

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10370 OF 2018**

Shivaji Eknath Phokane

.....Petitioner.

Vs.

Rajendra Pundlik Phokane & Ors.

.....Respondents.

Mr. S.S. Kulkarni for the Petitioner.

Mr Sachin Gite for the Respondent No.1.

Mr. P.P. Pujari AGP, for the Respondent-State.

Mr. R.A. Kamble, Nayab Tahasildar (Revenue), Igatpuri.

CORAM : A. S. GADKARI, J.**DATE : 24th JULY, 2019.****P.C.:-**

By the present Petition, the Petitioner has taken exception to the Order dated 20th August, 2018 passed by the Deputy Collector, Igatpuri-Trambakeshwar Sub-Division, Nashik in RTS/Revision/87/2018 under Section 23(2) of the Mamalatdars Courts Act, 1906 rejecting the said Application on the ground of delay and *res-judicata*.

2 Mr. Kulkarni, the learned counsel for the Petitioner submitted that, the principle of *res-judicata* would not apply to the present case, as the Petitioner had on earlier occasion preferred Revision under Section 258 of the Maharashtra Land Revenue Code

(for short "*the Code*") and not under Section 23(2) of the Mamalatdars Courts Act against the impugned Order therein, i.e. Order dated 15th April, 2017 passed by the Tahasildar, Igatpuri.

He further submitted that, the period in prosecuting the said wrong remedy under the Code has not been taken into consideration by the Respondent No. 4 while rejecting the Revision No. 87 of 2018.

3 Mr. Gite, the learned counsel for the Respondent No.1 submitted that, according to him, there is a delay of 490 days in preferring the said Revision No. 87 of 2018 by the Petitioner before the Respondent No.4. He further fairly conceded to the fact that, the period spent by the Petitioner in prosecuting a wrong remedy before the Respondent No.4 under the provisions of the Code has not been taken into consideration while calculating the said delay of 490 days.

4 Undoubtedly, the Petitioner is entitled to get benefit of Section 14 of the Limitation Act for bonafide prosecuting a remedy before a forum without jurisdiction and the said period needs to be deleted from the total period of delay.

5 As the contention of the learned counsel for the Petitioner

pertaining to the *res-judicata* and calculation of delay has not been taken into consideration by the Respondent No.4 while passing impugned Order, it is necessary to remand the matter back to the concerned Authority for consideration of the said Revision afresh on merits.

6 In view thereof, impugned Order dated 20th August, 2018 passed by the Respondent No. 4 in Revision No. 87 of 2018 is hereby set aside and the said Revision No. 87 of 2018 is restored to the file of Respondent No.4.

7 Petition is partly allowed in the aforesaid terms.

 The interim relief granted by Order dated 19th September, 2018 passed by this Court in the present Petition shall remain in force till four weeks from today.

 It is needless to mention that, all the contentions of both the parties are expressly kept open.

(A.S. GADKARI, J.)