

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3122 OF 2024

Aalibai Balya Gaikar & Ors.

....Petitioners

Versus

Bhiva Kashinath Mhatre & Ors.

....Respondents

Mr.Gajendra Jadhav., for the Petitioners.

Mr.Surel Shah a/w Mr.Ravi V. Asabe, for Respondent No.1.

Mr.J.P. Patil, AGP for Respondent Nos.2 and 5-State.

CORAM : R.M. JOSHI, J.

DATE : 23rd AUGUST 2024

P.C. :-

. This Petition involve issue for consideration is as to whether without satisfactory cause/reason been substantiated for condonation of delay, it can be condoned or nor, by taking into consideration merit of the case.

2. The facts which lead to filing of the present Petition can be narrated in nutshell as under:-

It is case of the Petitioner's that late Bala was original owner of Survey No.34/1 admeasuring 0-44-9 R and Survey No.36/4/5/6 admeasuring 1-58-4, situated at Village-Taloja,

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Pachnand, Taluka-Panvel, District-Raigad. The name of Balya was recorded as a tenant vide ME No.886 dated 17th August 1948, under the provisions of Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948. On 28th December 1973 Balya died and his widow Aalibai Balya Gaikwad name was mutated in the Revenue Record, she filed Tenancy Case No.7 of 1980 before the Tahsildar at Panvel against Respondent No.1 wherein it is held that Respondent No.1 was not tenant in respect of the subject property. Smt.Aalibai died on 13th August 1985. On the basis the alleged Will executed by Balya Respondent No.1 claims rights in the subject property and Mutation was also obtained on the basis of the Mutation Entry No.2973. A proceeding came to be filed bearing Tenancy No.7/2019 against Respondent No.1 alleging that Will is forged one. Proceedings were also initiated before the Civil Court. In the backdrop RTS Appeal bearing No.188 of 2019 came to be filed before the Sub Divisional Officer, Panvel under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short 'MLRC'). This Appeal was filed along with Application for condonation of delay.

3. By order dated 31st August 2019 Sub Divisional Officer rejected Appeal by refusing to condone delay. Second Appeal came to be filed before the Additional Collector, Raigad bearing Appeal No.140/2019. This Appeal also came to be rejected by order dated 22nd April 2021. Revision Petition filed under Section 257 of the MLRC before the Additional Collector, Raigad, however, was allowed by order dated 15th December 2022 and it was directed to conduct an enquiry in the Mutation Entry No.2973. Being aggrieved by this order, Respondent No.1 filed Revision before the State bearing No.283 of 2021, which came to be allowed by order dated 15th December 2022 whereby the order passed by the Additional Commissioner was set aside. Hence, this Petition.

4. The learned counsel for the Petitioner submits that, the Additional Commissioner while exercising powers under section 257 of the Code has rightly appreciated the nature of the dispute between the parties. It is his submission that since, there is serious challenge with regard to the Will executed by Balya and also in view of the fact that in Tenancy Case No.7 of 1980 it was

held by Tahsildar that Respondent No.1 is not tenant in respect of the subject property, the delay is condoned rightly. It is submitted that the State has committed error in reversing the said order in exercise of the revisional powers.

5. The learned counsel for the contesting Respondents opposed the said submissions by contending that, there is no reason much less sufficient reason has been made out for condonation of delay. It is contended that in absences of any such reason, it was not open for the Authority to condone the delay of 32 years.

6. At the outset it is relevant to take note of the latest judgment of the Supreme Court in the case of ***Pathupati Suba Reddy V/s. Special Duty Collector***¹, the Hon'ble Supreme Court in this case has dealt with the issue of condonation of delay and has laid down the categories for condonation thereof.

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law **laid down** by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

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(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the [Limitation Act](#) have to be construed differently, such as [Section 3](#) has to be construed in a strict sense whereas [Section 5](#) has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in [Section 3](#) of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and 17 condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

7. It is thus clear from the judgment of the Hon'ble Supreme Court that, unless satisfactory explanation has been

provided and the case is being made out for the condonation of delay, the delay cannot be condoned mechanically. Similarly, merit of the case are not required to be considered while condoning the delay, merely the merit of case not to become a ground/reason for condonation of delay. In the light of this, law settled by the Hon'ble Apex Court in facts of the present case are considered then it is absolutely clear that the Mutation Entry No.2973 has sought to be challenged by the Petitioner after 32 years. In order to substantiate the cause/reason for condonation of delay, there is absolutely no pleading on record in the Appeal filed before the Sub Divisional Officer. Apart from this it is relevant to note that the Petitioner had challenged Will in Special Civil Suit No.427 of 2014 and that indicates the knowledge of the Petitioner in respect of the said Will at least five years prior to the filing of the Appeal before SDO and also mutation entry in question. Thus, it is not the case that the Petitioner did not have knowledge about the Will of deceased Balya and the Mutation Entry No.2973 however, inspite of such knowledge, no Appeal is preferred against the same within limitation.

8. The Additional Divisional Commissioner has considered merits of the case without appreciating the fact that the Petitioner has neither pleaded nor proved sufficient cause for condonation of delay in filing the Appeal. The said order passed is not in conformity of judgment of Hon'ble Supreme Court. Moreover, delay in this case is over 32 years of period, but there is absolutely no cause mentioned therefor. It would not be permissible to condone such inordinate delay without making out sufficient cause. This Court therefore, finds no perversity in the order passed by State setting aside said order.

9. Considering the judgment of the Hon'ble Supreme Court and having regard to the facts of the present case, no case is made out by the Petitioner to cause interference in the impugned order. Hence, Petition stands dismissed.

10. All pending Civil and Interim Applications are disposed of.

(R.M. JOSHI, J.)