

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6351 OF 2017**

M/s. D. Dayabhai & Co. Pvt. Ltd.
Through their Director
Shri Nitesh Kothari,
R/o. 121/12th Floor, CC Wing,
Mittal Tower. Nariman Point,
Mumbai 400 021

..Petitioner

v/s.

Shri Narayan Ganu Tangdi (since deceased)
through LRs.

1/1. Shri Siddharth Narayan Tangdi
1/2. Shri Bhalchandra Narayan Tangdi
Since deceased through his Lrs.
1/2/1. Smt. Bhima Bhalchandra Tangdi
1/2/2. Shri Vijaydeep Bhalchandra Tangdi
1/2/3. Smt. Nalini Bhalchandra Tangdi
1/2/4. Shri Bhupendra Bhalchandra Tangdi
1/3. Smt. Bhagwati Patil
1/4. Smt. Sita Yadav Gharat.
1/5. Smt. Gulab Ramesh Tare.
1/6. Nayna Vishwanath Tangdi
1/7. Shri Avinash Vishwanath Tangdi
1/8. Shri Dnyaneshwar Vishwanath Tangdi
1/9. Shri Rakesh Vishwanath Tangdi
Sr.Nos.1/1 to 1/9. all R/o. Tangdi Niwas
Chitalsar, Manpada, Ghodbunder
Thane (W)

..Respondents

Mr.P.K.Dhakephalkar, Sr. Adv. along with Mr. K.S. Dewal for the
Petitioner.

Mr. P.S.Dani, Sr. Adv. a/w. Mr. Amol Mhatre for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd JANUARY, 2019.

ORAL JUDGMENT.

1. With consent, heard finally at the stage of admission.
2. The petitioner herein has challenged the Order dated 4th May, 2017 whereby the learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai, has allowed the revision application and set aside the order dated 23rd February, 2017 passed by the Divisional Officer, allowing the application for condonation of delay of 11 years and 9 months in filing Tenancy Appeal No. 109 of 2015.
3. A brief narration of the facts leading to this petition:

The petitioner Company is the owner of the property bearing Gut No. 59 Hissa No.1 (part), admeasuring 69 H-51R-07p situated at Village Chitalsar, Manpada, Taluka & District Thane. (The said property shall be hereinafter referred to as "the subject property".)

Shri Narayan Ganu Tangdi, the predecessor of the respondents nos.1/1 to 1/9 hereinafter referred to as the respondents) claimed to be an agricultural tenant in respect of the subject property. In the

year 1991 he filed an application under Section 70(b) of Bombay Tenancy and Agricultural Lands Act, 1948 (B.T.&A.L.Act). The petitioner herein initially contested the said proceeding under Section 70(b). However, subsequently the petitioner failed to appear, and by Order dated 23rd February, 2004, the learned ALT declared said Narayan Ganu Tangdi as a protected tenant in respect of the subject property.

4. The petitioner filed an appeal before the SDO, Thane along with an application for condoning the delay of 11 years and 9 months in filing the tenancy appeal. The petitioner claimed that it had no intimation whatsoever of the Order dated 24th February, 2004. The petitioner further stated that it had learnt about the said order for the first time on 23rd October, 2015. The said order was received on 29th October, 2015, and an appeal with application for condonation of delay was filed immediately thereafter.

5. The respondents claimed that the petitioner had filed an application under Section 6 of the Forest Act before the Deputy Collector (Private Forest) Thane Division and requested to exclude

the subject property from the purview of the Forest Act. Said Narayan Tangdi had filed an intervention application in the proceedings under Section 6 of the Private Forest Act contending that he was a tenant of the subject property. The Deputy Collector (Private Forest) Thane Division, Thane allowed the said intervention application and by judgment and order dated 27th December, 2004, exempted the subject property whereof Narayan Ganu Tangdi was a tenant and ordered restoration of the subject property to the intervenor Narayan Tangdi.

6. The respondent therefore disputed that the petitioner had no knowledge about the proceedings under Section 70(b) of the B.T.& A.L. Act. The respondents claimed that Narayan Tangdi had participated in all forest proceedings till the year 2014 as he was in possession of the subject property and was declared as a tenant in 70(b) proceedings. The respondents claimed that the petitioners had full knowledge about the decision of 70(b) proceedings at every stage.

7. The learned SDO allowed the application for condonation of

delay mainly on the ground that the Order under Section 70(b) was passed without serving a notice on the petitioner. The learned SDO accepted the contention of the petitioner that they were not aware of the order passed in 70(b) proceeding and that they had learnt about the same for the first time on 21st October, 2015. Relying on the judgment *of the Apex Court in N. Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*, the SDO held that the delay was sufficiently explained and hence condoned the delay of 11 years and 9 months in filing the appeal.

