

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

WRIT PETITION NO.-2699 OF 2022

Smita Balasaheb Madhawai

Age-43 Years, Occ.-Business

R/o- 40, Sathe Bag, Mahatma,

Gandi Road, Dist. Nashik.

...PETITIONER.

VERSUS

1. Bhausahab Rupchand Madhawai

Age- 56 years, Occ. Agriculture,

R/o-Pimpalgaon, Lep, Post- Jalgaon,

Neur, Tal. Yeola, Dist. Nashik.

2. Shankar Rupchand Madhawai

Age- 54 years, Occ. Agriculture,

R/o-Pimpalgaon, Lep, Post- Jalgaon,

Neur, Tal. Yeola, Dist. Nashik.

3. Shantaram Rupchand Madhawai

Age- 52 years, Occ. Agriculture,

R/o-Pimpalgaon, Lep, Post- Jalgaon,

Neur, Tal. Yeola, Dist. Nashik.

4. The Tahsildar

at Taluka, Yeola, Dist. Nashik.

5. The Sub-Divisional Officer,

at Taluka, Yeola, Dist. Nashik.

6. The State of Maharashtra through

Revenue and Forest Minister,

1st Floor, Main Building,

Hutatma Rajguru Chowk,

Madam Cama Road, Mumbai.

...RESPONDENTS.

Mr. Rakesh Kumar, with Mr. Akash Giri, a/w Ms. Swati Singh i/b M/s. Legal Vision, for Petitioner.

Mr. Rameshwar Gite, for Respondent Nos. 1 to 3.

Mrs. V.S. Nimbalkar, AGP for State- Respondent Nos. 4 to 6.

CORAM:- N. J. JAMADAR, J.

DATE:- 17th JULY, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.

2) This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 30th July, 2021, passed by the Minister (Revenue) in RTS-3021/P.K.130/J-6, whereby the Minister allowed the Revision Application by setting aside an order dated 18th June, 2021, passed by the Sub-Divisional Officer, Yeola in RTS Appeal No. 1 of 2021, condoning the delay in preferring the Appeal against Certification of Mutation Entry No.1510, in respect of

agricultural lands bearing Gat Nos. 27 and 28, situated at Jalgaon Neur, Tal. Yeola, Dist. Nashik ("the subject land").

3) Background facts necessary for the determination of this Petition can be summarized as under:-

(a) The subject lands were acquired by the petitioner under a sale-deed dated 15th July, 2008 from Shri. Jagannath Kashinath Mudanda and others for a consideration of Rs.50,00,000/-. The name of the petitioner came to be mutated to the record of right of the subject lands. Respondent Nos. 1 to 3 are the brothers of Balasaheb, the husband of the petitioner.

(b) It is the case of the petitioner that the respondent Nos. 1 to 3 by fabricating the record got their names mutated to the record of right of the subject land. The petitioner alleges that the respondent Nos. 1 to 3, behind the back of the petitioner, made an application purportedly under Section 85 of the Maharashtra Land Revenue Code, 1966 ("the Code, 1966"), for partition of the subject land. Signature of the petitioner on the said application was forged. Petitioner was never served with any notice by the Revenue Authorities. On 17th September, 2009, without providing an opportunity to the petitioner, the names of respondent Nos. 1 to 3 were mutated to the record of right of the subject lands under a subterfuge that the co-holders desired

to partition the subject lands, though the petitioner was the sole and absolute owner of the subject lands and the respondent Nos. 1 to 3 were never the co-holders thereof.

(c) The petitioner claims that she became aware of the aforesaid mutation in the year 2021 only. After ascertaining the correct facts and discovering the fraud, allegedly practiced by the respondent Nos. 1 to 3, the petitioner claimed to have preferred an Appeal against the said mutation before the Sub-Divisional Officer, Yeola. In the said Appeal, the petitioner preferred an application for condonation of delay asserting, *inter alia*, that she had not received the order passed by the Tahsildar and, thus, there was no delay and, in the event the Appeal was found to have been filed beyond the period of limitation, the delay be condoned for aforesaid reasons.

(d) The respondent Nos. 1 to 3 resisted the application for condonation of delay. It was contended that the delay was both inordinate and unexplained. It did not appeal to reason that the petitioner would not have obtained a copy of the 7/12 extract for more than 10 years. Thus, the reason assigned for condonation of delay was stated to be wholly unsustainable. Even otherwise, according to the respondent Nos. 1 to 3, the Mutation Entry was certified after giving due notice and providing effective

opportunity to the petitioner. In any event, the reason assigned in the application that the petitioner was unaware of the said mutation was unworthy of acceptance.

