IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6104 OF 2014

Shri. Raghunath Santu Kekan **..Petitioner**
Versus
Shri. Nilesh Babu Kekan and others **..Respondents**

Mr. Ajinkya Jaibhave i/by Mr. Sudam Kale for the Petitioner.
Mr. Sanskar Marathe for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 23rd NOVEMBER, 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 16.04.2014 passed by the Learned Member of the Maharashtra Revenue Tribunal, Mumbai, by which order, the Revision Application filed by the Respondent herein came to be partly allowed and the order dated 11.03.2013 passed by the Sub Divisional Officer, Niphad came to be set aside and the matter came to be remanded back to the Sub Divisional Officer for a de-novo consideration of the Appeal by firstly considering the aspect of delay in filing the said Appeal before him. The relevant clause of the operative part of the impugned order is reproduced hereinunder :-

> "3. Matter be remanded back to the Sub-Divisional Officer, Niphad who shall after receipt of the matter, decide the application filed by the Appellant Raghunath before

> him, viz. Shri. Raghunath Santu Kekan, for condonation of delay. While doing so, Sub-Divisional Officer shall give opportunity to both the parties and then consider whether delay can be condoned or not. If the Ld. Sub-Divisional Officer is pleased to condone delay, he shall then hear the matter in the presence of both the parties by giving them opportunity of additional submissions and decide the Appeal afresh in view of the observations made in foregoing paras of the judgment."

2 The genesis of the proceedings lie in the fact that the Petitioner herein had surrendered the land in question of which he was tenant as he was not willing to purchase the land in question. It appears that the Mutation Entry being No.439/1965 accordingly came to be entered in the revenue record in the year 1965. It is an undisputed position that the mutation entry has not been challenged by the Petitioner and continues till this date. It appears that thereafter in the year 2007, an order under Section 32P of the Tenancy Act came to be passed in favour of the Respondent/landlord. The Petitioner herein who is the heir of the original tenant thereafter filed proceedings by way of an Appeal before the Sub Divisional Officer against the order dated 10.10.2007 passed under Section 32P of the Tenancy Act. The said Appeal came to be allowed and the said order dated 10.10.2007 came to be set aside. The Respondent carried the matter to the Maharashtra Revenue Tribunal ("MRT" for short). The MRT having regard to the background facts as aforestated held that the Sub-Divisional Officer had erred in entertaining

the Appeal and setting aside the order passed by the Tahsildar without considering the aspect of condonation of delay which aspect would have to be considered in the context of the fact that the tenant i.e. the Petitioner herein had surrendered the land in question and in respect of which mutation entry came to be effected in the year 1965. The MRT has accordingly set aside the order passed by the Sub Divisional Officer and remanded the Appeal back to him for a de-novo consideration by firstly considering the aspect of delay in filing the Appeal. The MRT has further observed that if delay is condoned, the Sub Divisional Officer may hear the parties on merits. The Learned Counsel appearing on behalf of the Petitioner sought to raise contentions on the aspect of surrender of the land by the original tenant i.e. the father of the Petitioner.

3 In my view, it is not necessary for this Court to consider the said aspect having regard to the nature of the order passed by the MRT. The parties would be entitled to raise such contentions as are available in law if the delay in filing the Appeal is condoned by the Sub Divisional Officer. Hence no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]