8. The respondents challenged the said Order in Revision Application No. TNC/REV/THN/L-150 of 2017. The Revisional Authority held that Narayan Tangdi had intervened in the proceedings under Section 6 of the Forests Act and that the petitioner herein was fully aware that he was participating in the said proceeding in the capacity as a tenant of the subject land. The Revisional Authority held that the petitioner had not explained the inordinate delay in filing the appeal and accordingly dismissed the application for condonation of delay. The order of the Revisional

Authority is challenged in the present petition filed under Section 227 of the Constitution of India, 1950.

9. Shri Dhakephalkar, learned Sr. Counsel for the petitioner, submits that the proceedings under Section 70(b) were closed for Order on 5th February, 2004 and that the Order was subsequently passed on 23rd February, 2004. He submits that the petitioner had not received any intimation of the order passed in the proceedings under Section 70(b). Relying upon the decision of this Court in *Sharadchandra Malharrao Ajinkya & Anr. vs. Markus Philips Mendosa, 2003(5) Mh.L.J. 505*, the learned Sr. Counsel submits that by virtue of Section 20 of Mamlatdars Courts Act, 1906 the learned ALT was required to give due notice of the decision to the landlord, who was not present before him during the proceedings, or for that matter, on the day when the decision was pronounced.

10. Shri Dhakephalkar, learned Sr. Counsel further contends that the revisional authority has interfered with the discretion exercised by the Appellate Authority without there being any material to show that due notice of the decision was served on the petitioner. He

further contends that even in the reply filed before the Appellate Authority the respondents herein had not contended that the copy of the order passed in the proceedings under Section 70(b) was produced in the proceedings under Section 6 of the Private Forests Act and/or that such a copy was served on the petitioner. He submits that such contention which is raised for the first time before this Court cannot be considered.

11. Shri Dani, the learned Sr. Counsel for the respondents disputes that the petitioner had no knowledge about the order passed under Section 70(b). He has drawn my attention to the application for intervention filed by the respondent in the proceeding under Section 6 of the Private Forest Act wherein the respondent had categorically stated that he had been declared as a tenant of the subject property. He submits that the said intervention application clearly indicates that the copy of the order under Section 70(b) was annexed to the said application.

12. Shri Dani, the learned Senior Counsel has also drawn my attention to the judgment dated 27th December, 2004 in case no. 53

of 1999 in proceedings under Section 6 of the Private Forest Act wherein the Deputy Collector (Private Forest) Thane has observed that intervenor Shri Narayan Ganu Tangdi has been declared as a tenant of the subject property in proceedings under Section 70(b) of Bombay Tenancy And Agricultural Land Act, 1948.

13. The learned Counsel submits that the petitioner had filed a Writ Petition No. 9559 of 2015 wherein he had stated that he had learnt about the order dated 27th December, 2004 passed by the learned Deputy Collector, Private Forest, Thane for the first time in July 2008. He therefore contends that this statement falsifies the contention that the petitioner had learnt about the order under Section 70(b) for the first time in the year 2014.

14. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

15. The question which arises for consideration in this petition is whether the cause shown by the petitioner for condoning the delay of 11 years and 9 months in filing the tenancy appeal against the judgment and order dated 23rd February, 2004 passed in proceedings under Section 70(b) of B.T.&A.L. Act, 1948 in Tenancy Appeal No.

109 of 2015, can be construed as "sufficient cause".

16. There is no set definition of the expression “sufficient cause”. Whether the explanation given constitutes sufficient cause or not would depend on the factual matrix of each case. As it has been observed by the Apex Court in *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai (2012) 5 SCC 157*, “what Colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bonafide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay”.

17. It is also a well settled principle that the discretion to condone the delay should be exercised liberally as to advance substantial justice. All the same, the Court cannot be oblivious of rights accrued in favour of the successful litigant on the basis of the judgment under

consideration. As held by the Apex Court in ***Balwant Singh vs. Jagdish Singh & Ors. (2010) 8 SCC 685*** “Once a valuable right, has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

18. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors. 2013 Vol. XII SCC 649***, the Apex Court after considering the previous judgments on the issue has culled out the following principles to be considered while dealing with an application for condonation of delay :---

“15. (i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be

taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of

the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

19. In the instant case, the judgment and order in proceedings under Section 70(b) was passed on 23rd February, 2004, and the same was sought to be challenged in the year 2015 i.e. after a delay of 11 years and 9 months from the date of the order. The petitioner had sought to condone the delay on the ground that the judgment and order was not communicated to it. It was not aware of the order till 21st October, 2015 and hence could not file the appeal within the stipulated time.

