

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11583 OF 2015

Tukaram Mahadev Gurav (Since Deceased)	]	
Through his legal heir Shivaji Tukaram Gurav	]	
Through Power of Attorney Holder	]	
Shri Tanaji Nivrutti Gurav.	]	... Petitioner

Versus

Bandu Rama Pawar (Since Deceased)	]	
Through legal heir	]	
Smt Putalabai W/o. Bandu Pawar.	]	... Respondent

Mr. Nagesh Y. Chavan for Petitioner.
None for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- FEBRUARY 08, 2016

P. C. :-

1. The challenge in this petition is to the Judgment and Order dated 14/01/1974, made by the Maharashtra Revenue Tribunal ('MRT'), Kolhapur.

2. Although, the impugned order is dated 14/01/1974, this petition has been instituted only on 29/10/2015 i.e. after delay of almost 40 years.

3. In para 8 of the writ petition, the petitioner has offered the following explanation in the context of delay of 40 years in instituting the present petition :-

“The Petitioner states that the decision of the year 1974 is being challenged by the present Petition, there is reasons and circumstances behind the delay caused for filing of the present Writ Petition. The Petitioner states that since 1952-1953 the Petitioner and his predecessor was / is in possession of the suit properties and also cultivation of the suit property. The Petitioner further states that the impugned decision passed by the Ld. M.R.T. was unwarranted and without knowledge of the present Petitioner because the earlier proceedings were filed by the predecessor of the Petitioner and he was only person who look over the Court matter and the present Petitioner does not have any idea decision passed by the Ld. M.R.T. During the pendency of the Regular Civil Suit No.580 of 1990 and during pendency of the Regular Civil Suit No.394 of 1993 filed by the predecessor of the present Petitioner and by the Respondent, in the said proceeding when the matter was argued in the Second Appeal Nos.302 of 2010 and 303 of 2010 before the Hon'ble High Court, it reveals to the present Petitioner that the impugned Judgment and Order dated 14/01/1974 is not challenged and due to unchallenged the said order the wrong inference was taken by the Ld. Civil Courts as well

as this Hon'ble Court in respect of the possession, ownership, tenancy and cultivation as well as the rights over the property in the capacity of the ownership and tenancy. The Petitioner further states that due to unchallenged of the abovesaid decision, it was not advised to the present Petitioner to challenge the same during the pendency of the proceedings before the Civil Court as well as before the Hon'ble High Court. After decision of the Hon'ble High Court in both the Second Appeals the present Petitioner filed separate Leave Petition before the Hon'ble Supreme Court and the same was dismissed, while arguing the said matter before the Hon'ble Supreme Court, it was reveal to the present Petitioner and it is advised to the present Petitioner to challenge the impugned order dated 14/01/1974 passed by the Ld. M.R.T. Kolhapur, thereafter, collecting necessary papers and information about the possession and cultivation over the suit property and taking proper advise the present Petitioner has challenged the impugned Judgment and Order by this Writ petition. The petitioner states that the delay caused for filing of the present Petitioner is not deliberate and intention and therefore in the interest of justice it is just and proper to condone the delay, if the delay will not condone then the Petitioner will suffer irreparable loss, harm and injustice, per contra the Respondent will not suffer any irreparable loss, harm and injustice.”

4. Considering the magnitude of delay, the explanation offered hardly inspires any confidence. On the basis of the impugned Judgment and Order dated 14/01/1974, the Trial Court has decided Regular Civil Suit No.394 of 1993 against the petitioner. The first appeal and second appeal have also been dismissed. The petitioner's petition seeking special leave has also been dismissed by the Hon'ble Apex Court. To say that after the dismissal of the Special Leave Petition, the petitioner was advised for the first time that he need to challenge the Judgment and Order dated 14/01/1974, is hardly an explanation sufficient to explain the inordinate delay of 40 years in instituting the petition. It is apparent that the petitioner, seeks to avail yet another inning even though, the petitioner has failed before the Trial Court, First Appeal Court, the Second Appeal Court (High Court) and also before the Hon'ble Apex Court.

5. In the aforesaid circumstances, this petition is dismissed on the ground that it has been instituted after inordinate delay of 40 years since the making of the impugned Judgment and Order and further, the explanation offered, is by no means sufficient.

6. The petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)