

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

**WRIT PETITION NO.11650 OF 2016
WITH
CIVIL APPLICATION NO.2884 OF 2016
WITH
CIVIL APPLICATION NO.2885 OF 2016
WITH
CIVIL APPLICATION NO.2886 OF 2016**

Smt.Gangubai Shripad Nisal

since deceased by LRs

Smt.Shalini Gangadhar Nimbalkar and ors. : Petitioners.

versus

Sopana Rama Kaspate

since deceased by LRs

Shantaram Sopana Kaspate

since deceased by LRs

Bharat Shantaram Kaspate and ors. : Respondents.

**Mr. A G Damle, Senior Advocate along with Mr. Sachin Dhakephalkar for
the Petitioners.**

**Mr. A A Kumbhakoni, Senior Advocate a/w Mr. V P Sawant and Mr. P M
Jadhav for the Respondent No.1C.**

**Mr. P S Dani, Senior Advocate a/w Mr. P B Kulkarni for the Respondent
Nos.1A(I) to (V).**

CORAM : R. M. SAVANT, J.

DATE : 23rd January 2017

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 05/12/2015 passed by the learned Member (Judicial) of the Maharashtra Revenue Tribunal, Mumbai on deputation to Maharashtra Revenue Tribunal, Pune ("MRT" for short) by which order the application for condonation of delay filed by the Petitioners came to be dismissed.

2 The Petitioners are the heirs of the original landlady one Saraswatibai Kate. The lands in question are Survey No.185 and Survey No.264/6 of village Wakad, Tal.Mulshi, Dist.Pune. The lands were the subject matter of the proceedings under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act 1948 (for short “the Tenancy Act”). The Respondents herein have an order in their favour passed by the Agricultural Lands Tribunal and Tahasildar (“ALT” for short) recognizing their entitlement to purchase the lands in question as protected tenants. The said order dated 05/12/2000 is a common order, passed on the applications filed by the Respondents tenants under Section 32G of the Tenancy Act as also the Petitioners landlords under Section 32(P). The applications of the Petitioners under Section 32(P) came to be rejected. The said order dated 05/12/2000 was the subject matter of six appeals filed by both the tenants i.e. Kaspate's as also the landlords Nisal's. Both the sets of appeals filed by the tenants as well as the appeals filed by the landlords met with the same fate i.e. both sets of appeals were dismissed. In so far as the landlords were concerned, the dismissal of the appeals had the effect of their application under Section 32(P) of the Tenancy Act for possession being rejected. In so far as the tenants were concerned, the dispute between the tenants inter-se was as regards the right to purchase a particular land out of the said two lands and had nothing to do with the merits of the order passed under Section 32G of the Tenancy Act. The order passed by the Sub Divisional

Officer (for short “SDO”) is dated 28/02/2003.

3 It seems that in so far as the tenants are concerned, since the case of one of the tenants that he is entitled to a particular land was turned down by both the ALT and SDO, the tenant had carried the matter by way of revision being No.81/2003 before the MRT in the year 2003 itself. The said revision is pending. However, be it noted that the said revision is only as regards the particular land in respect of which the tenant is claiming a right to purchase.

4 The Petitioners herein who are the landlords of the lands in question did not take recourse against the order of the SDO dated 28/02/2003 until 30/04/2011. The Petitioners filed a revision application in the MRT challenging the said order dated 28/02/2003. Since admittedly there was a delay of about 7 years and 11 months in filing the said revision application, the Petitioners filed an application for condonation of delay which is dated 30/04/2011. The said application for condonation of delay having regard to the averments made therein can be said to be skeletal. The said application inter alia contains three grounds viz. that the Petitioners who were the applicants therein were not aware about “Lower Court's decision” as they had not received the same, the 2nd ground was that the applicants were not able to find the authorities before whom the revision was required to be filed and 3rd ground was that the order passed by the Lower Court was a nullity.