(e) The learned Sub-Divisional Officer, after appraisal of the averments in the application for condonation of delay and contentions in reply thereto and the material on record, was persuaded to condone the delay. The Sub-Divisional Officer observed, *inter alia*, that the subject lands were acquired by the petitioner under a registered sale-deed. However, in the application purportedly under Section 85 of the Code, 1966, the subject lands were stated to be ancestral properties. The notice issued by the Tahsildar was accepted by respondent No. 3, Shantaram on behalf of the petitioner. There was a report of a Hand Writing Expert that the signature appearing on the application and the statement before the Tahsildar were not of the petitioner. There was *prima facie* material to show that the petitioner was permanent resident of Nashik and notices were not issued and served on the said address. The Sub-Divisional Officer was of the view that, in the light of the aforesaid facts, the petitioner had succeeded in making out a sufficient cause for condonation of delay.

(f) Being aggrieved, the respondent Nos. 1 to 3 preferred revision before the State Government under Section 257 of the code, 1966. By the impugned order, the Minister (Revenue) allowed the revision overturning the finding of the Sub-Divisional Officer that the petitioner had made out a sufficient cause for condonation of delay. The Minister was of the view that the claim of the petitioner that she was unaware of the certification of Mutation Entry No. 1510 did not merit acceptance. In any event, since the Civil Suits, being R.C.S. No. 15 of 2021 and Special Civil Suit No. 10 of 2021, were subjudice before the Civil Court, in the view of the Minister, the Revenue authority ought to have refrained from embarking upon an enquiry into the disputed questions bearing upon the title to the subject lands.

4) Being aggrieved the petitioner has invoked the writ jurisdiction.

5) I have heard Mr. Rakesh Kumar, the learned Counsel for the petitioner, Mr. Rameshwar Gite, the learned Counsel for the respondent Nos. 1 to 3 and Mrs. V.S. Nimbalkar, the learned AGP for the State- respondent Nos. 4 to 6 at some length. With the assistance of the learned Counsel for the parties, I have

perused the material on record including the orders passed by the authorities below.

6) Mr. Rakesh Kumar, learned Counsel for the Petitioner, strenuously submitted that the Minister (Revenue) committed grave jurisdictional error in interfering with the order of condonation of delay passed by the Sub-Divisional Officer in the absence of any error in law or material irregularity in the order passed by the Sub-Divisional Officer. Mr. Rakesh Kumar would submit that where the first authority has exercised discretion to condone the delay, the revisional authority would not be justified in interfering with such order which advances the cause of determination of the matter on merit, in a light manner.

7) It was submitted that the Minister (Revenue) erred in delving into the merits of the matter in his endeavour to bolster up the reasons for interfering with the otherwise well-reasoned order of the Sub-Divisional Officer. Taking the Court through the documents on record, especially those evidencing the fact that the subject lands were purchased by the Petitioner under a registered Sale Deed, they were mutated in the sole name of the Petitioner, and, eventually, the name of the Petitioner came to be deleted on the basis of an alleged partition amongst the co-

holders purportedly under Section 85 of the Code, 1966, Mr. Rakesh Kumar would urge that the fraud and fabrication of record were writ large. The Sub-Divisional Officer had correctly noted that the notice of the application for mutation was allegedly received by the Respondent No.3 – Shantaram Rupchand Madhawai, one of the beneficiaries, and even the order certifying the mutation was also received by Mr. Shantaram and no notice was issued at the address of the Petitioner at Nashik. In this backdrop, the Revenue Minister could not have interfered with the order condoning the delay.

8) Mr. Rakesh Kumar also invited the attention of the Court to the provisions contained in Section 85 of the Code, 1966 to buttress a submission that the partition can only be between the co-holders and since the subject lands were purchased by the Petitioner, the names of the Respondents could not have been mutated by taking recourse to the provisions of Section 85 of Code, 1966.

9) In opposition to this, Mr. Gite, learned Counsel for Respondent Nos.1 to 3 supported the impugned order. It was submitted that the Revenue Minister was well within his rights in setting aside the order passed by the Sub-Divisional Officer condoning the huge delay of more than 11 years sans any cause,

much less, a sufficient one, having been assigned by the Petitioner. Mr. Gite submitted, with a degree of vehemence, that the claim of the Petitioner that she became aware of the certification of the mutation in the year 2021 only, is simply unworthy of acceptance.

