



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9048 OF 2019

Mr. Sachin Subhash Pakale

.....Petitioner

Vs.

Mr. Ramchandra Ganu Nirmal and ors

.....Respondents

Mr. Aloukik Pai i/b Neuty Thakkar for the Petitioner

Mr. R. J. Ghag i/b Swati Gawde for Respondent No. 1

CORAM : GAURI GODSE, J.

DATE : 5th FEBRUARY 2024.

P.C.

1. Heard. This petition challenges the order dated 14th June 2019 passed by the Maharashtra Revenue Tribunal ('MRT') allowing the application for condonation of delay and restoring the Revision Application to the file.

2. Learned counsel for the petitioner submitted that the application was filed after a period of more than four years for restoration of the Revision Application without giving any satisfactory reasons for the

delay. He pointed out that a vague averment was made in the application stating that Respondent No. 1 for the first time came to know about the dismissal of his Revision Application through a friend. He submits that no steps were taken by Respondent No. 1 to find about the pendency of his Revision Application. He submits that a vague application ought not to have been allowed by the MRT. He submits that there is total lack of diligence on the part of Respondent No. 1. He submitted that MRT has allowed the application on erroneous ground that for technicalities, Respondent No. 1 should not lose an opportunity of a fair hearing.

3. In support of his submissions, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Taramati Bhagwandas Vithlani Vs. Navjivan Gulab Gaikwad & Ors**¹. He in particular relies upon paragraph 10 and 11 of the said Judgment in support of his submission that though the Courts are required to be liberal in ensuring that a party is not prevented from a fair opportunity to pursue the proceedings, the conduct of the party and the nature of explanation given is also required to be seen. He submits that as per

¹ 2006 SCC OnLine Bom 563

the principles of law laid down by the Hon'ble Supreme Court in the said decision, a party cannot be allowed to benefit from a false defence. He further submitted that Hon'ble Supreme Court has held that in such matters, the Courts must be vigilant to ensure that liberal approach of the Court is not abused by a party who has set up a false case.

4. In reference to the aforesaid decision, learned counsel for the petitioner referred to a letter of intimation issued by MRT intimating the party regarding the order passed. He submits that the said letter indicates that order of dismissal of the Revision of Respondent No. 1 was intimated to him by MRT. He therefore submits that Respondent No. 1 has come up with a false case that he was not aware about the proceedings.

5. Learned counsel appearing for Respondent No. 1 submitted that on the date when the Revision was dismissed for non prosecution, his Advocate had appeared and had requested for time to take instructions. However, in spite of seeking time, the Revision Application was dismissed for non prosecution. He submitted that in

the Application for condonation of delay and restoration, Respondent No. 1 had come up with a specific case that he was not intimated by his Advocate with respect to dismissal of his Revision Application. He submitted that Respondent No. 1 has clearly stated in clause F of his Application for restoration as well as in paragraph 5 of his delay condonation application that Respondent No. 1 had learnt about the dismissal of his Revision Application through a friend on 15th May 2018. Thereafter, it is explained that in what manner the steps are taken and application was filed on 30th May 2018. Learned counsel submitted that perusal of the Rozanama would indicate that Revision Application was pending for service upon the Respondents. He thus submitted that Respondent No. 1 is entitled to a fair opportunity of hearing the Revision Application on merits. He thus supported the impugned order and submitted that MRT has examined in detail the reasons given by Respondent No. 1 and has rightly condoned the delay and restored the Revision Application for hearing it on merits.

6. I have considered the submissions made by both the parties. I have perused the record. Perusal of the Rozanama indicates that

Revision Application was pending for service upon Respondents. It appears that on earlier few dates, none had appeared for the Revision Applicants and the matter was kept for service upon the Respondents. On 12th November 2013, matter was adjourned for taking steps for service upon Respondent Nos. 3 to 5 in Revision Application. Thereafter, entries dated 27th November 2013 and 16th January 2014 indicates that Revision Application was adjourned for awaiting service upon the Respondents. It appears that on 28th February 2014, learned advocate for Respondent No. 1 had requested for time to take steps, however, the Revision Application was dismissed for non prosecution without recording any reasons for not granting time to take steps.

7. It appears that for condonation of delay as well as restoration application Respondent No. 1 has stated in his application that he was unaware about the dismissal of his Revision Application and immediately after he learnt about the dismissal of his Revision Application on 15th May 2018, he took steps to file restoration application alongwith delay condonation application. The applications also state that Respondent No. 1 was not intimated by his Advocate

about the dismissal of his Revision Application.

8. So far as submissions on behalf of the Petitioner that the letter of intimation issued by MRT indicates that Respondent No. 1 was aware about dismissal of the Revision Application, I do not find any substance. Learned MRT in the impugned order has recorded that there was no acknowledgment on record about service of intimation. Hence, it cannot be said that in view of the issuance of the intimation letter, Respondent No. 1 was aware of dismissal of his Revision Application. In the impugned order, MRT has examined the reasons given by Respondent No. 1 and has held that Respondent No. 1 is entitled for a fair opportunity of hearing on merits.

9. In view of the facts of the present case, in my view, principles of law laid down by the Ho'ble Supreme Court in the case of **Taramati Vithlani** are not applicable to the present case. There is nothing on record to show that Respondent No. 1 was aware about the dismissal of his Revision Application. Hence, it cannot be said that Respondent No. 1 had made any false statement before MRT.

10. By a well reasoned order, after examining all the contentions of

the parties, MRT has condoned the delay and restored the Revision Application to file. I do not find any infirmity or illegality in the reasons recorded in the impugned order. Hence, there is no ground made out for exercising powers under Article 227 of Constitution of India.

11. The petition is devoid of any merits. Petition is dismissed.

12. It is clarified that in the event of any further default on the part of Respondent No. 1, MRT will be at liberty to pass appropriate orders in absence of Respondent No. 1.

[GAURI GODSE, J.]