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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13569 OF 2018

Harishchandra Sakharam Jadhav .....Petitioner
Age 63 Years, Occu-Retired,
R/at. Kopari, Forest Colony, Thane(East)

V/s.

Sanjay Krushna Gharat .....Respondent
R/at Moreshwar Apartment, B-207,
Opp. J.S.M. College. Alibag, Tal. Alibag, Dist. Raigad

Mr. C. G. Gavnekar a/w Mr. Suhas Deokar for the Petitioner
Mr. Rohit D. Joshi for Respondent no. 1

CORAM : S. S. SHINDE, J.

DATE : MARCH 13, 2019.

ORAL JUDGMENT:

With the consent of the counsel appearing for the parties, taken up for final hearing.

2 Rule. Rule made returnable forthwith.

3 This petition takes exception to the impugned Judgment and Order dated 10/09/2018 passed by Maharashtra Revenue Tribunal, Mumbai ('MRT' for short) in Application/for Condonation of Delay in

TNC/REV/RAG/L-123 OF 2017, thereby condoning the delay of 6 years and three days in preferring the Revision Application.

4 Brief facts as disclosed in the petition are as under:

(I) The Petitioner filed Special Civil Suit No. 221 of 2008 against the Vendor of the Respondent Ganesh Gunaji Jadhav for declaration. By an order of the Civil Court, the said Ganesh Jadhav was restrained from conveying the property to the Third Party.

(II) Sub-Divisional Officer on the basis of Application made by Petitioner cancelled Sale Permission granted in favour of the respondent by an order dated 25/06/2009. In an Appeal preferred by Respondent, the matter was remanded.

(III) On remand, Sub-Divisional Officer dismissed the Appeal and confirmed the Order.

(IV) The Appeal by the Respondents against Order dated 15/01/2010 of the Sub-Divisional Officer came to be dismissed.

(V) Civil Suit filed by the Petitioner is decreed and Misc.

Appl. No. 24 of 2012 preferred by Respondent came to be dismissed on 14/02/2017. Writ Petition St. No. 13607 of 2017 challenging the Order dated 14/02/2017 came to be rejected by the High Court, by Order dated 11/12/2017.

(VI) Pending the Writ Petition, Respondent filed Revision Application before Maharashtra Revenue Tribunal challenging Order dated 15/01/2010 along with Application for Condonation of Delay.

(VII) It is the case of the petitioner herein that he filed reply to the said application and prayed for rejection of the said application. However, respondent MRT allowed the application for condonation of delay thereby condoning the delay of 6 years and 3 days caused in filing Revision No. TNC/REV/RAG/L-123/2017. Hence, this petition.

5 The submissions of the learned counsel for the petitioner are:

(I) Application for Condonation of delay filed by the Respondent in paragraph 5 relies upon Section 15 of the Limitation Act which is not applicable in Revision before Maharashtra Revenue Tribunal in view of Section 79 of MTAL Act.

(II) Assuming benefit of Section 14 of Limitation Act can be

given, making the same applicable to the Respondent, Sub-Section 2 of Section 14 provides for exclusion of time, during the period of proceeding was pending and the day, the same was instituted and the day on which it ended (Explanation (a) to Section 14 of Limitation Act)

(III) Section 15 of Indian Limitation Act provides for exclusion of time from the day on which order was made and the day on which it was withdrawn.

(IV) The Respondent has pleaded in paragraph 3 sufficient cause on the ground "lack of legal knolwedge" "wrong advise", "impressiuon of Respondent" and "fresh legal advice" (paras 3, 4 and 5) of delay Condonation application. The same cannot be deemed to be sufficient cause as the delay on the part of Respondent constituted dilatory tactics, want of bonafides, deliberate in action or negligence.

(V) Assuming that the court passing the impugned Order had discretion, but the same has to be exercised to advance substantial justice. The conduct of the Respondent purchasing the property inspite of injunctin order passed by the Competent Court and colluding with Defendant, in such situation disentitles him for executing direction in his favour.

