

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 76 OF 2016

Poonam & Patel Construction Ltd .. Petitioner
vs.
State of Maharashtra and ors. .. Respondents

Mr. Vishal Kanade with Mr. Ashraf Diamondwala i/b Diamnondwala
& Co for the Petitioner.
Mr. Karl Tamboly with Ms Shreya Ramesh i/b Bharucha & Partners
for Respondent No.5.
Mr. P.Y. Shankar for Respondent No.6.

CORAM : M. S. SONAK, J.
DATE : 17 FEBRUARY 2016.

P.C. :-

1] Mr. Kanade, learned counsel for the Petitioner, seeks leave to delete Respondent Nos.1 to 4, who, in any case are formal parties and further their presence is not required for decision in the present petition, which mainly concerns the Petitioner and Respondent Nos.5 and 6. Accordingly, leave is granted to delete Respondent Nos.1 to 4. Necessary amendment to be carried out forthwith.

2] Rule. With the consent of and at the request of learned counsel for Respondent Nos.5 and 6, who are now the only Respondents in this petition, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 21 August 2015, by which, the Maharashtra Revenue Tribunal (MRT) has condoned the delay on the part of Respondent No.5 in instituting Appeal No. 23 of 2014 against the order of Collector dated 24 May 2013.

4] The record indicates that the Respondent No.5 instituted an appeal before the Additional Konkan, Commissioner on 25 July 2013, in order to impugn the Collector's order dated 24 May 2013. There is no dispute that this appeal was instituted within the prescribed period of limitation of ninety days for purposes of institution or appeal under the provisions of Maharashtra Land Revenue Code, 1966 (Code).

5] The record further indicates that the Respondent No.5 withdrew the said appeal on 17 June 2014, upon realization that the appeal was instituted before the incorrect Authority, the correct authority being MRT. Soon thereafter, i.e., on 25 July 2014, Appeal No. 23 of 2014 was instituted before the MRT, questioning the Collector's order dated 24 May 2013. This was accompanied by application for exclusion of period, in terms of Section 14 of the

Limitation Act, 1963 (Limitation Act) as well as for condonation of delay in terms of Section 5 of the Limitation Act. By the impugned order dated 21 August 2013, the MRT has condoned the delay, however, without awarding any costs.

6] Mr. Kanade, learned counsel for the Petitioner, has submitted that the Collector in December 2013 itself had addressed a communication to the Additional Commissioner, making it clear that the appeal, in the present matter, would lie before the MRT and not before the Additional Commissioner, Konkan Division. Mr. Kanade contended that the Respondent No.5 was very much aware of this communication in December 2013 itself. However, for no justifiable reasons, Respondent No.5 withdrew their appeal only on 17 June 2014. Accordingly, it was submitted that the period of limitation, which had commenced to run, cannot, be halted by such subsequent self serving acts on the part of Respondent No.5. In any case, the Respondent No.5 cannot claim the benefit of exclusion in terms of Section 14 of the Limitation Act, as, at least the period between December 2013 and 17 June 2014 can hardly be regarded as period spent *bonafide* before an authority it lacked jurisdiction. Mr. Kanade submitted that the impugned order proceeded on the basis that the

delay in the present case was of hardly eight days, when in fact, the record would indicate that the delay was of more than one year. Finally, Mr. Kanade submitted that even costs have not been imposed upon the Respondent No.5. For all these reasons, Mr. Kanade submitted that the impugned order warrants interference and should be set aside.

7] Mr. Karl Tamboly, learned counsel for Respondent No.5, has defended the impugned order, by pointing out that Section 14 of the Limitation Act was clearly applicable to the facts and circumstances of the present case and the MRT, was right in excluding the period *bonafide* spent by the Respondent No.5 before the Additional Commissioner. Mr. Tamboly pointed out that the Respondent No. 5 was unaware of the communication made by the Collector to the Additional Commissioner in December 2013 and in any case, communication itself indicates that there was a genuine confusion as to the correct authority before whom an appeal would lay. In any case, Mr. Tamboly submitted that this was a fit case for condonation of delay as, Respondent No.5, has not been indolent in the matter, but was *bonafide* pursuing its remedies, may be, before an incorrect forum. Mr. Tamboly placed reliance upon the decision of the Hon'ble

Apex Court in case of *N. Balakrishnan vs. M. Krishnamurthy*¹, to submit that if the discretion has been exercised by the MRT in a positive manner, the writ Court ought not to interfere, particularly, where no perversity has been demonstrated.

8] Upon hearing the learned counsel for the parties and perusing the record, in my judgment, no case is made out to interfere with the impugned order, to the extent it condones the delay in instituting the appeal. However, Mr. Kanade is right that in a matter of this nature, whilst condoning the delay, the MRT, should have imposed costs upon the Respondent No.5.

9] The record would indicate that the Respondent No.5 had indeed preferred an appeal within the prescribed period of limitation before the Additional Commissioner. If, the application for condonation of delay/extension of time is perused, it does appear that there was a *bonafide* confusion in the matter of correct authority before which, the appeal would lay in a matter of this nature. There is no material on record to suggest that Respondent No.5 was aware of or was made aware of the internal communication between the Collector and the Additional Commissioner. The Respondent No.5

1 (1998)7 SCC 123

has instituted the appeal before the MRT within reasonable period of withdrawal of the appeal before the Additional Commissioner. This is not a case where Respondent No.5 has either slept over its rights or, has otherwise been indolent in the matter. Respondent No.5 has also not obtained any undue advantage, arising out of delay.

10] In this case, the MRT, has rightly extended the benefit of Section 14 of the Limitation Act to the Respondent No.5. Even assuming that such relief ought not have been extended to Respondent No.5, on the basis of material on record, it is quite apparent that sufficient cause was shown by Respondent No.5 and therefore, there is no error of jurisdiction in condoning the delay.

11] The Hon'ble Apex Court, in case of N.Balakrishnan (supra), has held that the condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act, does not say that the discretion can be exercised only if the length is of any particular duration. The length of delay is no matter, acceptability of the explanation is the only criterion. Further, once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such

finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. In the present case, if the impugned order is perused, it cannot be said that the exercise of discretion by the MRT was of any untenable grounds or perverse grounds. In the same judgment, the Hon'ble Apex Court has stated that in every case of delay, there can be some lapse on the part of the litigant. 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. The Hon'ble Apex Court has further added that while condoning the 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 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.

12] In the present case, although, there is no case made out to interfere with the impugned order insofar as it condones the delay, it does appear that the MRT has forgotten the Petitioner and the

expenses incurred by the Petitioner in defending the appeal before the incorrect forum, altogether. To that extent, therefore, the impugned order, warrants modification.

13] Accordingly, the impugned order to the extent, it condones the delay or excludes the period under Section 14 of the Limitation Act is not interfered with. However, the Respondent No.5 is directed to pay costs of Rs.25,000/- (Rs. Twenty Five Thousand) to the Petitioner within a period of two weeks from today. The MRT to ensure that such costs are indeed paid by the Respondent No.5 to the Petitioner, before, the matter is heard on its own merits.

14] Rule is, accordingly, disposed of, in the aforesaid terms. There shall, however, be no separate order as to costs insofar as this petition is concerned.

15] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)