20. The records indicate that the proceedings under Section 70(b) of the B.T.&A.L. Act were closed for judgment on 5th February, 2004 and the judgment was pronounced on 23rd February, 2004. It is true that there is nothing on record to indicate that the learned ALT had intimated the date of the decision to the petitioner. The records

however indicate that the petitioner had filed proceedings under Section 6 of Private Forests Act. Said Narayan Tangdi had filed an intervention application in the said proceedings wherein he had specifically stated that he had been declared as a tenant in respect of the subject property in case NO. 70B. Ch.Mann.16 of 1991. A perusal of the intervention application reveals that said Narayan had annexed copy of the order to the said intervention application. The Deputy Collector, Forest, disposed of the said proceeding under Section 6 of the Private Forests Act by judgment dated 27th December, 2004. While considering the issue whether Narayan Tangdi was a tenant of the subject property and whether the subject land qualifies for exemption under Section 3(2) of the Act, the Deputy Collector has observed as under :

“The intervenor has contended in his arguments that the original owner of the land Gat No.59/1, was on Shamaldas Gandhi and in the year 1960 D. Dayabhai & Co. purchased Gat No.59/1 and his father had been cultivating the land much prior to the 'Tiller Day'. And that he took crops such as paddy, barley and vegetables. For the first time in 1991 when the owner company tried to interfere with the peaceful possession of the intervenor, made an application u/s. 70B of B.T.A.L. Act, 1948, which came to be decided on 15.3.2004 in which the

intervenor was declared as lawful tenant over Gat No.59/1 to the extent of an area admeasuring 18A 18G.

...

In view of both side arguments mentioned above, the only issue in the present inquiry which needs to be settled with the scope of Section 3 (2) of Private Forest Act is whether the area of 18A 18G claimed by intervenor was was under lawful cultivation or not. On perusal of various orders cited above by the intervenor the trial Court in Cr. Case No.5227 /82 and the Honourable High Court in Cri. Appeal No.172/93 have held that the Intervenor was in possession of the said 18A-18G from and out of Gat No.59/1 pt.

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During the oral arguments Advocate for the Forest Department raised the issue whether the intervenor is a lawful tenant on 'Tillers Day' which is qualitative statutory requirement under B.T.A.L. Act to this Advocate for Forest Department of the intervenor pointed out that the said question of tenancy cannot be raised in the present proceedings. In my opinion this question here is whether the land was under cultivation prior to the appointed day i.e. 30.8.1975 under the Private Forest Act of 1975 and not the issue whether the intervenor is a tenant or not. So in view of the discussion views expressed above I have come to the conclusion that the intervenor was in possession and was cultivating the land admeasuring 18A:18G. Prior to the appointed day and hence the said land qualifies to be exempted u/s. 3(2) of the Private Forest Act, 1975, thus consequently cease to be a 'Private Forest' within the definition and meaning of the term. Hence the said land admeasuring 18A:18G on which Shri Narayan Ganu Tangdi has been declared as a tenant stands exempted u/s. 3(2) of the said Act.”.

21. Based on the aforesaid findings the subject land of which Narayan Tangdi was the tenant was exempted under Section 3(2) of the Act and the land was restored to him.

22. It is thus evident that Narayan Tangdi had intervened in the proceedings under Section 6 of Pvt. Forest Act filed by the Petitioner and disclosed that he was declared as a tenant of the subject land. He had also produced a copy of the order before the Id. Dy. Collector (Pvt Forest) and after considering the Orders, produced by Narayan Tangdi, the Dy. Collector had exempted the subject property of which Narayan Tangdi was a tenant and had ordered to restore the subject land in favour of Narayan Tangdi. It is inconceivable that the petitioner, was not aware of the claim put forth and documents produced by Narayan Tangdi or the order passed in the said proceedings. As such the explanation given by the petitioner is ex-facie not plausible.

23. The petitioner had filed WP No.9559 of 2014, wherein it had averred that it had learnt about the order dated 27th December 2004

for the first time in July 2008. If that be so, atleast as on July 2008, the petitioner would have had knowledge that Narayan Tangdi was declared as a tenant in 70(b) proceedings, and consequently the subject land which was held by him as a tenant was exempted under Section 3(2) of the Private Forests Act. The above facts therefore would clearly falsify and negate the contention of the petitioner that it had learnt about the order dated 23rd February, 2004 passed in Section 70(b) proceedings for the first time in 21st October, 2015.

24. The plea of lack of knowledge therefore lacks bonafides. Furthermore, the petitioner has not explained its inaction from 2008 till the year 2015. In the absence of any tangible explanation, the only inference that can be drawn is that the inordinate delay is the result of inaction and gross negligence on the part of the petitioner. Suffice it to say that such inordinate delay cannot be condoned and a valuable right accrued in favour of the respondent cannot be taken away on the basis of a false plea coupled with gross negligence and inaction.

25. In the light of above, the impugned order is neither illegal nor perverse and hence does not warrant interference. Petition stands dismissed.

(ANUJA PRABHUDESSAI, J.)