



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.637/2023

Smt. Narmada Pandurang Thokal .Vs. State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Shukla, Advocate (Appointed) for petitioner.
Mr. A. Chutke, A.P.P. for respondent no.1-State.

CORAM : ANIL L. PANSARE, J.
DATE : 04.12.2023

Rule. Rule is made returnable forthwith.

Contention is that the petitioner, who is an old lady, has been taken for a ride by respondent no.2, one of her three brothers. Respondent no.2, his two brothers and petitioner are the owners of the property left behind by their mother Sushilabai. Respondent no.2 forged the relinquishment deed dated 10.02.2011, thereby it is shown that the petitioner has relinquished her rights in the property in favour of the respondent no.2. The respondent no.2, on 15.02.2011, got the property mutated in his name to the extent of share of the petitioner. The petitioner challenged the said entry before the Sub Divisional officer, Darwaha. The Sub Divisional Officer, Darwaha vide order dated 14.05.2013 has quashed and set aside the mutation entry.

The petitioner then approached the police authorities by filing complaint dated 28.06.2013, alleging therein that the respondent no.2 committed forgery in collusion with the

respondent no.3 – Talathi and respondent no.4 – Revenue Inspector. The police officials did not take cognizance of the complaint and, therefore, the petitioner approached the court of Judicial Magistrate First Class, Darwha under Section 156(3) of the Criminal Procedure Code, 1973 vide Complaint No. 203/2013 dated 04.09.2013. The learned Magistrate has passed an order directing registration of the FIR. The said order was challenged by the respondent no.2 therein in Criminal Revision No.23/2014. The revisional Court, vide order dated 20.12.2016 allowed the revision and remanded the matter back to the trial Court to proceed further from the stage of verification.

Learned counsel for the petitioner submits that the revision Court has not fixed the date for appearance before the trial Court and, therefore, the petitioner was unaware of the status of the proceedings before the trial Court. The trial Court did not issue notice to the petitioner; rather, dismissed the application for want of prosecution, vide order dated 21.04.2017.

The petitioner had, on 12.12.2019, filed petition challenging the order passed by the revisional Court. On 04.01.2022, the respondent nos. 2 to 4 made a statement that the application filed before the trial Court has been dismissed in default on 21.04.2017.

Learned counsel for the petitioner submits that on that day i.e. on 04.01.2022, the petitioner, for the first time, came to know that the proceedings before the trial Court has been dismissed in default and, therefore, she approached the revisional Court to assail the said order. In doing so, there

occurred delay of 4 years 100 days. The revisional Court, however, rejected the application on the ground that the delay has not been properly explained.

Having heard learned counsel for the petitioner and learned A.P.P. and considering the series of events that occurred and in absence of any counter from the respondent nos. 2 to 4, who, though served, are absent, I do not find any reason why the revisional Court should not have allowed the application seeking condonation of delay.

The series of events would show that till 04.01.2022, the petitioner was unaware of passing of the order dated 21.04.2017 by the trial Court. There is nothing on record to show that the trial Court has issued notice of appearance to the petitioner. Learned counsel for the petitioner is correct in pointing out that the revisional Court has also not fixed the date of appearance before the trial Court. Therefore, the petitioner of her own had no reason to appear before the trial Court.

Considering the above and the nature of dispute, I am of the view that the revisional Court has committed error in rejecting the application. The order impugned thus is liable to be quashed and set aside.

Put all together, the writ petition is allowed. Impugned order dated 09.03.2023 passed by Additional Sessions Judge, Darwha, in Misc. Criminal Application No.21/2021 is quashed and set aside.

Misc. Criminal Application No. 21/2021 is allowed. The revision application be registered and processed, in accordance with law.

Parties shall appear before the revisional Court on 18.12.2023. The revisional Court shall issue notice of appearance to the respondent nos. 2 to 4 and proceed to decide the revision application, in accordance with law.

Rule is made absolute in the above terms.

(Anil L. Pansare, J.)

Kahale