

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3961/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Vijay M. Waghela for the petitioner
Mr. Sanjay Prabhu i/b. Sujata K. Gadakh for the respondent No.1.

CORAM : K. K. TATED, J.

DATE : JULY 3, 2017

P.C.:

1. Heard. The learned counsel for the petitioner submits that they have already served respondent Nos.2 to 5. To that effect, they filed Affidavit of service. In spite of service, none appeared for respondent Nos.2 to 5.

2. The learned counsel for the petitioner submits that respondent Nos.2 to 5 are formal parties. The statement is accepted.

3. As the contesting respondent is appearing through her Advocate, by consent of the parties, the matter is taken up for final disposal at the stage of admission.

4. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 01.12.2014 passed by the Sub Divisional Officer, Bhiwandi in RTS No.19/2014 condoning delay of 18 years in filing the appeal. He submits that while passing the impugned order dated 1.12.2014, the Sub Divisional Officer, Bhiwandi failed to consider the Affidavit-in-Reply filed by the petitioner as well as the case-law cited on the point of limitation. He submits that the Sub Divisional Officer, Bhiwandi passed the impugned order without giving any reason for condoning the delay of more than 18 years.

5. The learned counsel for the petitioner submits that initially they filed the appeal before the Additional Collector, Thane challenging the order dated 01.12.2014 by which the Dy. Divisional Officer, Bhiwandi condoned the delay of 18 years. That appeal was not accepted by the Authority. Hence, the petitioner has filed the present Writ Petition.

6. The learned counsel for the petitioner submits that during pendency of the present Writ Petition, the Sub Divisional Officer, Bhiwandi has

decided RTS No.19/2014 on merits by order dated 16.07.2015. He submits that being aggrieved by the final order dated 16.07.2015 they preferred Appeal No.137/2015 before the Additional Collector, Thane in the month of August 2015 with following prayers:

“a) that present appeal of the appellant be allowed.

b) that this Honorable Court be pleased to set aside the judgment and order dated 16.07.2015 passed below RTS Appeal No 19 of 2014, passed by the Sub Divisional Officer, Bhiwandi ie.Respondent No. 5 above named.

c) that this Honorable Court be pleased to restore the name of the appellant Mr. Nitin Chheda in the land records of Survey No.363/2 and on 7/12 extract of the property of Mouje Temburli, Taluka Shahpur, Dist. Thane.

d) that this Honorable Court be pleased to pass urgent interim and adinterim relief by staying the operation of the judgment and order dated 16.7.2015 passed by the Sub Divisional officer – Respondent No.5 abovenamed till disposal of the above appeal

e) that this Honourable Court be pleased to call upon the record and proceedings from the Office of the Talati, Tehsildar and from the office of the Sub Divisional Officer Respondent No.5 of entire Appeal Memo bearing RTS No.19 of 2014, and after perusing the same the said judgment and order of 16.7.2015 be quashed and set aside.

f)

g)”

7. The learned counsel for the petitioner submits that in view of subsequent development, the petitioner may be permitted to carry out appropriate amendment in appeal No.137/2015 pending before the Additional Collector, Thane by raising the objections to the order dated 01.12.2014 passed by the Sub Divisional Officer, Bhiwandi by which 18 years delay in filing RTS No.19/2014 was condoned. He submits that if the application for amendment of appeal No.137/2015 is made now, the authority may reject the same on the ground of limitation. Hence, he seeks permission to carry out appropriate amendment in appeal No.137/2015 by challenging the order dated 01.12.2014 and adding some grounds on that point.

8. The learned counsel for the respondent No.1 submits that they have no objection if the petitioner is permitted to carry out appropriate amendment in Appeal No.137/2015 for challenging the order dated 01.12.2014 and adding some grounds.

9. Considering these facts, by consent of the parties, following order is passed:

a. The petitioner is permitted to file an appropriate application before the appellate authority i.e. Additional Collector, Thane in Appeal No.137/2015 for carrying out appropriate amendment to challenge the order dated 01.12.2014 passed by the Sub Divisional Officer, Bhiwandi in RTS No.19/2014 and adding some grounds in appeal.

b. If the application is made within three weeks from today, the Authority is directed to allow the application made by the petitioner to carry out amendment in appeal No.137/2015 without raising any objection about the limitation because of pendency of the present petition in this court.

c. If amendment is carried out in Appeal No.137/2015, the petitioner to serve a copy of the amended appeal on the respondent immediately thereafter.

d. The appellate authority i.e. Additional Collector, Thane is directed to decide the appeal No.137/2015 on its own merits.

e. With these directions, the Writ Petition stands disposed of.

f. Parties to act on an authenticated copy of this order.

JUDGE