

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

WRIT PETITION NO.9590 OF 2017

Vijay Kanhaiyalal Oswal .. Petitioner
Versus
Divisional Joint Registrar (C.S.) & Ors. .. Respondents

Mr.Ranjit A. Agashe a/w Ms.Ketaki A.Asgoankar for the petitioner.
Mr.S.H.Kankal, AGP for the respondent nos.1, 2 & 4-State.
Mr.Rakesh Bhatkar for the respondent no.3.

CORAM : R.D. DHANUKA, J.
DATE : 3rd April 2018

P.C.:

. By this petition filed under Article 227 of the constitution of India, the petitioner has impugned the order dated 24th March 2017 passed by the respondent no.1 thereby refusing to condone delay of 21 days in filing the revision application.

2. Learned counsel for the petitioner invited my attention to the averments made by the petitioner in the application for condonation of delay and also the averments made in the additional affidavit of the petitioner affirmed on 2nd August 2017. He submits that the mother in law of the petitioner was seriously ill and was in ICU for one and half month.

3. Learned counsel invited my attention to Exhibit 'D' to the petition. It is submitted that in the identical matter between the same parties, there was delay of 34 days before the same learned authority which was condoned by relying upon the same documents. He relied upon the said order.

4. Learned counsel for the respondent no.3, on the other hand, invited my attention to the averments made in the application for condonation of delay of 21 days in filing the revision application and submits that the petitioner has not explained the delay in filing the revision application and thus the learned authority was justified in rejecting the application for condonation of delay. He placed reliance on the judgment of the Supreme Court in the case of ***Balwant Singh (Dead) vs. Jagdish Singh & Ors., reported in AIR 2010 SC 3043*** and in particular paragraphs 13 and 16 thereof.

5. It is submitted that the impugned order which was the subject matter of the revision application has already been implemented and the society has been already registered. It is submitted that since the petitioner has not explained the inordinate delay in filing the revision application, a right is vested in his client and thus this Court shall not interfere with the impugned order passed by the revisional authority refusing to condone the delay in the application filed by the petitioner.

6. I have heard the learned counsel for the parties and have perused the averments made in the application for condonation of delay and the documents annexed to the petition. I have also perused the affidavit and additional affidavit filed by the petitioner.

7. A perusal of the reasons recorded in the application for condonation of delay indicates that the mother in law of the petitioner was in ICU for substantial period of time. The petitioner has also

annexed a copy of the order passed on 30th January 2016 issued in favour of the petitioner.

8. A perusal of the copy of the order annexed to the additional affidavit indicates that in that matter between the same parties before the same authority conducting the proceedings filed under Section 21A, the said authority has condoned the delay of 34 days based on the same arguments based on the same documents relied upon in the present proceedings. I am inclined to accept the submission made by the learned counsel for the petitioner that the delay of 21 days is sufficiently explained by the petitioner for condonation.

9. In so far as the submission of the learned counsel for the learned counsel for the respondent no.3 that the impugned order passed by the authority which was the subject matter of the revision application has already been implemented and the society has been already registered is concerned, the said issue can be considered by the revisional authority while dealing with the revision application filed by the petitioner on merits.

10. In so far as the judgment of the Supreme Court in the case of ***Balwant Singh (Dead) vs. Jagdish Singh & Ors. (supra)*** relied upon by the respondent no.3 is concerned, in that matter, there was inordinate unexplained delay whereas in this matter, delay has been sufficiently explained by the petitioner in the application seeking condonation of delay. There is no dispute about the proposition of law laid down by the Supreme Court in the case of ***Balwant Singh (Dead) vs. Jagdish Singh***

& Ors. (supra). However, in the facts of this case, the said judgment is clearly distinguishable and would not assist the case of the respondent no.3. In my view, the learned authority ought to have considered the reasons recorded in the application for condonation of delay and ought to have condoned the delay of 21 days in filing the revision application. Learned authority, however, has adopted unreasonable approach in the matter while rejecting the application though the delay was sufficiently explained.

11. I therefore pass the following order :-

- (i) The impugned order dated 24th March 2017 passed by the respondent no.1 is set aside.
- (ii) Application for condonation of delay filed by the petitioner is allowed. Delay of 21 days is condoned.
- (iii) The respondent no.1 is directed to hear the revision application filed by the petitioner on its own merits and in accordance with law expeditiously.
- (iv) Writ petition is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.