

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

WRIT PETITION NO. 1129 OF 2015

Asha Shantaram Kolaskar	... Petitioner
Versus	
Gurunath Bhagwan Kumbhar and others	... Respondents

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Mr. Clive D'souza for the Petitioner.
None for the Respondents.

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CORAM : M. S. SONAK, J.

DATE : 27th APRIL, 2018

P. C.:

1. Heard Mr. D'souza, learned Counsel for the Petitioner.
2. Mr. D'souza states that in pursuance of the notice dated 3rd February, 2015, respondents have been duly served and even an affidavit of service has been filed. The order dated 3rd February, 2015 had made it clear that endeavor shall be made to dispose of this matter finally at the stage of admission.
3. Accordingly, Rule. Rule is heard forthwith in view of the notice dated 3rd February, 2015.

4. The challenge in this Petition is to the order dated 31st October, 2014, by which the Maharashtra Revenue Tribunal (MRT) has declined to condone the delay of around 5 months in instituting revision petition against the order dated 12th July, 2013 made by the Sub Divisional Officer, Sawantwadi in Tenancy Appeal No.19/2010.

5. Mr. D'souza, learned Counsel for the Petitioner submits that the Petitioner met with an accident and on an account of health related complications she was required to change her address. He submits that necessary intimation with regard to change of address had been submitted in the office of Sub-Divisional Officer (Revenue), Sawantwadi. However, on account of ignorance of legal procedures, no formal amendment was carried out to the appeal memo. Mr. D'souza submits that the order dated 12th July, 2013, which was proposed to be revised was communicated by the SDO to the former address of the Petitioner. The Petitioner, in such circumstances, was really not aware of the order dated 12th July, 2013. No sooner, the Petitioner secured information, the revision came to be instituted. Mr. D'souza submits that this is sufficient cause for condonation of delay. He submits that no

serious prejudice would have occasioned the Respondents if the delay were to be condoned. In any case the prejudice, if any, could always be compensated by costs. He placed reliance on *N. Balakrishnan Vs. M. Krishnamurthy* reported in (1998) 7 SCC 123 and urged that the issue of sufficient cause be liberally construed. For all these reasons, Mr. D'souza submits that the impugned order made by the MRT refusing to condone the delay be set aside and the delay be condoned.

6. Although, the respondents are neither present nor represented, there is on record an affidavit-in-reply filed by and on behalf of the Respondents. In affidavit-in-reply, it is submitted that the Petitioner was represented by an Advocate before the Sub-Divisional Officer. It is stated that in the *Rozanama* that there is no entry as regards the alleged intimation of change of address by the Petitioner. On this basis, it is urged that the copies annexed to this petition are fabricated documents. On this basis, it is further urged that the discretion may not be exercised in favour of the Petitioner. Rather, it is submitted that action for forgery be initiated against the Petitioner.

7. On record, the Petitioner has placed an intimation dated 1st August, 2011 as regards change of address. The intimation bears initials and the rubber stamp, which *prima-facie* suggests receipt in the office of the Sub-Divisional Officer and Tahsildar, Kudal. The explanation that the Petitioner was not aware of the legal procedure and therefore, did not effect any amendment in the appeal memo, is a plausible explanation.

8. This does not appear to be a case of *malafide* explanation or that the Petitioner has taken any undue advantage on account of the delay involved. In such circumstances, discretion ought to have been exercised in favour of the Petitioner.

9. In the case of *N. Balakrishnan* (supra), the Hon'ble Supreme Court has held that in matters of exercise of discretion under Section 5 of the Limitation Act, length of delay is no matter, acceptability of the explanation is the only criterion. 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 such finding, much less in revisional

jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The Hon'ble Supreme Court has given reasons for such a different stance. The first is that the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Secondly, a court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

11. The Hon'ble Supreme Court has further held that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. However, while condoning the delay the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

12. Applying the aforesaid principles to the facts of the present case, the impugned order dated 31st October, 2014 is required to be set aside and is hereby set aside. The delay on the part of the Petitioner in instituting revision before the MRT is hereby condoned subject to the Petitioner's depositing before the MRT within a period of six weeks from today a sum of Rs.10,000/-.

13. If such amount is deposited within six weeks from today, the delay to stand condoned and the MRT to dispose of the revision petition on its own merits and in accordance with law. The Respondents are at liberty to withdraw the amount of costs, if deposited, unconditionally. The MRT to issue fresh notice to the Respondents before taking up the revision for consideration.

14. Further, if within a period of six weeks the amount of costs are not deposited before the MRT, then this petition shall be deemed to have been dismissed with costs of Rs. 10,000/-.

15. Rule is made absolute in the aforesaid terms.

16. All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)