IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 WRIT PETITION NO.9645 OF 2019

SYED YUSUFULLAH ALIAS YUSUF JANI
VERSUS
SYED SAIFULLAH ALIAS SAIF SYED ASEFULLAH QUADRI AND OT
...
Advocate for Petitioner : Mr. Vakil Afzal Husain M.
Advocate for Respondent No. 1: Mr. Shaikh Mobin H.
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 30th January, 2023

PER COURT :

1. The learned Advocate for the petitioner seeks permission to delete respondent No.14. Leave is granted on his own risk. Amendment be carried out forthwith.

2. The learned Advocate for the petitioner submits that he has served respondent No.12 privately and want to file service affidavit. He is permitted to file service affidavit. The learned Advocate for the petitioner is permitted to file documents on record.

3. By consent of the parties, the matter is heard finally.

4. By the impugned order dated 3rd of May, 2019, passed by the President, Maharashtra Revenue Tribunal Bombay At Aurangabad, the order passed by the Collector (Atiyat), Latur dismissing the appeal petition on account of delay of 12 years 09 months and 05 days is set

aside and the delay has been condoned by the Tribunal on the concession made by some of the parties and a joint pursis being filed by the said parties and the revision was allowed.

Brief facts leading to this petition :-

5. The petitioner had filed proceeding bearing No.1974/Inam/BD/5069 before the learned Deputy Collector (Atiyat), Udgir. The said proceeding was allowed by the Deputy Collector (Atiyat), Udgir on 25/04/2005. The respondents filed proceeding before the learned Collector bearing No.2018/Bhusu/Atiyat/Kavi/100, which is dismissed by the learned Collector on 03/01/2019 on account of delay of 12 years 09 months and 05 days. Thereafter, respondents preferred Revision Petition No.15/B/2019/L before Maharashtra Revenue Tribunal, Aurangabad. The said revision petition was allowed on 03/05/2019 by the Tribunal on concession made by some of the parties by filing pursis to that effect. It was mentioned in the order of the Tribunal that all the points are kept open and the learned Collector (Atiyat), Latur was directed to decide the main appeal pending before him on merits and the matter was remanded back. Since the petitioner was not party to the said pursis, he has filed the present writ petition for quashing the impugned order dated

03/05/2019 passed by the learned Maharashtra Revenue Tribunal, Aurangabad in Revision Petition No.15/B/2019/L.

Petitioner's Submission :-

6. The learned Advocate for the petitioner submits that, he was not a party to the joint pursis and that he has not consented before the Tribunal.

7. It is the contention of the petitioners that the some of the parties filed joint prusis and submitted before the Tribunal that the order needs to be considered on merits and delay be condoned and the matter be remitted back before the learned Collector for adjudication.

8. It is contended by the petitioner that he has never signed the pursis and that the original order impugned before the Collector and the right vested and settled in favour of the petitioner for over a period of 12 years was set aside by a consent order wherein the petitioner's consent was not taken.

9. The learned Advocate for the petitioner submits that the Tribunal could have decided the application for condonation of delay on merits and could have never passed an order on the consent of

some of the respondents.

Respondents Submission :-

10. The learned Advocate appearing on behalf of respondent No.1 submits that the petitioner has now filed appearance before the Appellate Authority i.e. the Collector and the said proceedings are stayed by this Court. The learned Advocate further submits that no prejudice would be caused to the petitioner as there is no adjudication on the merits. He relies upon the Judgment in ***Dharampal Satyapal Limited versus Deputy Commissioner of Central Excise, Gauhati and Others, reported in (2015) 8 Supreme Court Cases 519****, wherein it is held as under :-*

> *"40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test*

of prejudice or the test of fair hearing."

Conclusion : -

11. It is not disputed by the respondents that the petitioner has not signed the joint pursis. However, it is contended that the petitioner was served in the revision petition and he chose not to appear before the Tribunal and as such he cannot be said to be prejudiced by the impugned order. The Judgment in case of *Dharampal (Supra)* relied upon by the learned Advocate for the respondents is not applicable to the present case as in the present case there is not merely a violation of procedure and the concept of empty formality/prejudice is not applicable to the instant case. The Judgment cited by the respondents deals with the aspect of the passing of orders by authorities without notice to the affected party, and thus, is not applicable to the instant case. In the instant case substantial right which has accrued in favour of the petitioner on account of delay of 12 years cannot be taken away without consent of the petitioner and thereafter apply the test of prejudice to the order passed.

12. In view of this, the order dated 03/05/2019 passed in Revision Petition No.15/B/2019/L for condoning the delay is hereby set aside

and the matter is remitted back to the Tribunal to decide the application for condonation of delay on merits. Consequent proceeding bearing No.2018/Bhusudhar/Atiyat/Kavi-100 revived before the Collector is automatically set aside.

13. The amount of Rs.20,000/- deposited by the petitioner in this Court is permitted to be withdrawn as the same was deposited on account of the fact that this Court had directed the petitioner to deposit the same on account of the statement made by the petitioner that he had not signed the joint pursis, and if it was to be found has signed it, then the amount could have been forfeited. But since there is no dispute on the aspect that the petitioner had not signed the pursis, he is permitted to withdraw the same.

14. In the event the Tribunal condons the delay on merits, the Tribunal may pass appropriate order of restoring the matter before the Collector. In view of the above, the writ petition is disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.