

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4828 OF 2018

Krushna alias Kisan Dhondu Karnuk
(since deceased) Through LRs. and
others.

...Petitioners

Versus

Smt. Ulhas Vasudev Nimkar

...Respondent

....

Mr. Rohit Joshi, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 24th NOVEMBER, 2018

P.C.

1. Heard Mr. Rohit Joshi, learned counsel for the petitioners, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 17.11.2017 passed by the learned Member (Administrative) of the Maharashtra Revenue Tribunal, Mumbai (for short, 'Tribunal') below application dated 18.11.2015 filed by the respondent for condonation of delay in filing revision application under Section 76 of the Maharashtra Tenancy and Agricultural Lands Act, previously known as Bombay Tenancy and Agricultural Tenancy Act, 1948 (for short, 'Act'). By the impugned order, the Tribunal condoned the delay of one year and seven months caused in filing Revision Application.

3. The petitioners instituted the proceedings under Section 70(b) of the Act before the Tahsildar, Karjat being Case No.10/2012. The controversy between the parties is in respect of Survey No.57/7 admeasuring 0.27.1 situate at village Wanjale, Taluka – Karjat, District – Raigad (for short, 'suit land'). By order dated 21.1.2013, the Tahsildar, Karjat allowed the application and held that Krishna Dhondu Karnuk's name should be recorded as a tenant in respect of the suit land. Aggrieved by that decision, the respondent instituted Tenancy Appeal No.36/2013. By order dated 10.3.2014, the Sub-Divisional Officer, Karjat Sub-Division, Karjat dismissed the appeal. Aggrieved by that decision, the respondent instituted Revision Application under Section 76 of the Act some time on 18.11.2015. As there was delay in filing the Revision Application, she took out application for condonation of delay. The petitioner filed reply dated 15.2.2016 enclosing therewith documents filed in Civil Court. The respondent filed rejoinder on 15.2.2016 as also affidavit of Advocate Lata S. Chavan dated 16.2.2016.
4. As indicated earlier, by the impugned order the Tribunal has condoned the delay of one year and seven months. It is against this order, the petitioners have instituted the present Petition.
5. In support of this Petition, Mr. Joshi submitted that in the application for condonation of delay the respondent has given three

grounds, namely,

- (1) the respondent was not aware of passing of the order by S.D.O.;
- (2) though she was making enquiries regularly with the office of S.D.O. by personally visiting the office along with her lawyer, the office staff orally informed that she would get the intimation, if any, of the order passed by the S.D.O. by registered post or in person;
- (3) the respondent's husband who is in U.S. was unwell and, therefore, she was required to leave India for U.S. on 31.8.2014.

6. Mr. Joshi invited my attention to the affidavit-in-reply dated 15.2.2016 filed by Krushna Dhondu Karnuk. In paragraph-8, it was specifically asserted that the respondent got knowledge about the impugned order on 16.9.2014 from her Advocate appearing for her in the civil court where suit is pending. The respondent has appointed her nephew as Constituted Attorney and he ought to have filed revision application within a reasonable time. In paragraph-9 reference is made to the purshis dated 16.9.2018 and 16.2.2015 filed in the civil court to the effect that S.D.O. has dismissed the appeal instituted by the respondent. The certified copy of the order dated 10.3.2014 passed by the S.D.O. in Tenancy Appeal was also enclosed. He submitted that the

respondent filed affidavit-in-rejoinder dated 17.2.2016 *inter alia* contending that her Advocate Ms. Lata Chavan was looking after the civil litigation. She did not inform about production of the order passed by the S.D.O. She has also enclosed the affidavit of Advocate Lata Chavan dated 16.12.2016 where it is stated that due to oversight she failed to communicate the order to the respondent.

7. Mr. Joshi submitted that thus the respondent was fully aware of the order passed by S.D.O. at least on 16.2.2015 and if not on 16.9.2014 when the order dated 10.3.2014 passed by the S.D.O. was produced on record in the civil court. He, therefore, submitted that the impugned order deserves to be set aside.

8. I have considered the submissions advanced by Mr. Joshi. I have also perused the material on record. As noted earlier, there is delay of one year seven months in filing revision application. The respondent, therefore, filed application for condonation of delay. In paragraph-6 she asserted that in August, 2014 she fell ill with upper lobe pneumonia which is a serious condition in the elderly as she was 75 years old. The respondent was admitted in Deenanath Mangeshkar Hospital for three weeks. She was required to leave India for U.S. on 31.8.2014 specifically to take care of her husband. Her husband was scheduled for a knee replacement surgery which had already been postponed three

times because of her absence. Finally on 24.11.2014, her husband was operated for knee replacement surgery. In paragraph-8 it is asserted that after her departure from India on 31.8.2014 no intimation was delivered to her till date. Her Constituted Attorney (nephew) is staying at Bangalore and he has not received intimation from the concerned office.

9. As mentioned earlier the petitioner filed affidavit-in-reply dated 15.2.2016 placing on record the order passed by the S.D.O. The respondent filed affidavit-in-rejoinder dated 17.2.2016. In paragraph-3 it is stated that she was staying in U.S. from August, 2014 till January, 2016 and she did not visit India. In paragraph-4, it is stated that Advocate Lata Chavan was looking after her civil litigation in respect of the suit land. She did not inform her about the production of copy of the impugned order by the first Advocate representing the plaintiff in the civil court. In support of her contention, she has also filed affidavit of Advocate Lata Chavan dated 16.2.2016. In paragraph-3 of her affidavit, Advocate Lata Chavan has stated that due to over-sight she failed to communicate the order produced in the civil court.

10. The Tribunal has considered this aspect in paragraph-7. After considering the material threadbare, the Tribunal observed that the respondent is aged about 77-78 years of age and is bound to have age-

related hurdles in pursuing the court proceedings. In support of her claim she has produced medical certificates which were not contradicted or disputed by the respondents (petitioners herein). In fact it was contended before the Tribunal that such medical disability of the respondent or her husband is irrelevant as she had appointed her nephew as her power of attorney for pursuing the matter. The Tribunal noted that the power of attorney is residing at Bangalore and there is a possibility that he relied upon the Advocate who was locally appointed for pursuing the matter before the first appellate Court.

11. For the reasons recorded in paragraph-7 of the impugned order, I do not find that the Tribunal has committed any error in passing the impugned order. The order impugned is purely discretionary in condoning delay of one year and seven months. In my opinion, this is not a fit case for invocation of powers under Article 227 of the Constitution of India. Hence petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)