

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3315 OF 2020**

Harishchandra Sakharam Jadhav	...	Petitioner
versus		
Sanjay Krushna Gharat	...	Respondent

Mr. C.G.Gavnekar, Senior Advocate with Mr. Ashutosh Gavnekar, Mr. Rohit Parab for
Petitioner.
Mr. Rohit D. Joshi for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 10 APRIL 2023

P.C.

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

2. The challenge in this Petition is to an order dated 25 September 2019 passed by the learned Member, Maharashtra Revenue Tribunal, Mumbai (for short ‘MRT’), in Tenancy Revision No.TNC/REV/RAG/L-123/2017, whereby the delay of about 6 years and 350 days in preferring Revision Application came to be condoned. In fact, this is the second round of challenge to the order of condonation of delay. It arises in the backdrop of the following facts :

2.1 The Petitioner had instituted a Suit being Special Civil Suit No.221 of 2008 seeking a declaration that the Petitioner and Mr. Dattatraya Sakharam Jadhav, Defendant N.3 in the said suit, were the owners of the lands bearing Survey No.67

Hissa No.1 and Survey No.68 Hissa No.3 and for cancellation of Sale Deed and the consequential reliefs of injunction. Mr. Ganesh Gunaji Jadhav, predecessor in title of the Respondent was one of the Defendants in the said suit. During the pendency of the said suit, by an order dated 8 December 2008, the Civil Court had ordered the parties to maintain status quo.

2.2 The Defendant No.1 obtained permission under Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (the Act of 1948) on 25 June 2009 and executed a Sale Deed in favour of the Petitioner on 7 July 2009 while the status quo was in force.

2.3 By a judgment and decree dated 13 October 2011 the said suit came to be decreed and it was declared that the Petitioner and Mr. Dattatraya Sakharam Jadhav were the owners and possessors of the land bearing Survey No.67/1 (the subject land).

2.4 By an order dated 15 January 2010 after noting that the permission to sell the subject land was obtained under Section 43 of the Act of 1948 suppressing the fact that the Civil Court had ordered status quo in respect of the subject land, the Sub-Divisional Officer, Alibag, cancelled the permission granted vide order dated 25 June 2009.

2.5 Being aggrieved, Respondent No.1 and others preferred an Appeal, which came to be dismissed by an order dated 15 April 2011.

2.6 Further appeal before the Additional Collector, Alibag was also

dismissed for want of prosecution by an order dated 12 July 2012.

2.7 In the meanwhile, the Petitioner filed an Application being Civil Misc. Application No.24 of 2012 in the District Court, Raigad-Alibag, seeking leave to file an Appeal against the judgment and decree dated 13 October 2011 passed in Special Civil Suit No.221 of 2018.

2.8 By a judgment and order dated 14 February 2017, the learned Principal District Judge, Alibag was persuaded to dismiss the Application holding, *inter alia*, that the transfer of property in breach of the prohibitory order passed by the Civil Court was void.

2.9 A Writ Petition against the said order also came to be dismissed for want of prosecution.

2.10 In the year 2017, the Respondent preferred Revision Application purportedly under Section 76 of the Act, 1948 assailing the order passed by the Sub-Divisional Officer, cancelling the permission dated 15 January, 2010. In the said Revision, the Respondent preferred an application seeking condonation of delay. It was, *inter alia*, contended that the delay was required to be condoned under Section 15 of the Limitation Act as the Respondent was prosecuting the remedies before the wrong forum due to an incorrect legal advice.

2.11 By an order dated 10 September 2018, the learned Member, MRT condoned the delay in filing the Revision Application.

2.12 Being aggrieved, the Petitioner invoked the writ jurisdiction of this Court. By an order dated 13 March 2019 in Writ Petition No.13569 of 2018, this Court was persuaded to allow the Petition and quash and set aside the order dated 10 September 2018 passed by the MRT and remit the application for afresh decision. The following observations of this Court in paragraphs 9 and 10 spell out the reasons which persuaded the Court to remit the matter back for a fresh decision. They read as under :

“9.....