6 In support of aforesaid submissions, the learned counsel for

the Petitioner placed reliance on Judgment of the Supreme Court in the case of **Esha Bhatacharee Vs. Managing Committee of Raghunathpur Nagar Academy & Ors [(2013) 12 SCC 649]**.

7 On the other hand, the learned counsel for the respondent placed reliance upon reasons assigned by the MRT in the impugned order for condonation of delay and submits that, since the respondents approached to the wrong Forum after cancellation of said permission by Sub-Divisional Officer, Alibaug and therefore, keeping in view the said period spent by respondents before the aforesaid Forum, MRT has taken plausible and reasonable view and condoned the delay. The learned counsel appearing for the Respondents submits that in the interest of justice, the delay has been condoned keeping in view the merit involved in the matter. It is submitted that the Supreme Court in the case of **District Collector land Acquisition Anantnag Vs. Katiji and others [AIR 1987 SC 1353]** held that the liberal view needs to be taken while considering the prayer for condonation of delay so as to advance the

substantial justice. He further submits that good case on merit cannot be defeated on technicality of delay in instituting the proceedings.

8 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for respondent no. 1. With their able assistance, perused the pleadings and grounds taken in the petition and reasons assigned by the MRT in the impugned order while condoning the delay of 6 years and 3 days caused in filing the Revision.

9 The order which was impunged before the MRT was passed by the learned Sub-Divisional Officer, Alibaug in Tenancy/SR/181/2009 on 15/01/2010. It appears that being aggrieved by the aforesaid order, the petitioner herein filed RTS Appeal bNo. 306/2011 before Additional Collector Raigad-Alibaug. The said appeal was allowed and Sub-Divisional Officer Alibaug was directed to review its order dated 15/01/2010, however, Sub-Divisional Officer Alibaug dismissed the review and confirmed the

order dated 15/01/2010. Being aggrieved by the said order, respondent no. 1 preferred RTS Appeal No. 429 of 2011 before Additinal Collector Raigad. The said appeal was dismissed on 12/07/2012.

It is the contention of the respondent no. 1 that, he was not aware about the remedy available before MRT so as to take exception to the order passed by the Additional Collector Raigad dated 12/07/2012 and therefore, there was delay in filing the Revision before the MRT. The MRT has condoned delay of 6 years and three days caused in filing the revision by accepting the contention of respndent no. 1 that the said delay was caused because respondent no. 1 was not aware about the remedy available before MRT, so as to take exception to the order passed by Additinal Collector Raigad dated 12/07/2012. Except the aforesaid reason, MRT has not assigned any other reason while allowing the application for condonation of delay in filing the revision. It is true that, so as to advance substantial justice, the prayer for delay in filing the appropriate proceedings needs to be construed liberally. However, there should be sufficient cause disclosed in the application for condonation of delay. In the facts of the present case, no sufficient cause was disclosed by the respondent no. 1 to condone the delay of 6 years and 3 days casued in filing the revision. The reasons assigned by the MRT in the impugned order are cryptic and far away from satisfactory.

10 In that view of the matter, the ends of justice would be met in case the impugned order is quashed and set aside and the application No.TNC/REV/RAG/L-123/2017 is restored to its original file before MRT so as to consider the said application afresh on its own merits. Hence, following order:

(A) The impugned Judgment and Order dated 10/09/2018 passed below Condonation Application in TNC/REV/RAG/L-123 of 2017 is quashed and set aside.

(B) Application is restored to its original file.

(C) Maharashtra Revenue Tribunal to hear the said Application afresh and decide the same as expeditiously as possible, however, within two months from the date of receipt of this order.

(D) With above observations, Writ Petition is partly allowed.

(E) MRT shall not get influenced by the observations made herein above and reconsider the prayer of respondent no. 1 afresh by giving sufficient opportunity to parties to put forth their contentions.

(F) Rule is made absolute in above terms.

[S. S. SHINDE, J.]