10) What impairs the case of the Petitioner, according to Mr. Gite, was the inconsistency in the stand of the Petitioner. In the application before the Sub-Divisional Officer a case of ignorance was sought to be urged. In the instant Petition, the Petitioner has made an endeavour to assert that the fraud was allegedly practiced while she was abroad. Mr. Gite would submit that there is material to indicate that at the relevant point of time, the Petitioner had not gone abroad.

11) Mr. Gite submitted that an application for condonation of delay cannot be granted without considering the period of delay and the reasons ascribed for the delay. Valuable rights accrue on account of delay and indolence. If delay is condoned, as a matter of course, the adversary in whose favour rights have accrued would suffer grave injustice, urged Mr. Gite. To lend support to these submissions, Mr. Gite placed reliance on a decision of a Division Bench of this Court in the case of State of

Maharashtra and Ors. V/s. Vithu Kalya Govari and Ors.¹ and a judgment of the Supreme Court in the case of Balwant Singh and Anr. V/s. Daulat Singh (dead) by Lrs and Ors.²

12) Mr. Gite would further urge that, in any event, an entry in the revenue record does not make or unmake title. Substantive suits have been instituted. In the said suits, the Petitioner has pleaded that the subject lands form part of the joint family properties, which demolishes the Petitioner's case in the instant petition that the subject lands are acquired by her. In such situation, the parties must be left to workout their remedies before the civil court. From this standpoint, according to Mr. Gite, the revisional authority was fully justified in setting aside the order of condonation of huge delay.

13) At the threshold, it is required to be clarified that the remit of this petition is testing the legality, propriety and correctness of the impugned order passed by the Revenue Minister interfering with the order condoning the delay in preferring the appeal against the certification of a mutation entry. It would be wholly unwarranted to delve into the question of the character of the subject lands. Whether the subject lands form part of the joint family properties and, thus,

¹ 2008(4) ALL MR 856

² AIR 1997 SC 2719

amenable to partition, is the matter which can be properly adjudicated before the civil court.

14) Whether the Revisional authority was justified in interfering with the exercise of discretion by the appellate authority in condoning the delay is the only question which merits consideration. When a superior or revisional court is called upon to examine the correctness of the exercise of discretion by the lower authority in the matter of condonation of delay, different considerations come into play where the lower authority has condoned the delay and declined to exercise the discretion.

15) This distinction in the approach is premised on an overarching principle that ordinarily an application for condonation of delay should receive liberal consideration. Generally, the courts and tribunals lean in favour of condonation of delay so as to advance the cause of substantive justice by promoting the determination of a lis on merits rather than on technicalities. Undoubtedly, there is an equally compelling public policy in prescribing the period of limitation. However, where the authority is invested with jurisdiction to condone the delay, exercise of such discretion is often informed by liberal considerations.

16) Consistent with the aforesaid approach, where the delay is condoned by a lower court or authority by accepting the case assigned by a party as sufficient, normally superior court ought not disturb the said finding, unless the exercise of discretion suffers from the vice of manifest arbitrariness or perversity. On the other hand, when the court / authority at the first instance refuses to condone the delay, the superior court would be within its rights in examining the cause assigned for the delay and draw its own conclusion.

17) The aforesaid position in law was enunciated by the Supreme Court in the case of N. Balakrishnan V/s. M. Krishnamurthy³ on which reliance was placed by Mr. Rakesh Kumar. The Supreme Court observed, inter alia, as under :

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in regional

³ (1998) 7 SCC 123

jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litum* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy

promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749]."

18) The aforesaid pronouncement was followed by the Supreme Court in the case of **B.T.Purushothama Rai V/s. K.G.Uthaya and Ors.**⁴ The observations in paragraph No.17 read as under :

"17. On the question of limitation and delay this Court in *N. Balakrishnan V/s. M. Krishnamurthy* (supra) held that the purpose of the Limitation Act was not to destroy the rights. It is founded on the public policy fixing the life span for legal remedy for the general welfare. The primary function of a court is to adjudicate between the parties and to advance substantial justice. The object of providing legal remedy is to repair the damage caused as a result of legal injury. If the explanation given does not smack of mala fides or is not shown to have been put forth as a part of a dilatory strategy, the court must show utmost consideration to the suitor."