It is the contention of the respondent No.1 that, he was not aware about the remedy available before MRT so as to take exception to the order passed by the Additional Collector Raigad dated 12/07/2012 and therefore, there was delay in filing the Revision before the MRT. The MRT has condoned delay of 6 years and three days caused in filing the revision by accepting the contention of Respondent No.1 that the said delay was caused because respondent No.1 was not aware about the remedy available before MRT, so as to take exception to the order passed by the Additional Collector Raigad dated 12/07/2012. Except the aforesaid reason, MRT has not assigned any other reason while allowing the application for condonation of delay in filing the revision. It is true that, so as to advance substantial justice, the prayer for delay in filing the appropriate proceedings needs to be construed liberally. However, there should be sufficient cause disclosed in the application for condonation of delay. In the facts of the present case, no sufficient cause was disclosed by the respondent No.1 to condone the delay of 6 years and 3 days caused in filing the revision. The reasons assigned by the MRT in the impugned order are cryptic and far away from satisfactory.

10. In that view of the matter, the ends of justice would be met in case the impugned is quashed and set aside and the application No.TNC/REV/RAG/

L-123/2017 is restored to its original file before MRT so as to consider the said application afresh on its own merits.”

2.13 Post remand, the learned Member, MRT was again persuaded to allow the Application, subject to payment of costs.

2.14 Being again aggrieved, the Petitioner has approached this Court.

3. I have heard Mr. Gavnekar, learned Senior Advocate for the Petitioner and Mr. Rohit Joshi, learned Counsel for the Respondent, at some length.

4. Mr. Gavnekar would urge that despite this Court having remitted the matter back to the MRT with scathing observations that the reasons assigned by the MRT in the order dated 10 September 2018 were cryptic and far from satisfactory, the learned Member, MRT, has again allowed the application by ascribing reasons which are totally extraneous to the consideration of an application for condonation of delay.

5. Mr. Gavnekar urged that, in fact, this Court has recorded in the order dated 13 March 2019 that no sufficient cause was disclosed by the Respondent to condone the delay and yet to ensure that the application for condonation of delay received adequate consideration, remitted the matter back to the MRT. The impugned order has been passed in total disregard to the letter and spirit of the order passed by this Court, urged Mr. Gavnekar. An endeavour was made by Mr. Gavnekar to draw home the point that the reasons ascribed in the application do not commend themselves and the application for condonation of delay deserves to be rejected.

6. In contrast, Mr. Joshi, learned Counsel for the Respondent would urge that the Respondent had ascribed specific reasons for condonation of delay. Inviting the attention of the Court to the averments in paragraphs 3, 4 and 5 of the Application for condonation of delay, Mr. Joshi submitted that the Respondent had instituted an appeal and even approached the learned District Judge seeking leave to file an appeal against the decree passed in Special Civil Suit No.221 of 2008 on account of an incorrect legal advice. That surely constitutes a sufficient cause for condonation of delay.

7. Mr. Joshi would further urge that having regard to the settled legal position that an application for condonation of delay should receive liberal consideration so as to advance cause of substantive justice, this Court may not interfere with the order, especially when the MRT has exercised the discretion to condone the delay.

8. I have given careful consideration to the rival submissions. The reasons which weighed with the learned Member, MRT to condone the delay are to be found in Paragraphs 13 and 14 of the impugned order. They read as under :