5 The Petitioners it seems thereafter whilst the first application was pending filed another application on 26/05/2014. In the said application the Petitioner i.e. the Applicants endeavoured to be more elaborate than the earlier application dated 30/04/2011. A reading of the 2nd application discloses that the Petitioners have put forth the reasons that they were under advice of an advocate who seemingly advised them that they were not required to file a revision as the revision had been filed by one of the tenants. The 2nd reason was that one of the Petitioners in a casual talk with a lawyer friend was advised that revision was required to be filed against the order passed by the SDO and with an application for condonation of delay. It is after the said advice from a lawyer friend that a decision was taken by the Petitioners to file a revision against the order of the SDO dated 28/02/2003. The Petitioners relying upon the averments made in the 2nd application, had sought condonation of delay of 7 years, 11 months and 26 days in filing the revision.

6 On behalf of the Respondents a reply was filed dealing with the case of the Petitioners as set out in their 2nd application dated 26/05/2014. The reasons set forth by the Petitioners for the said delay of about 7 years and 11 months were questioned on behalf of the Respondents in the said affidavit in reply. The Respondents in the said reply have referred to the steps taken by the Petitioners after the SDO had decided the appeals and the revision application

No.81/2003 came to be filed by the tenants. It was stated in the said reply that the Petitioners had filed an application under Section 32(P) of the Tenancy Act praying for possession of the lands i.e. Survey No.185 and Survey No.264/6. It was also stated that the Petitioners have participated in the proceedings relating to fixation of the purchase price, and that the Respondents have also paid purchase price which was to the knowledge of the Petitioners. It was also stated that the ground that the Petitioners were not aware of the authorities before whom the proceedings were to be filed in the absence of the MRT could not be accepted as the Divisional Commissioner who was vested with the powers had entertained the proceedings filed by one of the parties. This was the sum and substance of the reply filed on behalf of the Respondents opposing the application for condonation of delay filed by the Petitioners.

7 The learned Member of the MRT considered the said application and as indicated above has by the impugned order dated 05/12/2015 rejected the application for condonation of delay. The gist of the reasoning of the learned Member was that the Petitioners' case that acting on the advice of their advocate they had not filed the revision could not be accepted in the absence of the name of the advocate mentioned as also in the absence of any steps taken by the Petitioners in the appropriate forum against the advocate. The learned Member has also adverted to the fact that the Petitioners have not mentioned the name of the advocate who had given them the friendly advice

to file a revision as also the application for condonation of delay. The learned Member has referred to the various judgments of the Apex Court which were relied upon on behalf of the Petitioners before the Tribunal to contend that a liberal approach should be adopted. The learned Member having regard to the said judgments held that though a liberal approach is required to be adopted, the same would not mean that a right which has accrued to a party on account of the delay can be taken away in a casual manner. The learned Member has also adverted to the fact that the Petitioners were aware of the revision filed by one of the tenants and therefore their case that they were not aware of the order passed by the SDO could not be accepted. As indicated above it is the said order dated 28/02/2003.

8 The learned Senior Counsel Shri A G Damle would reiterate the case of the Petitioners before the MRT. It was the submission of Shri Damle that it is on account of the advice of their advocate that the Petitioners had not taken any recourse against the order of the SDO dated 28/02/2003. It was the submission of Shri Damle that the Petitioners ought to be given an opportunity especially having regard to the fact that the orders under Section 32G of the Tenancy Act have been passed in favour of the Respondents. The learned Senior Counsel would lastly contend that since the revision filed by one of the tenants is pending, the Petitioners can be shown some indulgence and be permitted to take recourse by way of a revision against the order of the SDO

dated 28/02/2003.

9 Per contra, the learned Senior Counsel Shri Kumbhakoni appearing on behalf of the Respondent No.1C and the learned Senior Counsel Shri P S Dani appearing on behalf of the Respondent Nos. 1A(I) to (V) would support the impugned order. The learned Senior Counsel would contend that the Petitioners' case that they were not aware of the order dated 28/02/2003 passed by the SDP could not be accepted. It was their submission that both the earlier application dated 30/04/2011 as also the instant application dated 26/05/2014 do not make out a case of sufficient cause being shown by the Petitioners so as to entitle them to the exercise of discretion by this Court in the matter of condonation of delay.

