

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1717 OF 2016

Surekha Giridhar Ghag

.. Petitioner

-Versus-

Narayan Ramchandra Jakhal
since deceased through his
L.Rs. and Ors.

..Respondents

Mr. J.S.Gaikwad for petitioner

Mrs. Vaishali Nimbalkar, AGP for State Respondent No.3.

CORAM : G.S. KULKARNI, J.

DATE : 23rd August 2016.

P.C.

1] Heard Mr. Gaikwad for petitioner and learned AGP for State – respondent No.6. Office report indicates that petitioner has, in pursuance of the earlier orders, already served respondent Nos. 2 to 6 and acknowledgement of service are placed on record in the affidavit of service dated 1st April 2016. Service to the legal heirs of respondent No.1 viz., respondent Nos. 1(a), (b) and (c) are also complete. Though served, respondent Nos. 1(a) to 1(c) and respondent Nos. 2 to 5 have chosen not to appear.

2] By consent of parties taken up for final hearing at the admission

stage as directed in the earlier orders.

3] The challenge in this petition is to an order dated 26th November 2015 passed by the learned President, Maharashtra Revenue Tribunal (MRT) whereby, the revision application filed by the petitioner against the order passed by Sub-Divisional Officer (SDO) Dapoli, in appeal No. 19 of 2013 (which appeal came to be decided on 8th January 2015), has been rejected on the ground that the appeal before the S.D.O. was time barred and as filled beyond the prescribed period of limitation.

4] In the impugned order, the learned President MRT has categorically observed that there was no objection to the limitation which was raised on behalf of the opposing parties to the appeal before the S.D.O. The provisions of Section 4, 5, 12 and 14 of the Limitation Act, 1908, are squarely applicable in view of Section 79 of the Maharashtra Agricultural Lands and Tenancy Act, 1948. If this is the position, then, in that event, it would have been appropriate for the President MRT to have relegated the parties before the S.D.O. with appropriate directions that delay condonation application be filed by the petitioner in the proceedings before the S.D.O. and directed the S. D. O. to pass appropriate orders. However, the MRT has not only dismissed the appeal but disposed of the revision application without any effective directions. The result is that

there is no adjudication of the dispute. In this peculiar situation, parties could not have been left without adjudication of the dispute and further without a remedy. An opportunity was required to be granted to the petitioner to pursue the appeal before S.D.O., after filing an application for condonation of delay in filing appeal under section 74 of the Act. The impugned order definitely meets the petitioner with harsh consequences, more particularly when the issue of limitation itself, was not raised/objected by any of the contesting parties. In these circumstances, following order is passed:-

ORDER

- (i) The impugned judgment and order dated 26th November 2015 passed by the learned President, MRT is quashed and set aside.
- (ii) It is directed that the appeal filed by the petitioner before the SDO Dapoli, stands revived and would be considered to have been filed on its original date of filing.
- (iii) The petitioner is permitted to move an application for condonation of delay as permissible in law.
- (iv) The SDO shall in the facts and circumstances of the case pass necessary orders on the delay condonation application and take up the appeal and hear the same on its own merits and in accordance with law.

- (v) All contentions of the parties on the merits of the matter are expressly kept open.
- (vi) Petition is allowed in the aforesaid terms. No costs.

(G.S. KULKARNI, J.)