“13. In the case in hand, the order, which is impugned in the present Revision, prima facie, is ‘abortive’ in its nature, inasmuch as, the earlier order granting sale permission, had in fact, been acted upon and cancellation of an order, which had already been acted upon, could not yield any results as such. In para 21.3 (iii) of the judgment of Hon’ble Supreme Court in the matter of Esha Bhattacharjee (supra) it has been categorically emphasized

that “Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.” In view of this settled law, Ld. Sub-Divisional Officer, who had granted the Sale Permission, i.e. a permission to execute a ‘Deed of Transfer of Title’, was not empowered to revoke the same, even after the Sale Permission was acted upon, i.e. the Sale Deed was already executed. Sale Permission u/s. 43 or 63 of the Act of 1948 is more of an administrative nature and the authority would cease to have the power to deal with such an order, once it was finally executed. After execution of Sale Deed, the title of the property was transferred and thenceafter, Ld. Sub-Divisional Officer in the capacity of a Revenue Authority, was not empowered to take any reversible action which would devolve or take away title from any person. It was very much within the jurisdiction of a Civil Court to decide the entitlement of a person with regard to the suit property. Therefore, prima facie, there appears to be substance in the contention of the Applicant that the Ld. Sub-Divisional Officer, has exceeded his powers, while passing of the order dt. 15/1/2010 and the matter needs to be heard on merits in order to deliver justice. The order, which prima facie, appears to have been passed in violation of devolved authority in Ld. Sub-Divisional Officer, cannot therefore, be left to be in existence, because an order without authority would be a nullity, i.e. an order not in existence at all.

14. Hence, substantial justice being paramount and pivotal, the technical consideration need not be given undue and uncalled for emphasis, as per the law laid down by Hon’ble Supreme Court, the delay caused in filing the present Revision, needs to be condoned, however, subject to payment of costs of Rs.8,000/- out of which Rs.4,000/- to be deposited with the local Bar Association of Maharashtra Revenue Tribunal at its Principal Seat at Mumbai and Rs.4,000/- to be paid to the Respondent, on or before next date.”

9. The aforesaid observations unmistakably indicate that the learned

Member, MRT, ventured into the merits of the order which was sought to be assailed in the Revision Application and this line of reasoning gives heft to the submission of Mr. Gavnekar that the learned Member, MRT did not keep in view the well recognized principles in considering the application for condonation of delay. The aforesaid observations, on the one hand, indicate that the learned Member, MRT has delved into the merits of the matter, quite unwarrantedly, and, on the other hand, did not test the *bona fide* and genuineness of the reasons ascribed for condonation of delay which was imminently warranted.

10. This exercise to venture into the merits of the matter vitiated the approach of the learned Member, MRT. Resultantly, the pivotal question as to whether the delay of almost 7 years deserved to be condoned for the reasons stated in the application has not been determined.

11. The situation which thus obtains renders it necessary to set aside the impugned order and again remit the matter back to the MRT to decide the application for condonation of delay in the light of the reasons assigned in the application and keeping in view the principles which govern the application for condonation of delay. Since the first order dated 10 September 2018 which was set aside by this Court and the second order post remand dated 25 September 2019 which is impugned in this Petition, have both been passed by the same learned Member (Administration), MRT, Mumbai, it would be expedient to request the President, MRT, Mumbai to hear and

decide the application for condonation of delay afresh.

12. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned Order dated 25 September 2019 passed by the learned Member, MRT, Mubai on an application for condonation of delay being Tenancy Revision No.TNC/REV/RAG/L-123/2017 is quashed and set aside.
- (iii) Tenancy Revision Application No.TNC/REV/RAG/L-123/2017 is restored to the file of the MRT, Mumbai.
- (iv) The President, MRT, Mumbai is requested to get the said Application transferred to his file and hear and decide the same in accordance with law, taking into consideration the reasons stated in the said application for condonation of delay and keeping in view the principles which govern the application for condonation of delay.
- (v) The President, MRT, is requested to give an efficacious opportunity of hearing to the parties.
- (vi) It is clarified that this Court has not entered into the merits of the Application for condonation of delay and the learned President, MRT, shall decide the same on its own merits .
- (vii) Rule is made absolute in the aforesaid terms.

(viii) No order as to costs.

(N.J.JAMADAR, J.)