur. Bare reading of panchnama as well as possession receipt shows that as on today, respondents are in possession of the suit land. Hence, status quo order passed by this court on 26.10.2015 and 17.12.2015 is required to be recalled. Therefore, following order is passed:

- a) Impugned order dated 15.4.2015 passed by learned Member, Maharashtra Revenue Tribunal, Pune is set aside.
- b) Application dated 4.7.2014 filed by petitioner for condonation of 125 days delay in filing restoration application is allowed.

- c) Tribunal is directed to hear the petitioners' application dated 4.7.2014 for restoration of Revision Application No.TNC/REV/35/99/KP on its own merits.
- d) Respondent is in possession of the suit land as per panchnama and possession receipt dated 5.5.2015, is entitled to cultivate the same.
- e) Petitioners are restrained by an order of injunction from interfering with the respondents' possession in respect of the suit premises till further orders from the Maharashtra Revenue Tribunal.
- f) Petition as well as Civil Application stands disposed of accordingly.

JUDGE