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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3559 OF 2016

Prakash Kisan Ambardekar

and ors

... Petitioners.

V/s.

Baburao Ramchandra Ambardekar

and ors

... Respondents

Mr. Pratap Patil, for the Petitioners.

Mr. Ramdas A. Shelke, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the petitioners and learned counsel for the respondents.

2] By this petition, the petitioners are challenging the order dated 11.6.2015, passed by the Maharashtra Revenue Tribunal, Mumbai, thereby refusing to condone the delay occurred in filing Revision Application and consequential dismissal of the Revision Application vide order dated 14.12.2015.

3] The submission of learned counsel for petitioners is that

the delay occurred in filing Revision Application was not on account of any negligence on the part of the petitioners but it was purely on account of the reasons which were beyond their control. It is submitted that their father was looking after this proceeding when the decision was given by the Sub Divisional Officer on 29.12.2001, in Revision application No.23 of 2001. Their father had preferred an application for certified copy on 29.7.2005. The said copy was received on 17.9.2005. During that time, their father was alive, but he was bed ridden. Their father died on 14.11.2007. The petitioners were not aware of the said order. They came to know about the same in the year 2009 when the respondents proceeded to enforce the execution of said order. Immediately thereafter the petitioners have filed revision application with application for condonation of delay. According to learned counsel for petitioners, learned MRT has rejected the said application on two grounds. Firstly it was held that when the certified copy was applied on 29.7.2005, at that time the petitioners were aware of the said decision. Secondly, it was held that if the petitioners' father was looking after the matter and he was bed ridden during the period 2005 to 2007, then no documentary evidence is produced on record to that effect except for making vague averments.

4] According to learned counsel for the petitioners the certified copy of the order reveals that the application was made by petitioners' father and when it was received, at that time also, their father was alive and looking after the said matter . Therefore, learned MRT has wrongly attributed the knowledge about the proceeding to the petitioners.

5] As regard, the reasons given by learned MRT that no documentary evidence was produced to show that the petitioners' father was bed ridden, it is submitted that the petitioners have produced on record the postmortem report of their father which shows that the death was on account of mayo cardial infraction. Thus, it is submitted that in the interest of justice it is necessary that the matter should be decided on merits instead of being dismissed on technical grounds.

6] Per contra, learned counsel for respondent has submitted that no fault can be found in the impugned order passed by the trial Court when admittedly the petitioners have not produced any evidence showing that their father was bed ridden and secondly even the postmortem report does not show that their father was suffering from any illness which was sufficient to bed-rid him. Further it is

submitted that the delay which is caused in the present case is substantial of more than 42 months. Therefore, this is taking away the rights which have accrued to the respondent. Secondly it is urged that on merits, the petitioners have no case. They have filed Revision just in order to protract and prolong the proceeding and therefore, the learned MRT has rightly rejected their application.

7] On consideration of the submissions advanced by learned counsel for both parties, it can be seen that the reason given by the learned MRT that the petitioners got the knowledge of the proceeding in the year 2005 itself, when their father got certified copy, is not appearing to be correct as certified copy was applied by father of petitioners and the father of petitioners was very much alive when certified copy was received.

8] As regards the second ground on which learned MRT has rejected application for condonation of delay, the report of postmortem does show that the petitioners' father died due to mayo cardial infraction. But the fact remains that at the age of 70 he might be suffering from one or the other illnesses.

It is well settled that the matter especially relating to

immovable property should be decided on merits and not to be dismissed on technical grounds. The petitioners should not be penalized on account of death of their father. The ends of justice always require that both parties be given an opportunity to contest the issue on merits. Whatever grounds on merits parties can agitate before appropriate forum.

9] In view of above, this Court is of the opinion that the petitioners should be given an opportunity to substantiate their contentions on merits. Hence the delay caused in the matter needs to be condoned.

10] In view thereof, the impugned order passed by the MRT, is set aside. The Writ Petition is allowed and the delay in preferring Revision Application stands condoned. Accordingly Revision Application is restored to it's original file.

[DR.SHALINI PHANSALKAR-JOSHI, J.]