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

**WRIT PETITION NO.7237 OF 2018**

Maruti Raoji Manjrekar

... Petitioner

**V/s.**

Prakash Shivram Mithbavkar & Ors.

... Respondents

Mr. V. S. Kapse i/by Mr. Kunal J. Rane for the Petitioner.

Mr. Shashank C. Mangle for Respondent No.1.

Mr. Sanjay D. Rayrikar, AGP, for State/Respondent No.7

**CORAM : AMIT BORKAR, J.**

**DATED : JANUARY 4, 2024**

**P.C.:**

1. The petitioner is challenging the order passed by the Maharashtra Revenue Tribunal (for short 'MRT') dismissing revision application arising out of application for condonation of delay of about 11 years in challenging order passed by ALT, Kankavli issuing certificate under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The Additional Tahasildar/ALT Kankavli by order dated 10 June 1994 fixed purchase price holding respondent No.1 has become owner of the property in dispute.

3. According to petitioner, in the year 2005, he came to know about passing of order dated 10 June 1994. Immediately,

therefore, he filed appeal before Sub-Divisional Officer, Kankavli bearing Tenancy Appeal No.34 of 2005. He filed an application for condonation of delay along with appeal.

4. The application filed along with appeal states that the petitioner was not aware of the order dated 10 June 1994 as petitioner's deceased mother Laxmi Raoji Manjrekar did not receive notice of hearing of Tenancy Case No.3 of 1994 and, therefore, she could not remain present before ALT, Kankavli. His mother Laxmi died in the year 1999. The petitioner got knowledge of the order only on 22 February 2005. He applied for certified copy on 25 February 2005. He received the certified copy on 16 May 2005.

5. The Sub-Divisional Officer by order dated 31 August 2015 rejected the application for condonation of delay. The Sub-Divisional Officer recorded a satisfaction that no sufficient cause for condonation of delay was made out by the petitioner. He also recorded finding that the documents on record indicate that petitioner's mother Laxmi was served with notice of proceedings on 6 May 1994. Despite service of notice, she failed to remain present at the time of hearing of the application. Moreover, no evidence to show her illness from 1992 till her death in the year 1999.

6. The petitioner aggrieved by the said order filed Tenancy Revision No.187 of 2016. The MRT by the impugned order dismissed the revision holding that petitioner's mother was served, her statement was recorded on 3 June 1994. She requested not to

fix purchase price and not to sell the property to Prakash, she also stated that property in dispute is the property from which she is earning as livelihood.

7. The MRT, therefore, recorded a finding that, it is not possible to accept the reasons submitted by the petitioner as his mother appeared in the proceedings.

8. Learned Advocate for the petitioner invited my attention to second affidavit filed by the petitioner before the Sub-Divisional Officer giving details of sufficient cause, in addition to reasons mentioned in the application. He also invited my attention to the earlier notices postponing the inquiry under Section 32G where notice was issued to the petitioner. According to him, the petitioner being co-owner was entitled to be served and in absence of service of such notice, the cause shown by the petitioner needs to be termed as sufficient cause under Section 5 of the Limitation Act, 1963.

9. Per contra, learned Advocate for the respondent invited my attention to the reason specified in the application for condonation of delay. The application proceeds on the ground that petitioner's mother was not served with the notice of hearing and, therefore, she could not remain present. He, therefore, submitted that the reason mentioned in the application is false; hence, refusal of application in exercise of discretion against the petitioner need not be interfere.

10. Having heard Advocates for the parties and on careful consideration, in my opinion, no fault can be found in the

authoritative pronouncement. It needs to be noted that the reason mentioned in the application for condonation of delay by the petitioner is that his mother had no notice of hearing of proceedings under Section 32G and, therefore, petitioner had no notice of passing of impugned order. It is also stated that, in absence of notice of hearing, petitioner's mother failed to remain present on the date of hearing. The Tribunal in paragraph 6 of the order has referred to the original record available with it. The relevant discussion by the member is as under:

“6.....In fact, page No.3 & 5 of the record and proceedings received from the trial Court reveals that the notices of the proceedings before the trial Court were duly served by the Talathi, Koloshi on Smt. Laxmibai Raoji Manjarekar and Prakash Shivram Mithbavkar. Page No.15 (in red ink) of the record and proceedings received from the trial Court also reveals that on the backside of this page, there is statement recorded in the presence of the Additional Tahsildar & A.L.T., Kankavali of said Smt. Laxmibai Raoji Manjarekar in the said proceedings, in which Smt. Laxmibai has admitted tenancy of Shri Prakash Shivram Mithbavkar, however, requested not to fix purchase price and not to sell the said property to Prakash on the ground that it is the property from which her livelihood is earned. This statement is dt.3/6/1994. So, in the absence of any documentary evidence that right from 1992 till her death in the year 1999, Smt. Laxmibai was residing at Mumbai, it could not have been inferred that the documents available on record were false, frivolous or fabricated. No such claim also appears to have been made by the appellant either before the first appellate Court nor before this Tribunal that the record and proceedings before the trial court was fabricated one.”

**11.** Based on the aforesaid reasons, it is evident that the findings recorded by the MRT that petitioner's mother appeared before the ALT and opposed fixing of purchase price is borne out of record. Once, its proved that the petitioner's mother received notice and she recorded her statement in the proceedings under Section 32G, the reasons mentioned in the application for condonation of delay turns out to be false. It is well settled that, if the reason mentioned in the application for condonation of delay is false, the Court would be within its power to reject such application for condonation of delay.

**12.** The contention raised by the petitioner that the petitioner being co-owner was entitled to have individual in addition to notice issued to her mother cannot be accepted as the estate was represented substantially by petitioner's mother. The statement made by petitioner's mother, in absence of any contrary needs to be construed as statement on behalf of all the persons having rights in the property. Therefore, in my opinion, no fault can be found in the impugned order.

**13.** The writ petition is dismissed. No costs.

**(AMIT BORKAR, J.)**