



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

WRIT PETITION NO. 9007 OF 2023

Gunabai Aba Patil and Ors

.....Petitioners

Vs.

Khalil Amid (Deceased) Through
LRs

.....Respondents

Mr. K. K. Malpathak for the Petitioners
Mr. Vishal V. Jaju for the Respondents

CORAM : GAURI GODSE, J.

DATE : 16th FEBRUARY 2024.

P.C.

1. Considering the issue involved in the matter, parties agree that the Petition can be disposed of finally at admission stage.
2. The Petitioners are challenging the order dated 13th December 2023 passed by the Maharashtra Revenue Tribunal ('MRT'), Mumbai dismissing the petitioners' application for restoration of their Revision Application which was dismissed for non prosecution on 21st August 2019.

3. Learned counsel for the petitioner submitted that when revision application was dismissed for non prosecution, petitioner nos. 3, 4 and son of petitioner no. 1 were present. He submits that in order dated, 21st August 2019 a request made by them was recorded that due to financial constraints, they were unable to engage advocate. He submits that in spite of the said petitioners remaining present, MRT had dismissed the revision application for want of prosecution. He further submits that on earlier occasions, parties had attempted to explore the possibility of settlement, however, amicable settlement was not arrived at. He submits that in such circumstances, the petitioners filed an application for restoration before MRT which is dismissed by the impugned order. He submits that though the aforesaid petitioners were present, revision application was dismissed for non prosecution and the submissions as made aforesaid, ought to have been appreciated by MRT and an opportunity of hearing on merits should not have been given to the petitioners.

4. Learned counsel appearing for respondents submits that on various occasions, time was granted to the petitioners, however, they

never made an attempt to argue the matter. He submits that on 21st August 2019, hearing was fixed to enable the petitioners to make arrangement for appointing advocate, however, they have failed to do so and hence, MRT rightly dismissed the revision application for non prosecution.

5. I have considered the submissions made by both parties. Perused record. Perusal of order dated 21st August 2019 indicates that petitioner nos. 3, 4 and son of petitioner no. 1 were present and had made a statement that they were unable to engage advocate due to financial constraints. Once the said petitioners were present before the Tribunal and had made a request on the ground of financial constraints, it was in the interest of justice that the Tribunal ought to have issued directions for appointing an advocate from Legal Aid to represent the petitioners. However, though the said petitioners were present, MRT proceeded to dismiss the revision application for non prosecution in spite of recording the request made by petitioners. Perusal of the impugned order dismissing the application for restoration does not indicate consideration of the aforesaid

submissions made by the petitioners. In such circumstances, in my view, the petitioners are entitled to one opportunity of hearing on merits.

6. However, considering the objection raised on behalf of the respondents, the petitioners are granted one opportunity to engage advocate and argue their revision application on merits on the date as fixed by the Tribunal. Any default on the part of the petitioners, would disentitle them from seeking any kind of indulgence for hearing the revision application on merits.

7. Hence, for the reasons recorded aforesaid, Writ Petition is allowed by passing following Order:

ORDER

I. Order dated 13th December 2022 passed by the MRT, Mumbai in RESTO/TNC/RAG/15/19 is quashed and set aside and the Restoration Application is allowed.

II. Revision Application No. TNC/REV/482/B/2010 is restored to the file of MRT, Mumbai for deciding it on merits.

III. Parties shall appear before MRT, Mumbai on 4th March 2024. Thereafter, MRT shall fix the date for hearing.

IV. In the event of any default on the part of the petitioners, MRT shall be at liberty to pass appropriate orders in absence of the petitioners.

8. Writ petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]