

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11594 OF 2019

Niket Khushal Rambhia

....Petitioner

Vs.

Cicil Dominic Gomes

Since deceased thru.Legal Heirs

1A. Bosevel Cicil Gomes and ors.

..... Respondents

Mr.Sunil Kale i/b Mr.Omkar Nagvekar, for the Petitioner.

Mr.Rajiv Narula i/b Jhangiani Narula & Associates, for
Respondents No. 1 to 7.

Mr.S.H.Kankal, AGP for the Respondent – State.

CORAM : M. S. KARNIK, J.

DATE : 29th JANUARY, 2021

P.C. :

. Heard learned Counsel for the Petitioner.

2. The order assailed in this Petition under Article 227 of the Constitution of India is dated 12/04/2019 passed by learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai. The Tribunal allowed the Revision filed by Respondents No. 1 to 8. Respondents No. 1 to 8 in the Revision before the Tribunal were aggrieved by an order passed by the Sub-Divisional

Officer, Thane (for short ' SDO, Thane') on 23/04/2018 rejecting the application for condonation of delay. The Tribunal observed that the SDO, Thane failed to notice that the Respondents No. 1 to 8 had filed an application for condonation of delay and stated reasons in support. The Tribunal by the impugned order having observed thus, then proceeded to consider the question of condonation of delay on merits and thereby condoned the delay of 2 years, 7 months, 14 days subject to payment of cost of Rs.20,000/- payable to M.R.T. Bar Association.

3. Learned Counsel for the Petitioner submitted that the Tribunal has virtually not assigned any reason while condoning the delay and that too in an application yet to be decided by SDO, Thane. Moreover, it is the submission that if the finding of Tribunal that SDO, Thane did not notice condonation of delay application which was filed by Respondents No. 1 to 8, in that case, the Tribunal should have directed the SDO, Thane to decide the condonation of delay application first instead of itself deciding question of condonation of delay.

4. Learned Counsel for the Respondents No. 1 to 8 on the other hand supported the impugned order. According to him,

reasons have been assigned by the Tribunal in paragraph 5 and paragraph 6 of the impugned order. He further submitted that the Tribunal considered the decision of the Apex Court in the case of Esha Bhattacharjee Vs. Management Committee of Reghunathpur Nafar (2013) 12 SCC 649 while adopting liberal approach and in any case the delay has been condoned subject to imposing cost. He therefore submitted that the order should not be interfered with.

5. Heard learned Counsel for the parties. In my opinion, the order passed by the Tribunal calls for interference. The Tribunal in paragraph 5 of the impugned order has observed that the SDO was not correct in observing that there was no application for condonation of delay along with affidavit filed by Respondents No. 1 to 8. If that is so, then, in my opinion, the Tribunal could have directed the SDO, Thane to decide the application for condonation of delay instead of deciding the question of condonation of delay itself in the first instance. Moreover, I find that there are no reasons assigned by the Tribunal while condoning the delay.

6. As application for condonation of delay is filed by

Respondents No. 1 to 8 before SDO, Thane, the SDO, Thane can be directed to decide the application of condonation of delay on its own merits and in accordance with law. Hence, the following order.

ORDER

- (i) The impugned order is quashed and set aside.
- (ii) The SDO, Thane is directed to decide the application for condonation of delay filed by Respondents No.1 to 8 on its own merits and in accordance with law within a period of 4 weeks from the date of receipt of this order.
- (iii) Respondents No.1 to 8 are at liberty to file additional affidavit and documents in support of their application for condonation of delay.
- (iv) The Petitioners are at liberty to seek time to file response to the application.
- (v) In case the application is moved by Respondents No. 1 to 8 for appropriate interim relief before SDO, Thane, the same may be considered by SDO, Thane expeditiously.
- (vi) The parties to appear before SDO, Thane on 04/02/2021 at 11.00 a.m. whereafter further schedule may be fixed.

(vii) It is made clear that I have not made any observations on the merits of the application for condonation of delay and all questions thereon are kept open to be decided by SDO, Thane without being influenced by any observations made by me or the Tribunal.

7. Writ Petition is disposed of.

(M.S.KARNIK, J.)

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signed by
Urmila P. Ingle
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