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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10202 OF 2016

Smt. Monika S. Bodas & Ors.                      ...      Petitioners  
Vs.  
Dhananjay Pandit & Ors.                      ...      Respondents

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Mr. Nachiket V. Khaladkar, for the Petitioners.

Mr. S. D. Rayrikar i/b S. N. Chandrachood, for the Respondent.

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CORAM : M. S. SONAK, J.

DATE : SEPTEMBER 13, 2017

PC :

1. Not on board. In view of urgency, the petition is taken on the production board.
2. This petition takes an exception to order dated 30<sup>th</sup> March, 2016 passed by the Sub Divisional Officer, Pune sub-division, Pune (for short "SDO"), condoning the delay of ten months on the part of Respondent No. 1 in instituting the appeal before the SDO under the provisions of the Maharashtra Land Revenue Code, 1966 (for short the "Code").

3. The learned counsel Mr. Khaladkar, appearing for the Petitioners submits that in this case there was no sufficient cause shown for condonation of delay. He points out that the respondent is a practicing advocate and the medical certificate produced by him in support of his ailment of the eyes was a stale medical certificate, which could not have been relied upon. The learned counsel points out that during the period for which condonation is applied for, there is material on record which indicate that Respondent had travelled to U.S.A., further the Respondent had taken out several proceedings. The learned counsel further submits that if the Respondent was fit to take out several proceedings, the cause shown for condonation of delay can hardly be regarded as sufficient. Further, the learned counsel points out that there is a discrepancy in the dates of execution and the notarisation of the affidavit in support of the application for condonation of delay.

4. There is an issue of availability of an alternate remedy to the Petitioners. However, learned counsel submits that against the impugned order, no more alternate remedy is available under the provisions of the Code. Without going into the issue of alternate

remedy, Mr. Khaladkar was permitted to make his submissions on merits, since it is the case of the Petitioners that the contention raised on behalf of the Petitioners were not properly considered by the SDO.

5. Upon due consideration to the submissions of Mr. Khaladkar, I think that there is no sufficient reason to interfere with the impugned order. In this case, the delay cannot be said to be an inordinate. Besides this, as noted by the SDO there is no doubt that the Respondent, who is an old aged person, was suffering from ailments, and the Respondent is also an old age person. The SDO has referred to the medical certificates, which were produced on record. The SDO has exercised the discretion in favour of condoning the delay. It can hardly be said that impugned order is vitiated by jurisdictional error or perversity.

6. The contention, that Respondent had travelled to USA or had also undertaken some other works during the period for which condonation is applied, is not *per se* a ground for refusal to exercise discretion. In such matters, it is possible that there is some lapse on the part of the applicant seeking condonation of delay. However, that by itself does not mean that a valuable right of appeal should be

denied. Unless the explanation smacks mala fides or it is put forth as a part of a dilatory strategy, the courts are required to show utmost consideration to the suitor. Further, as has been held by the Hon'ble Supreme Court in the case of *N. Balkrishnan Vs. M. Krishnamurthy*<sup>1</sup> that 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 finding, much less in revisional jurisdiction unless the exercise of discretion is on wholly untenable grounds or arbitrary or perverse. In this case, it cannot be said that exercise of discretion was on wholly untenable grounds, arbitrary or perverse.

7. Learned counsel Mr. Khaladkar submits that the discrepancy of dates of execution and notarisation of affidavit is serious. The right of appeal in this case, in the interest of justice, cannot be defeated on the basis of such hyper technical submissions. In fact, mere institution of this petition appears to be a tactic to delay adjudication of the appeal on merits. Therefore, the writ petition is dismissed with no order as to costs, and is accordingly disposed of.

Sd/-  
[M. S. SONAK, J.]