NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 950 of 2020

1. Ravindra Kumar Sahu S/o Shri Asharfi Sao Aged About 52 Years R/o Manipur, Ambikapur P.S. Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
2. Surendra Kumar Sahu S/o Shri Asharfi Sao Aged About 49 Years R/o Manipur, Ambikapur P.S. Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioners

Versus

1. Shanti Devi D/o Late Navrangi Sao Aged About 52 Years R/o Manipur, Ambikapur, P.S. Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
2. Chintamani Devi D/o Late Navrangi Sao Aged About 57 Years R/o Manipur, Ambikapur P.S. Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Petitioner	:	Bhupendra Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/03/2020

1. The challenge in the present writ petition is to the order passed by the Board of Revenue, Bilaspur in case No. R. N./16/R/A-6/284/2017 dated 01.12.2018. Vide the said impugned order the Board of Revenue has affirmed the order passed by the Commissioner dated 30.10.2017 passed in revenue proceedings wherein the

Commissioner has affirmed the order passed by the Sub Divisional Officer dated 14.05.2013 in an appeal.

2. Brief facts of the case is that petitioners had moved an application under Section 110 of the land Revenue Code on the basis of Registered Will. The said application of mutation was allowed on 26.06.1997. Against the said order of mutation the respondents herein in the year 2010 preferred an appeal before the SDO along with the application for condonation of delay. The said application for condonation of delay stood allowed on 14.05.2013 and admitted the appeal for hearing finally.

3. Aggrieved by the decision of the Sub Divisional Officer in condoning the delay the petitioner preferred a revision before the Commissioner who rejected the revision on 30.07.2017. Against which the petitioner approached the Board of Revenue by way of revision which also stands rejected vide the impugned order.

4. The solitary grievance of the petitioner is that there is no justifiable reason given on the part of the Sub Divisional Officer for allowing the condonation of delay application. Further ground of challenge is that the appeal itself was filed after a period of around 13-14 years, therefore there is an unexplained, inordinate delay which should not have been condoned by the Sub Divisional Officer as a matter of routine without any explanation for each days delay and therefore the impugned order is bad.

5. Contention of the petitioner is that the respondents were fully aware of the mutation proceedings that took place before the Tahsildar and yet if they do not prefer an appeal promptly they themselves are to be

blamed and the respondents appeal itself should have been rejected at the outset.

6. What is relevant at this juncture to take note of is that the property which has been mutated in favour of the petitioners dated 26.06.1997 was on the basis of a registered "Will". Undisputedly, the disputed property was originally in the name of one Smt. Pavna Devi. There is also no dispute to the extent that respondents or the appellant before the SDO were the legal heirs of the said Pavna Devi. Similarly, there is also no dispute to the fact that respondents who were the legal heirs of the original land owner Pavna Devi were not made a party to the mutation proceedings. They were not made a necessary party even in spite of they having approached the Tahsildar and had submitted their objection.
7. All these facts were taken note of by the SDO and later by the Commissioner as well as by the Board of Revenue in the impugned order, condoning the delay and declining to interfere with the same in the subsequent proceedings.
8. Given the fact that there is concurrent finding of fact affirming the order passed by the Sub Divisional Officer by the Commissioner as well as by the Board of Revenue, this Court is of the opinion that there is hardly any scope of interference left by this Court to interfere with the impugned orders.
9. Moreover, the appeal is still pending, petitioners can still contest the case on merits. The writ petition deserves to be rejected on this ground alone.
10. So far as the authority condoning the delay taking a liberal and justice oriented approach is concerned, it would be relevant at this

juncture to refer to an old judgment of the Hon'ble Supreme Court reported in the case of **Collector, Land Acquisition Anantnag and Another Vs. Mst. Katiji and Others (1987) 2 SCC 107** where in paragraph 3 the Supreme Court laid down has under :-

> “3. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaning- ful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-
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> 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
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> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
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> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
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> 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
>
> 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but

> because it is capable of removing injustice and is expected to do so. "

11. Another reason why this Court is not inclined to entertain the writ petition is the fact that impugned order passed by the Board of Revenue is dated 01.12.2018 and present writ petition has been filed on 05.03.2020 i.e. after a period of about 14-15 months. No plausible explanation has been given for the delay so occurred. Hence the present writ petition itself suffers from delay and latches.
12. With the aforesaid observations, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rohit