10 Having heard the learned counsel for the parties, I have considered the rival contentions.

11 As indicated in the earlier part of this order there are orders passed under Section 32G of the Tenancy Act in favour of the Respondents herein thereby recognizing their right to purchase the lands in terms of the purchase price fixed. It appears that the Respondents had paid the purchase price and 32M certificates under the Tenancy Act have also been issued in favour of the Respondents. It seems that the Petitioners had filed an application

under Section 32P of the Tenancy Act for seeking possession of the lands in question whilst the matter was before the ALT. Hence both the applications i.e. the application under Section 32G for fixing the purchase price as well as the application under Section 32P for possession were dealt with and decided by ALT at the same time. The order passed by the ALT is a composite order dated 05/12/2005 dealing with the applications filed by the Respondents tenants as well as the application filed by the Petitioners landlords. It seems that one of the tenants i.e. Sopan Kaspate being aggrieved by the fact that the right to purchase was restricted to only one land had filed an appeal before the SDO as also some of the other tenants, as also the Petitioners as the landlords had filed appeals as their applications were rejected under Section 32P of the Tenancy Act. The said 6 appeals as indicated herein above have been rejected by the SDO by order dated 28/02/2003. In so far as tenant Sopan Kaspate is concerned, he has filed a Revision Application being No.81 of 2003 in the MRT in the year 2003, however, the Petitioners did not take recourse to any proceedings for challenging the order dated 28/02/2003 passed by the SDO. It is almost after a period of 7 years 11 months that the Petitioners proposed to file a revision against the said order dated 28/02/2003 passed by the SDO and as indicated in the earlier part of this order, filed an application on 30/04/2011 seeking condonation of delay as also the 2nd application dated 26/05/2014 which was a slightly more elaborate application than the 1st one. The reasons put forth by the Petitioners in both the application did not commend

acceptance to the learned Member of the MRT. In so far as 1st application is concerned, the 1st ground mentioned therein is that to the Petitioners i.e. the applicants knowledge, they have not received any intimation about the Lower Courts decision. The said ground does not stand scrutiny having regard to the fact that the Petitioners themselves were the applicants under Section 32P before the ALT and thereafter had filed Appeals before the SDO, as also having regard to the fact that one of the tenants had filed revision application in the year 2005. The second ground is that the Petitioners were not able to find out the authorities before whom the revision is to be filed. The said ground also does not bear scrutiny having regard to the fact that already one of the parties had moved the Divisional Commissioner who was vested with the powers in place of the MRT. The third ground is that the orders passed by the Lower Authorities were a nullity. If that be so, the Petitioners were required to be all the more diligent in challenging the order passed by the Lower Authorities. This is in so far as the three grounds mentioned in the application dated 30/04/2011 is concerned. In so far as 2nd application is concerned, the averments made therein can only be said to be blissfully vague. No particulars of the advocates have been mentioned as also the date, month and the year on and in which such an advice was given to the Petitioners. The said averments are therefore totally bereft of any particulars. A party who seeks the exercise of discretion has to be candid in the matter of placing the facts before the Court. In the instant case, the averments cannot be said to satisfy the aforesaid

test. Though it is well settled that a highly technical and pedantic approach in the matter of condonation of delay is to be avoided, the fact still remains that the approach has to be judicious and having regard to the facts and circumstances which are on record. In the instant case having regard to the fact that the revision was sought to be filed after a period of 7 years and 11 months and condonation of delay was sought on the grounds mentioned in the two applications, in my view, the Petitioners have failed to satisfy the test of sufficient cause being shown for the exercise of discretion in their favour. The fact that the Revision filed by one of the tenants being No.81 of 2003 is pending would be of no assistance to the Petitioners, as the scope of the said Revision is only as regards in respect of which particular land the tenant is entitled to, the fixation of purchase price. In that view of the matter the impugned order does not suffer from any error of jurisdiction or any other illegality or infirmity for this court to interfere with in its writ jurisdiction. The writ petition is accordingly dismissed.

12 In view of the dismissal of the writ petition, the above civil applications which have been filed for bringing the heirs of some of the applicants on record need not be considered as this Court has not found any merit in the above Petition. The above Civil Applications to accordingly stand disposed of.

[R.M.SAVANT, J]