

Anand

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

WRIT PETITION NO. 11889 OF 2017

Ankush Tukaram Komaskar

.Petitioner

Vs.

Eknath Balaram Patil & ors.

.Respondents

Mr. Atul Damle, Senior Counsel i/b. Mr. R. R. Lanjekar, for the
Petitioner

Mr. S. B. More, Advocate, for the Respondent No. 1

Ms P. J. Gavhane, AGP, for the Respondent No. 9 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 27.09.2018

P.C.

. Heard learned counsel for the parties.

2. Learned Senior Counsel for the Petitioner has produced a copy of the roznama of the proceeding before the Sub Divisional Officer, Kalyan. The said roznama is taken on record. From a perusal of the roznama, it appears that initially, i. e. at the time of filing Appeal No. 71 of 2004, the Petitioner had not filed an Application seeking condonation of delay, however, subsequently i. e. on 30.08.2003, an Application for condonation

of delay was filed. It is not in dispute, that no orders were passed by the Sub Divisional Officer, Kalyan on the said Application for condonation of delay and that the Sub Divisional Officer, Kalyan proceeded to hear the Appeal filed by the Petitioner on its own merits. Since the Appeal filed by the Petitioner before the Sub Divisional Officer, Kalyan was allowed, the Respondents herein filed an Appeal, being Appeal No. 141 of 2006 before the Additional Collector (Appeal) in 2006. The Additional Collector (Appeal) vide order dated 11.09.2007 allowed the Respondents' Appeal on the ground that the learned Sub Divisional Officer, Kalyan had not considered the delay caused in filing the Appeal and hence, set aside the order passed by the Sub Divisional Officer, Kalyan. Being aggrieved by the said order dated 11.09.2007 passed by the Additional Collector (Appeal), the Petitioner filed a Revision Application, being Revision No. 409 of 2013 before the Additional Commissioner, Konkan Division, Mumbai. The learned Additional Commissioner, Konkan Division, Mumbai was pleased to allow the said Revision Application and as such, was pleased to confirm the order dated 19.10.2006 passed by the Sub Divisional Officer, Kalyan. Being aggrieved by the said

order, the Respondents herein filed a Revision Application before the Hon'ble Minister for Revenue and the Hon'ble Minister for Revenue was pleased to allow the said Revision Application filed by the Respondents herein, on the ground that the Sub Divisional Officer, Kalyan had not considered the delay caused in filing the Appeal. Hence, this Petition.

3. It is pertinent to note that the Respondents Revision was allowed by the Hon'ble Minister for Revenue and the impugned order was passed only on the premise , that there was no separate order passed by the Sub Divisional Officer, Kalyan on the delay condonation Application. A perusal of the roznama in Appeal No. 71 of 2004 before the Sub Divisional Officer, Kalyan shows that the delay condonation Application was filed on 30.08.2003, however, no orders were passed by the Sub Divisional Officer, Kalyan on the said delay condonation Application and as such, the Sub Divisional Officer, Kalyan proceeded to hear the Appeal, being Appeal No. 71 of 2004 on its own merits, without deciding the said Application. Learned counsel for the Respondents also does not dispute the aforesaid i.

e. the Application for delay condonation in Appeal No. 71 of 2004 although filed was not considered by the Sub Divisional Officer, Kalyan.

4. Considering the aforesaid, it would be appropriate to remit the matter back to the Sub Divisional Officer, Kalyan for fresh consideration and for deciding the delay condonation Application filed in Appeal No. 71 of 2004. Since the matter is being remanded back for fresh consideration, all the orders passed subsequent thereto i. e. order of the Sub Divisional Officer, Kalyan dated 19.10.2006 passed in Appeal No. 71 of 2004, the order dated 11.09.2007 passed by the Additional Collector (Appeal) in Appeal No. 141 of 2006, the order dated 30.06.2016 passed by the Additional Commissioner, Konkan Division, Mumbai in Appeal NO. 409 of 2016, as well as the order dated 06.04.2017 passed by the Hon'ble Minister for Revenue are quashed & set aside. The Sub Divisional Officer, Kalyan shall first decide the delay condonation Application before proceeding with the Appeal filed by the Petitioner. All contentions of all parties are kept open. It is made clear, that this Petition has not been heard on merits. Since

the Appeal is of the year 2004, it would be appropriate to direct the Sub Divisional Officer, Kalyan to decide the delay condonation Application as expeditiously as possible and in any event by 20.12.2018.

5. The Petition is allowed & disposed off in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)