

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14502 OF 2017

RAMNATH BHAGA GAIKAR
VERSUS
NANA MARUTI GAIKAR DIED THROUGH LRS BHANUDAS NANA
GAIKAR AND OTHERS

Mr.S.V.Deshmukh, Advocate for the petitioner.
Mr.S.K.Shinde, Advocate for respondent Nos. 1 to 7.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/12/2019

PER COURT :

1. The petitioner is aggrieved by the order dated 05/10/2017, by which the application for seeking condonation of delay in filing the restoration application for restoring the revision dismissed in default, has been rejected.

2. The original respondent before the Maharashtra Revenue Tribunal (M.R.T.) died on 02/05/2009. He belong to the same village in which the petitioner is residing. Yet, till 04/08/2011, despite the direction of the M.R.T. to bring the LR's on record, the petitioner acted negligently and the revision was dismissed on 04/08/2011 on account of remaining absent on 3 consecutive dates. It is admitted

that the LR's were not brought on record and considering the provisions of the CPC, the proceedings had technically abated in 2009 itself.

3. The petitioner preferred an application for condonation of delay and restoration and one application for seeking leave to bring the LR's on record, on 24/07/2015 i.e. after 6 years of the demise of the sole respondent. The M.R.T. has therefore rejected the application for condonation of delay since the delay for restoration was 1415 days and the delay in bringing the LR's on record was 2178 days. As such, the delay is quite large.

4. Considering the above, I could have dismissed this petition in view of the conduct of the petitioner and the strenuous submissions of the learned Advocate for respondent Nos. 1 to 7 who sought dismissal of this petition by imposition of costs. However, I find that the litigants are agriculturists and an agricultural land is the suit property. If the delay is not condoned, the application for restoration would not be considered and the petitioner would be rendered remediless and would lose the land forever. The petitioner prays for mercy and sympathy.

5. In view of the above, as there are 7 LR's of the deceased sole respondent, I find that imposing costs of Rs.10,000/- (Rs.Ten thousand only) would be a reasonable amount.

6. The learned Advocate submits that if this petition is allowed, his restoration application would stand automatically allowed. I find that these submissions do not deserve consideration. The only issue before this Court today is that the M.R.T. has declined to condone the delay caused in filing the restoration application. Now if I condone the delay, the restoration application will have to be decided on its merits.

7. This petition is, therefore, partly allowed. The impugned order dated 05/10/2017 refusing condonation of delay is quashed and set aside and the delay caused in filing of the restoration application is condoned. Consequentially, the petitioner shall deposit the amount of Rs.10,000/- as costs, before the learned M.R.T. Aurangabad in Case No.18/D/2015/Ahmednagar, on or before 10/01/2020.

8. After the amount is deposited, the restoration application shall be considered alongwith the application for bringing the LR's on record, together, on their merits. Needless to state, if these 2

applications are allowed on conditions as may be imposed, only then the original revision proceedings will be restored.

9. After the amount is deposited, the LR's would be at liberty to withdraw the said amount in equal proportions.

(Ravindra V.Ghuge, J.)