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

WRIT PETITION NO.389 OF 2020

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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

PC.:

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 32G 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 347 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.

5. After declaration under Section 70(b) of the said Act, respondent No.1 filed proceedings under Section 32G of the said Act. The petitioner appeared in the said proceedings. However, thereafter failed to remain present. The Sub-Divisional Officer by order dated 20 May 2016 passed order under Section 32G of the said Act.

6. The petitioner filed an appeal under Section 74 of the said Act along with application for condonation of delay. According to the petitioner, he was not aware of the decision in the proceedings. By the impugned order, the Maharashtra Revenue Tribunal refused to condone delay by dismissing appeal. Therefore, the petitioner filed present writ petition.

7. On perusal of the orders passed by the Sub-Divisional Officer and the Maharashtra Revenue Tribunal, it appears that the Sub-Divisional Officer refused to condone delay of around one year in filing appeal mainly on the ground that the petitioner was aware of the proceedings. However, no findings are recorded by the Sub-Divisional Officer as to when the petitioner became aware of the decision in 32G proceedings.

8. The Maharashtra Revenue Tribunal by the impugned order has not considered the reason assigned in the appeal arising out of proceedings under Section 32G. Therefore, it was necessary that the Sub-Divisional Officer and the Maharashtra Revenue Tribunal should re-consider the application for condonation of delay filed by the petitioner.

- a) The impugned orders passed by the Sub-Divisional Officer and the Maharashtra Revenue Tribunal refusing to condone delay of around one year are quashed and set aside.
- b) The Sub-Divisional Officer shall re-consider the application for condonation of delay and shall pass fresh order on merits.

c) Considering the pendency of proceedings since 2017, the Sub-Divisional Officer shall decide the application for condonation of delay within three months from the date of appearance of the parties.

d) The parties shall appear before the Sub-Divisional Officer on 18 March 2024 at 10.30 a.m.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)

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