

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

**CIVIL APPLICATION NO.134 OF 2016
IN
REVIEW PETITION STAMP NO.8312 OF 2016
IN
WRIT PETITION NO.2425 OF 1984**

Mr. Bhagwan Bapu Veer (Deceased)	..Applicants/
Mr. Subrao Bhagwan Veer and others	Review Petitioners

IN THE MATTER BETWEEN

Smt. Sitabai Vyanku Taur (Deceased)	..Petitioner
Versus	
Bhagwan Bapur Veer (Deceased) others	..Respondents

Mr. Vaibhav V. Ugle for the Applicants/Review Petitioners.

**CORAM : R. M. SAVANT, J.
DATE : 23rd MARCH, 2017**

PC.

1 The above Civil Application has been filed in the above Review Petition seeking condonation of delay of 18 years and 122 days in filing the above Review Petition. The Review Petition is filed seeking review of the judgment and order dated 15.10.1997 passed by a Learned Single Judge of this Court in Writ Petition No.2425 of 1984 by the said judgment the above Writ Petition was allowed. The judgment and order of the Maharashtra Revenue Tribunal ("MRT" for short) in so far as it dismissed the Revision Application on the ground of delay was set aside

however the part of the judgment of the MRT by which the orders passed by the Tahsildar and the Sub Divisional Officer were set aside was sustained by the Learned Single Judge of this Court by the said judgment. The record discloses that none had appeared for the Respondent in the said Writ Petition i.e. Mr. Bhagwan Bapu Veer whose heirs are the Review Petitioners and also the Applicants herein.

2 The condonation of delay in filing the Review Petition is sought principally on the round that the Applicants were not aware of the above Writ Petition filed in this Court wherein their father Mr. Bhagwan Bapu Veer was the Respondent, and which Writ Petition he was prosecuting. It is their case that only when they made inquiries with the Revenue Authorities in respect of the land in question in the second week of January 2016 that they became aware of the judgment and order dated 15.10.1997 passed in the said Writ Petition. Save and except the said reason, there is no other reason mentioned in the above Civil Application in justification of the said delay of 18 years and 122 days. This Court by order dated 20.12.2016 had directed the Applicants to give details as regards the ages of the sons of the original Respondent i.e. Mr. Bhagwan Bapu Veer and their avocations in life. Accordingly an affidavit affirmed on 02.03.2017 has been filed in support of the above Civil Application. In the said affidavit, it has been stated that Mr. Bhagwan

Bapur Veer has expired on 10.12.1986 and that he had four sons, namely Mukund, Shivaji, Pandit and Subrao. It has further been stated that Mukund has expired on 22.10.2013, Shivaji has expired on 28.06.1990, Pandit has expired on 22.10.1985 i.e. he is predeceased his father and Subrao i.e. present Applicant No.1 is about 65 years of age and was about 45 years old when the judgment and order dated 15.10.1997 came to be passed. It therefore appears that Subrao i.e. the Applicant No.1 is the youngest son of the Mr. Bhagwan Bapu Veer and therefore all of them were major when the said judgment and order dated 15.10.1997 came to be passed.

3 It would be relevant to refer to the proceedings under the Tenancy Act which resulted in the filing of the said Writ Petition No.2425 of 1984. The Petitioner therein Smt. Sitabai Vyanku Taur was the wife of Vyanku Taur who had filed an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, for declaration that he is the tenant. The said application was allowed by the Tenancy Authorities and declaration came to be issued that the said Vyanku Taur was a tenant as on 01.04.1957 tillers day. The said declaration of tenancy became final and binding. It seems that the Tahsildar in the proceedings filed for fixation of the purchase price held that the said Vyanku Taur was not a tenant on 01.04.1957 and therefore Section 32O of the said Act

would be applicable. The lands were therefore directed to be restored to the landlord resorting to the provisions of Section 32P of the said Act. Against the said order, the Petitioner filed an Appeal which came to be dismissed by the Sub Divisional Officer by order dated 21.11.1981. The Petitioner carried the matter by way of a Revision before the MRT. The MRT having regard to the earlier adjudication whereby the application filed under Section 70(b) filed by Vanku Taur was allowed and he was declared as tenant as on 01.04.1957 held that the Tahsildar and the Sub Divisional Officer i.e. Lower Authorities had erred in recording a finding that Vyanku Taur was not a tenant, when the said issue was barred by res-judicata. However the MRT on the ground that the Revision was belated by 545 days, had therefore after recording findings in favour of the tenant i.e. Vyanku Taur had dismissed the Revision on the ground of delay. The said judgment and order dated 20.01.1984 of the MRT was the subject matter of the above Writ Petition. As indicated above, a Learned Single Judge having regard to the earlier adjudication found fault with the order of the MRT dismissing the Revision on the ground of delay when according to the Learned Single Judge there was merit in the Revision Application filed by the tenant. The Learned Single Judge accordingly set aside the dismissal of the Revision on the ground of delay however affirmed the order passed by the MRT in so far as the setting

aside of the order passed by the Tahsildar and Sub Divisional Officer is concerned, hence the said issue of Vyanku Taur being a tenant was also concluded by the Learned Single Judge by the judgment and order of which review is sought. This fact implies that the heirs of the original tenant are in possession of the land in question as tenants.

4 Now, coming to the ground on which condonation is sought namely that the Petitioners were not aware of the proceedings as also the ground which is urged across the bar that the heirs of the said landlord Mr. Bhagwan Bapu Veer were not brought on record and therefore the judgment is against a dead person. In my view, it is not impossible to accept that the Applicants who were all major in the year 1997 being between the ages of 18 and 30 were not aware of the proceedings which were pending in respect of the tenancy claimed by the said Vyanku Taur. In so far as the second ground is concerned, it was for the Advocate for the Respondent i.e. Mr. Bhagwan Bapu Veer to inform the Advocate for the original Petitioner as regards his death as also inform the names of heirs of the said Mr. Bhagwan Bapu Veer. This admittedly has not been done and the same is sought to be justified on the ground that the Applicants were not aware of the pending Writ Petition. Hence, there is no merit in the second ground also. In my view, having regard to the aforesaid facts and considering that a period of about 20 years has

elapsed since the passing of the judgment and order dated 15.10.1997 the delay cannot be condoned. Reliance placed on the judgment of the Apex Court in Smt. Gangadevi Vs. Union of India and another delivered on 01.10.1996, in my view, would not aid the case of the Applicants having regard to the facts and circumstances of the case. No relief can therefore be granted to the Applicants in the above Civil Application. The same is accordingly rejected.

5 In view of the rejection of the Civil Application, the Review Petition which suffers from the delay of 18 years and 122 days would not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]