IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9962 OF 2018

Shivaji Namdeo Zure ….. Petitioner

VERSUS

Ramchandra Dadu Zure ….. Respondent

Mr.Dilip Bodake for the Petitioner.

Mr.P.S.Gole, A.G.P. for the Respondent.

CORAM : S.S. SHINDE, J.

DATE : 8th APRIL, 2019

P.C.

Rule. Rule made returnable and heard forthwith with the consent of the parties.

2. Heard learned counsel appearing for the petitioner and learned counsel appearing for the contesting respondent. This petition takes exception to the order dated 7th May, 2018 passed by the learned Member, Maharashtra Revenue Tribunal, Camp Kolhapur (hereinafter will be referred as 'MRT').

3. Learned counsel appearing for the petitioner submits that the application filed by the respondent for condonation of delay in filing the revision has been allowed by the MRT. It is submitted that the two principle reasons, which were stated in the application for condonation of delay by the respondent were firstly, the intimation of the order passed by the SDO was not received by him and secondly, the

advocates who were appearing before the Collector representing the respondent died, and therefore no intimation about order passed by the collector was received by the respondent. Therefore, there was delay in filing the revision application before the MRT. It is submitted that the petitioner has brought on record sufficient material to demonstrate that the petitioner did receive the intimation from the office of the collector about passing of the order by the collector and secondly about three advocates who were on record for the respondent before the collector are alive, and they are regularly practicing in the court. It is submitted that the respondent has played fraud and obtained the impugned order. Therefore, the respondent is neither entitled for discretionary relief or an equitable relief, and on the contrary respondent deserves to be prosecuted for making false statement before the MRT.

4. On the other hand, learned counsel appearing for the respondent prays that the impugned order may be quashed and set aside and the proceedings initiated by the respondent be restored to its original file before the MRT for *de-novo* consideration.

5. Upon appreciating the contentions of the learned counsel appearing for the petitioner and perusal of the documents placed on record, *prima facie* it appears that the observations made by the Maharashtra Revenue Tribunal that the grounds taken by the respondent of death of the advocate deserves acceptance since no party will make such statement without reality and therefore such statement about death of the advocate has to be accepted, *prima facie* appears to

be contrary to the fact situation. It appears that merely relying upon the statement of the learned counsel appearing for the respondent that the advocate on record who was appearing for him before the collector died subsequently, the MRT has condoned the considerable delay in filing the revision application. In that view of the matter, the impugned order and judgment is quashed and set aside.

6. Tenancy Revision No.KP/35 of 2017 is restored to its original file before the Maharashtra Revenue Tribunal for fresh consideration.

7. Needless to observe that the parties will be entitled to bring on record the documents in support of their contentions.

8. The petitioner would be entitled to bring on record relevant documents and an information in support of the contention that the respondent did receive the official intimation about passing an order by the collector, and also all the three advocates on record who appeared for the petitioner before the collector are alive and regularly practicing before the court.

9. Keeping in view the time spent by the parties litigating the subject matter in the revision, the Maharashtra Revenue Tribunal to decide the application for condonation of delay as expeditiously as possible and in any case within four weeks from the date of receipt of this order.

10. The parties to appear before the Maharashtra Revenue Tribunal on 15th April,2019.

11. Rule is made absolute in the above terms. Petition is partly allowed and the same stands disposed of accordingly.

[S.S.SHINDE, J.]