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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.388 OF 2020

NIKITA KAILAS DARADE
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Date: 2024.04.16 17:36:21 +0530

Pulkerin Francis D'Souza, through
PoA William Francis D'Souza … Petitioner

V/s.

Raymond Manual D'Souza & Anr. … Respondents

Mr. Akhil Rao for the petitioner.
Mr. Sanskar Marathe for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 11, 2024

P.C.:

1. By the present writ petition under Article 227 of the Constitution of India, the petitioner is challenging an order passed by the Maharashtra Revenue Tribunal thereby confirming an order refusing to condone delay in filing appeal arising out of proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the said Act" for short).

2. Respondent No.1 initiated proceedings under Section 70(b) of the said Act on 3 September 2005. On the same day, the Tehsildar issued notice to the petitioner. On 26 September 2005, the petitioner appeared before the Tehsildar through Power of Attorney *Margaret D'Souza*. Roznama produced on record at page 263 indicates that the petitioner's power of attorney was present before the Tehsildar. On the same day, i.e. 26 September 2005, the Tehsildar passed judgment holding respondent No.1 as agricultural tenant in the property in dispute.

3. Aggrieved by the judgment and order dated 26 September 2005, the petitioner filed an appeal before the Sub-Divisional Officer in the year 2017. Along with the appeal, the petitioner filed an application for condonation of delay of 12 years in filing the appeal. The reason furnished in the application was lack of knowledge of the order passed by the Tehsildar. The Appellate Authority recorded a finding that the Tehsildar had issued notice to the petitioner. The petitioner was aware of the proceedings before the Tehsildar and, therefore, refused to condone delay.

4. Aggrieved thereby, the petitioner filed Revision before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal by the impugned order dismissed the Revision. The Maharashtra Revenue Tribunal proceeded on the basis that the Sub-Divisional Officer rightly concluded that the petitioner was aware of pendency of the proceedings and the reason furnished in the application for condonation of delay cannot be treated as sufficient cause for condonation of delay of more than 10 years. The petitioner, therefore, filed present writ petition.

5. According to the learned advocate for the petitioner, the order of the Tehsildar was in breach of the principles of natural justice. The petitioner was unaware of the pendency of the proceedings and the order impugned before the Sub-Divisional Officer. He realized about passing of order before filing an appeal and immediately thereafter he filed appeal in the year 2017. On perusal of the record, it appears that the order under Section 70(b) was filed by the Tehsildar on 26 September 2005. Roznama of the said proceedings indicates that petitioner's power of attorney was present on 26 September 2005. Therefore, the reason furnished by the petitioner that the petitioner was not aware of passing of the order cannot be treated as sufficient cause. Moreover, in the year 2015 in a proceeding under Section 32G the petitioner replied notice on 21 October 2015. Therefore, the petitioner was aware of passing of the order at least in the year 2015. However, appeal was filed only in the year 2017. Therefore, no fault can be found with the order passed by the Authorities below refusing to condone delay of more than 10 years in filing the appeal.

6. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)

Note: This order is corrected as per order dated 16 April 2024 passed on a praecipe for speaking to the minutes. Correction in paragraph 2 is shown in italicize.