

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.86 OF 2019

IN

WRIT PETITION NO.7086 OF 2019

Smt. Rashmi Ashok Joshi

..Petitioner.

V/s.

State of Maharashtra & Ors.

..Respondents.

Mr.Parag M.Tilak for the petitioner.

Mr.S.L.Babar for respondent No.1.

Mr.Akhileshkumar Dubey i/b. Troy Legal for respondent Nos.2 to 10.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 22, 2019

P.C. :-

In Writ Petition No.7086 of 2019, the order of State Government passed on June 7, 2019 was questioned. While dismissing the said writ petition, this Court was sensitive to the finding recorded by the State Government in the order impugned that there was no delay caused in preferring the appeal before it.

2. In the aforesaid backdrop, the application for review is moved by the petitioner so as to claim that if the proceedings

before the State Government are filed at a belated stage without accompanying an application for condonation of delay, it was incumbent on the part of the State Government to first decide the issue of delay condonation and then to proceed with the hearing of appeal on merits. According to him, the Apex Court in the matter of *Ragho Singh V/s. Mohan Singh and others*¹ in paragraph 6 has made the following observations :-

“6. We have heard learned Counsel for the parties. Since it is not disputed that the appeal filed before the Additional Collector was beyond time by 10 days and an application under Section 5 of the Limitation Act was not filed for condonation of delay, there was no jurisdiction in the Additional Collector to allow that appeal. The appeal was liable to be dismissed on the ground of limitation. The Board of Revenue before which the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous. In this situation, the High Court was right in setting aside the judgment of the Additional Collector as also of the Board of Revenue. We find no infirmity in the impugned judgment. The appeal is dismissed. No costs. ”

3. As such, according to him, unless the issue of

¹ 2001 AIR SCW 2351

condonation of delay is not answered, the authority would not get jurisdiction to decide the appeal. Further submissions are, that the non-applicant has every liberty before the said authority to move an application for condonation of delay and for the said submission, the petitioner has drawn support from a Division Bench judgment of this Court in the matter of *Macchindranath Adiwasi Masemari Sahkari Sanstha & Ors. V/s. The State of Maharashtra & Ors.*² particularly paragraph 5.

4. So far as the aforesaid contentions are concerned, what was noted by this Court while dismissing the petition is, the respondent while passing an order impugned observed that there is no delay caused in preferring the appeal before it.

5. As such, the finding recorded is that in absence of any delay, the appellate authority has every authority to go ahead with the hearing of the appeal.

6. If ultimately the State Government answers the appeal against the petitioner on merits, the petitioner has every right to question the findings recorded on merits by the State Government, including the finding recorded on the fact that there is no delay in

² 2014 (1) All MR 171

preferring the appeal before it.

7. As such, in my opinion, no case for review is made out.

The review petition fails and is rejected.

8. Needless to clarify that it will be open for the petitioner to raise such issue including that of delay, in case if he is aggrieved by the order of the authority which may be passed against him.

(NITIN W.SAMBRE, J.)