IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1655 OF 2016

Vinod K. Bhagat .. Petitioner

v/s.

The Tax Recovery Officer,
Ward – 21, Mumbai .. Respondent

Mr. Vipul Joshi a/w Mr. Sameer Dalal for the petitioner
Mr. Ashok Kotangle a/w Mr. A.K. Saxena for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 23rd NOVEMBER, 2016.

P.C.

1. This petition under Article 226 of the Constitution of India seeks a writ of certiorari to quash and set aside of the following :-

(i) The notice under the Second Schedule to the Act and dated 08.08.2011, purportedly issued by the first respondent to the petitioner as a legal representative of late K.G. Bhagat for recovery of tax demand of late K.g. Bhagat.

(ii) The order of attachment of Vijay Mahal property belonging to the petitioner, passed by the first respondent under Rule 48 of the second schedule and dated 25.01.2012.

(iii) The garnishee notice u/s. 226(3) of the Act and dated 06.03.2012 issued by the first respondent to the bank of the petitioner.

(iv) The order dated 27.03.2012 passed by the first respondent under Rule 16 of the second schedule and declaring the Development Agreement as null and void.

(v) The order dated 19.06.2012 passed by the first respondent keeping the attachment of the flats belonging to the petitioner while vacating the attachment of the property and recovering Rs.7.50 crores from the developer.

(vi) The order dated 25.09.2012 passed by the first respondent under Rule 11 of the second schedule, declaring that the petitioner was not owner of Vijay Mahal property.

(vii) The order dated 06.05.2015 passed by the first respondent rejecting all the objections of the petitioner.

(viii) The order dated 30.07.2015 passed by the third respondent rejecting the request of the petitioner for an opportunity of being heard to the petitioner

and all other and further consequential proceedings;"

2. As is evident from the above, the petitioner has challenged various orders beginning from 2011 onwards and the last impugned order is dated 30th July, 2015. This petition was filed / lodged in Court on 1st March, 2016.

3. As the petition did not satisfactorily explain the delay and laches, the petitioner sought leave of the Court to amend the petition. As the petition was still awaiting admission, permission to amend was granted

by an order dated 14th September, 2016. However, the order dated 14th September, 2016 clarified that the merits of the reason for the delay and / or absence of laches which are to be a part of the amended petition will be considered at the hearing of the petition.

4. Therefore, at the very outset, we called upon the petitioner to explain the delay. Although, the prayers seeking quashing of orders were passed as far back as in 2011 for the purpose of examining the laches and delay on the part of the petitioner, we have taken the last order dated 30th July, 2015 as the point of commencement of time. It is to be noted that the last order dated 30th July, 2015 was passed on the application of the petitioner in effect seeking a review of the order dated 6th May, 2015. However, the conduct / time spent from 6th May, 2015 till 3rd August, 2015 when order dated 30th July, 2015 was received, is evidently *bona fide*. Thus, the delay from 3rd August, 2015 till filing of this petition on 1st March, 2016 is alone being considered. It may also be pointed out that the objections to the petition were removed on 15th July, 2016 leading to the petition to be allotted a regular number and then coming up for hearing. However, for the purposes of considering the delay, we also ignore the delay post filing of

the petition. This for the reason that this delay can not be attributable to the petitioner as the petition had been filed by an advocate.

5. We find that the order dated 30th July, 2015 received on 3rd August, 2015 rejected the petitioner's application for review of the order dated 6th May, 2015. This order was passed by the Principal Commissioner of Income Tax under Rule 86 of the second schedule to the Income Tax Act, 1961.

6. Mr. Joshi, learned Counsel points out that the petitioner has a past history of heart and blood pressure problems. After the receipt of order dated 3rd August, 2015, the petitioner became unwell and on 19th August, 2015 was advised to take rest for a period of 3 weeks, as evidenced by the Medical Certificate annexed. Thereafter, the petitioner's mother-in-law passed away on 24th October, 2015 which left the entire family disturbed. However, the petition avers that in the meantime the petitioner had approached his advocate for further course of action and was advised to do a search and compile all the original documents concerning his case so as to represent his case before the higher authorities. This compilation of documents according to the petitioner took time which led to time being taken in filing this

petition. It is further submitted that the delay in filing the petition was not deliberate, but due to *bona fide* reasons as pointed out hereinabove.

7. The Hon'ble Supreme Court in ***Chennai Metropolitan Water Supply & Sewerage Board Vs. T.T. Murali Babu, (2014) 4 SCC*** has observed as under :-

> *"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved persons, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."*

8. As pointed out above, for the purposes of this petition we are ignoring the delay in challenge to the earlier order and considering the delay from 3rd August, 2015 i.e. the date of receipt of order dated 30th July, 2015 by the petitioner. However, even after 30th July, 2015 the reasons set out by the petitioner does not inspire confidence. The petitioner being advised rest for 3 weeks from 3rd August, 2015 and the passing away the petitioner's mother-in-law on 24th October, 2015 by itself would not justify the delay of almost 7 months in filing this petition from the receipt of the order dated 30th July, 2015. In fact, the petitioner after stating that the family was disturbed due to the death of his mother-in-law on 24th October, 2015, states that in the meantime he contacted his advocate. The essence / substance of reason made out for the delay by the petitioner is that after receiving of the order, the petitioner was required by his advocate to search various documents concerning his case and locating these documents took time. This statement does not appear to be correct, as soon thereafter, the petitioner states that these documents were already available with the petitioner as the petitioner states at page 98E of the petition that *"Thereafter, all the facts were compiled again and the petitioner was advised to file another writ petition"*. Therefore, the reasons set out in the petition for the delay in moving this Court do not inspire

confidence. In fact, it appears that locating of the documents took time as the petitioner was seeking to challenge before this Court orders passed as far back as 2011. This itself is evidence of a belated challenge. Moreover, the petitioner is *inter alia* challenging the order dated 6th May, 2015 and 30th July, 2015 of the Commissioner of Income Tax. Therefore, it would be for the petitioner to point out a flaw in the decision making process which led to the orders dated 6th May, 2015 and 30th July, 2015. In these circumstances, all the documents which were relevant and / or necessary for the petitioner to make out his case should have been available with the petitioner and if relevant, relied upon at the time when adjudication was done leading to the order dated 6th May, 2015 or at the very least when the application for review was made on 27th July, 2015 requesting "one more opportunity of being heard". Therefore, the reasons set out for the delay in filing this petition does not appear to be *bona fide*. This conduct alone dis-entitles the petitioner for any relief under Article 226 of the Constitution of India.

9. Moreover, it has been repeatedly observed by the Apex Court that a relief under Article 226 of the Constitution being discretionary should not ordinarily be exercised where the petitioner acquiesces in the order

and / or is indolent in moving the Court challenging the order, in its extraordinary jurisdiction.

10. In our view, the petition not only suffers on account of delay and laches but the explanation offered for the delay does not inspire any confidence as it is not *bona fide*. In the above view, the petition is dismissed.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**