

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12164 OF 2019

Smt. Guljar Bano Patel

..Petitioner

V/s.

Jayraj Devidas and Ors.

..Respondents

Mr. Kailas Dewal i/b Mr. Jayesh Joshi for the Petitioner.

Mr. Prathamesh Gaikwad for Respondent Nos. 2, 3, 5 to 7, 10 & 13.

Mr. S.H. Kankal, AGP for Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 21 OCTOBER 2022

:ORAL JUDGMENT:

. Rule made returnable forthwith. The learned counsel for the contesting Respondent waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 07.04.2016 passed by the Maharashtra Revenue Tribunal (MRT) in Misc. Application No. 7 of 2014. By the impugned order the learned MRT has rejected the Misc. Application No. 7 of 2014 thereby refusing to recall the order dated 30.01.2014 by which revision application bearing No. TNC/REV/281/B/2010 has been dismissed in default.

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3. I have heard learned counsel for the parties.

4. The learned counsel for the Petitioner submitted that the Petitioner is a lady aged 85 years and was unable to personally look after the matter. It is submitted that son-in-law of the Petitioner namely Anjum Patel was looking after the litigation. He points out that on account of the fact that the Petitioner could not produce the documents as noticed in the order, the revision application came to be dismissed in default, which ought to have been restored.

5. The learned counsel for the contesting Respondents has opposed the petition stating that repeated chances were granted to the Petitioner to produce the documents. It is submitted that even so far as filing of the present petition is concerned, there is a delay of over three years as the order dated 30.01.2014 is sought to be challenged in 2019.

6. In reply, the learned counsel for the Petitioner has stated that Anjum Patel was arrested on 05.02.2016 for an offence punishable under Section 326, 323, 324, 114 read with Section 34 of IPC registered with Kashimira Police Station and was released on bail on 28.06.2019. He, therefore, submits that no steps could be taken for filing the petition. He submits that documents as referred to in the order dated 07.04.2016 are now ready and can be produced.

7. I have considered the submissions made. Normally, this court would incline in favour of the disposal of the petition on merits rather than on technicality. It is true that as per the record there was some lapse on the part of the petitioner to produce the documents, as a result of which, the revision application came to be dismissed in default by a common order passed on 30.01.2014. So far as the delay in filing of the petition is concerned, the Petitioner claims that Petitioner being a aged lady, the litigation was looked after by her son-in-law, who was arrested and was in custody. In my considered view, the petitioner has therefore, made out a case for restoration of the revision application subject to condition of payment of costs.

8. In that view of the matter, the following order is passed:

ORDER

- (i) The writ petition is partly allowed.
- (ii) The impugned order dated 07.04.2016 as well as order dated 30.01.2014 to the extent of dismissal of the revision application TNC/REV/281/B/2010 are hereby set aside.
- (iii) Revision Application No. 281/B/2010 is restored to the file of the learned Maharashtra Revenue Tribunal subject to the petitioner paying costs of Rs.10,000/- to the contesting Respondents or depositing the same before the learned MRT for payment to the contesting Respondents.

(iv) The costs shall be deposited within the period of four weeks from today. The Parties to appear before the learned MRT on 02.12.2022.

Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.