4 (2011) 14 SCC 86

19) A profitable reference, in this context, can be made to a decision of the Supreme Court in the case of **Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and Ors.**⁵ wherein after an elaborate analysis of all the previous pronouncements, which bear upon the exercise of discretion to condone the delay, the Supreme Court culled out the principles as under :

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public

5 (2013) 12 SCC 649

mischievous because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

20) On the aforesaid touchstone, readverting to the facts of the case, it is imperative to note that in the backdrop of the nature of the assertion of the Petitioner, by an order dated 22 August 2022, this Court considered it appropriate to call for the original record and proceedings before the Tahasildar under Section 85 of the Code, 1966. The observations in paragraphs 2 to 4 of the said order read as under :

“2. It appears that the Petitioner feeling aggrieved, preferred proceedings under Section 247 of the MLRC, which was time barred. Sub-Divisional Officer in the said proceedings has condoned delay of 11 years on two accounts viz. (a) that notice in the partition proceedings was received by co-owner Shantaram and not the Petitioner and (b) there is no sufficient material to infer independent notice to the Petitioner.

3. Contention of the Counsel for the Respondents is, proceedings under Section 85 were initiated by the Petitioner herself under her signature and Tahasildar while exercising powers under the said provision has followed due procedure prescribed under the provisions of Section 85 of the MLRC.

4. In the aforesaid backdrop, it will be appropriate in my opinion to direct the learned AGP to produce original record of proceedings in relation to passing of the order impugned under Section 85 by the Tahasildar.”

21) Pursuant to the aforesaid directions, the original record has been produced before the Court. Since the merits in the matter of certification of mutation entry No.1510 is yet to be

decided by the appellate authority, should the appeal get restored, it may not be appropriate to delve deep into the legality and correctness of the procedure followed by the Tahasildar. Two factors, however, become evident from the perusal of the original record. First, the notice dated 24 September 2009 of the hearing then scheduled to be held on 29 June 2009 was sent to the petitioner at the address of Jalgaon, Neur, Tal Yewala and was received by Shantaram – Respondent No.3 on behalf of the Petitioner. Second, the communication of the decision of the Tahasildar dated 17 July 2009 was again received by Shantaram – Respondent No.3, on behalf of the Petitioner.

At this juncture, as noted above, the Court would not be justified in delving into the disputed questions of facts as to whether the application for partition of the holding under Section 85 of the Code, 1966 was not made by the Petitioner and her signature thereon was forged and the Petitioner had not made any statement before the Revenue authority. Yet, the fact remains that, *Prima facie*, the Sub-Divisional Officer arrived at an inference that the notice of hearing was not served on the Petitioner in person, nor she had received the order of certification of mutation. Such *prima facie* finding that the order of certification of mutation was not received by the Petitioner

bears upon the commencement of the period of limitation under Section 250 of the Code, 1966. It provides that the period prescribed by the said Section for filing an Appeal shall be counted from the date on which the decision or order is received by the Appellant. The question as to whether the exercise of discretion by the Sub-Divisional Officer to condone the delay was justifiable, could not have been decided *de hors* the aforesaid attendant facts.

22) As noted above, the substantive justice is of paramount consideration and procedural technicalities should not be permitted to score a march over substantive justice. The courts and tribunals are required to be alive to the fact that a party does not get away with fraud, mis-representation or sharp practice by taking recourse to the technicalities of law of limitation.

23) In the case at hand, the Petitioner succeeded in *prima facie* making out a case that there were arguable questions about the legality of the procedure adopted by the Tahasildar in certification of the mutation. The record *prima facie* lends credence to her claim that she had neither notice of hearing nor of the decision. Sufficiency of cause ascribed by the Petitioner was, thus, required to be appreciated through the aforesaid

prism and, in my view, the learned Sub-Divisional Officer correctly exercised the discretion to condone the delay.

24) In the aforesaid view of the matter, the Minister (Revenue) was not justified in interfering with the exercise of discretion by the Sub-Divisional Officer as the same would promote substantive justice. Resultantly, the Writ Petition deserves to be allowed.

25) Hence, the following order :

:-ORDER:-

- i)** The Writ Petition stands allowed.
- ii)** The impugned order 30 July 2021 passed by the Minister (Revenue) stands quashed and set aside.
- iii)** The order dated 18 June 2021 passed by the Sub-Divisional Officer in RTS Appeal No.1 of 2021 stands restored.
- iv)** RTS Appeal No.1 of 2021 be heard and decided by the Sub-Divisional Officer, after providing an effective opportunity of hearing to the parties, on its own merits and in accordance with law.

v) By way of abundant caution, it is clarified that the observations hereinabove are confined to the consideration of the legality, propriety and correctness of the impugned order on the aspect of condonation of delay and they shall not be construed as an expression of opinion on the merits of the matter and the authorities shall decide the same without being influenced by any of the aforesaid observations.

vi) Rule made absolute in the aforesaid terms.

vii) No order as to costs.

viii) The record and proceedings, called for by this Court, be returned to the learned AGP.

[N. J. JAMADAR, J.]