

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

WRIT PETITION NO.3434 OF 1990

Vasant Dattatraya Panadi
(since deceased) through LRs & Ors. ...Petitioners
vs.
Hiralal Dhanaji Chavan
(since deceased) through LRs & Ors. ...Respondents

- Mr. S. G. Deshmukh with Sachin Deokar, Advocate for Petitioners.
- Mr. V. S. Tadake, Advocate for Respondent No.1.
- Mr. Anand Kulkarni, Advocate for Respondent Nos.3A, 3C, 3D, 3E.

**CORAM : C. V. BHADANG, J.
DATE : 19th DECEMBER, 2019**

P.C. :

1. The challenge in this petition is to the order dated 19/4/1990 passed by the Maharashtra Revenue Tribunal (MRT) at Pune in Restoration Application No.13/1990 and the order dated 23/10/1989, in Revision Application No.01/1989.

2. The aforesaid revision application was filed by the petitioner challenging the order passed by the Sub-Divisional Officer (SDO), Solapur dated 13/6/1989 in Tenancy Appeal No.34/1988. It appears that said revision application was fixed for hearing on 23/10/1989 on which date the learned counsel appearing for the petitioner had expressed his inability to attend the revision application on account of his pre-occupation at Solapur. The record further discloses that the petitioners sent a telegram to the office of the MRT expressing their

inability to attend the hearing. It appears that the MRT did not approve of the party communicating to the office on the basis of telegraphic communication and after noticing absence of the petitioners and their Advocate, proceeded to dismiss the revision application by an order dated 23/10/1989.

3. According to the petitioners, they learnt about the passing of this order somewhere in the January 1990 and thereafter filed an application for restoration alongwith an application for condonation of delay on 26/2/1990. The petitioners had inter alia prayed for condonation of delay of about 84 days in filing the application for restoration and further praying for restoration of the revision application.

4. The learned Member of the MRT by the impugned order dated 19/4/1990 has refused to grant the condonation of delay and the restoration as well, which order is subject matter of challenge in this petition.

5. I have heard learned counsel for the parties and perused record.

6. Learned counsel for the petitioner submitted that the petitioners cannot be made to suffer on account of inability of their counsel to attend the revision application on 23/10/1989. It is submitted that the petitioners communicated their inability as well as inability of their Advocate to remain present by way of telegram to

the office of the MRT and this was a bonafide exercise by the petitioners. It is submitted that it is always advisable that the matters are decided on merits, rather than on technicalities. Learned counsel submitted that the impugned orders may be set aside subject to costs as may be deemed fit.

7. Learned counsel for the LR of respondent No.1 as well as learned counsel appearing for LR of respondent No.3 have supported the impugned order. It is submitted that learned Member of MRT has rightly found that no case for condonation of delay is made out as the MRT has found that intimation of the impugned order was prepared on 25/10/1989 and sent on 27/10/1989. However, the learned counsel in all fairness submitted that if this Court is inclined to restore the revision application, then it may be subject to costs.

8. I have carefully considered the circumstances and the submissions made. It is true that the revision application of the year 1988 is required to be restored at this distance of time. However, as rightly submitted on behalf of the petitioners normally the Court would prefer the matters being decided on merits rather than on technicalities. It indeed appears that the petitioner had made an attempt to intimate the MRT about their inability and the inability of their Advocate to remain present on 23/10/1989 and have made out a specific case that they came to know about order of dismissal of revision application on 15/1/1990. Thus, taking over all view of the matter, I find that revision application can be restored after

condonation of delay, subject to payment of costs of Rs.75,000/- which shall be equally shared by the LR's of the respondent No.1 and the LR's of respondent No.3.

9. In the result, petition is allowed. The impugned orders dated 19/4/1990 and 23/10/1989 are hereby set aside, subject to petitioners paying / depositing costs of Rs.37,500/- each to the LR's of respondent No.1 and LR's of respondent No.3 within a period of four weeks from today.

10. On payment / deposit of the costs before the MRT, within a period of four weeks from today, as aforesaid, the Revision Application No.01/1989 shall stand restored to file of MRT for disposal in accordance with law.

11. The learned Member of MRT shall proceed to decide the revision application as expeditiously as possible and preferably within a period of six months from the date of its restoration.

12. Parties to appear before the MRT on 16/1/2020.

Rule is made absolute in aforesaid terms.

(C. V. BHADANG, J.)