



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Application (CAF) No. 3219 of 2023

in

First Appeal St. No. 20981 of 2023

[Shri Maroti B. Kokate and ors. **..vs..** Shri Pandurang Sansthan Ward, Tal. Shegaon, Dist. Buldhana, for trustee, Shri. J. R. Patil (Gole) and anr.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Smt. S. W. Deshpande, Advocate for the applicants
Mr. V. B. Bhise, Advocate for non-applicant nos. 1 and 2

CORAM : ANIL L. PANSARE J.

Date of reserving order : 11-01-2024

Date of pronouncing order : 16-01-2024

By the present application, the applicants are seeking to condone delay of 92 days in filing appeal against orders (three in numbers) dated 11-4-2023 passed by the Joint Charity Commissioner, Amravati in Application Nos. 2/2021, 3/2021 and 6/2021.

2. Smt. S. W. Deshpande, learned counsel for the applicants submits that the delay has occurred for various reasons. The applicants had earlier approached this Court under writ jurisdiction (in Writ Petition No. 3768/2023). This Court vide order dated 6-9-2023 having found that the challenge is to the order passed under Section 41E of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as 'the Act of 1950'), granted liberty to the applicants to file appeal. Learned counsel for the applicants submits that the applicants accordingly approached the District Court for filing appeal whereupon they were informed that the applicants should approach the High Court and,

therefore, the applicants filed application seeking recall of order dated 6-9-2023 which came to be dismissed. Accordingly, the plea of Advocate's fault is raised. Learned counsel submits that the party should not suffer for Advocate's incorrect advice. When enquired as to who was applicant's Advocate, Smt. Deshpande submits she is the one who advised applicants to approach High Court. Despite such status, the applicants continued her as their Advocate.

3. Smt. Deshpande then submits that the applicants have simple request of giving them an opportunity of hearing before the Joint Charity Commissioner. She submits that the applicants could not contest the application filed under Section 41E of the Act of 1950 by the non-applicants because of the ailment of the child born in applicants' family who suffered heart ailment by birth. The entire family was required to attend the child.

4. When enquired as to when was child born, Smt. Deshpande submits that child was born in the year 2005 but underwent surgery on multiple occasions. She submits that last such surgery was done on 1-6-2018 at K.E.M. Hospital, Mumbai. All male members of the family were required to attend the hospital. The applicants, therefore, could not give instructions to their Advocate, who, on 19-7-2019, filed no instructions pursis in the proceedings pending before the Joint Charity Commissioner. Accordingly, she prayed to condone the delay.

5. Learned counsel for the non-applicants has vehemently countered the submissions and I am astonished to see the contemptible level of practice, the counsel and her clients are indulging into, to get favourable order.

6. Learned counsel for the non-applicants has invited my attention to the impugned orders to only notice that the applicants were duly represented by their Advocate before the Joint Charity Commissioner and have fully participated in the said proceedings. The impugned orders have been passed on merit. The Joint Charity Commissioner has, by impugned orders, restrained the applicants from causing obstruction and interference to the peaceful possession of the non-applicants over the suit properties viz. (1) Block No. 160 (Survey No. 82) admeasuring 5H. 18R, (2) Block No. 74 (Survey No. 37/1) admeasuring 3H. 08R and (3) Block No. 221 (Survey No. 111/1) admeasuring 0.85 R, situated at Varud, Tahsil Shegaon, District Buldhana.

7. Learned counsel for the non-applicants submits that the applicants and non-applicants both had filed applications under Section 50A(1) of the Act of 1950. The application filed by the non-applicants came to be allowed and that of the applicants came to be rejected. The non-applicants have been appointed as trustees of Shri Pandurang Sansthan, Varud, Taluka Shegaon, District Buldhana. The Deosthan is the owner of the suit properties. The revenue entries support such status. The Joint Charity Commissioner, considering the relevant

documents and after giving opportunity to both the sides, has passed the impugned orders. Accordingly, he argued that the reasons put forth by the applicants are not only incorrect but are also misleading. Thus the story of child's ailment and his surgery etc. is put forth to get sympathy of the Court.

8. The contemptible conduct does not stop here. The counsel, while arguing application, has invited my attention to order dated 21-4-1995 passed in Revision Application No. Ten-A-198/88 by the Maharashtra Revenue Tribunal, Nagpur Bench, Nagpur. The Pandurang Sasthan under question had filed application against three persons, one of whom is the father of applicant no. 4 herein. Smt. Deshpande, by referring to said order, has contended that the Tribunal has held that the non-applicant therein viz. the predecessor of applicant no. 4 has been declared owner of the suit property and, therefore, the application came to be dismissed.

9. I have gone through the aforesaid order. The Pandurang Sansthan had filed application under Section 120 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. According to Deosthan, the land bearing Survey No. 37/1, admeasuring 3.08 H. was leased out to Natthuji Gole, the father of non-applicants therein. The case of the Deosthan was that since Natthuji Gole expired, the property under lease will not be subject to law of inheritance and in turn, the non-applicants will not acquire the right of

tenancy. The Tribunal was, however, of the view that tenancy rights are inheritable and, therefore, the non-applicants cannot be said to be unauthorisedly occupying the possession of the land and accordingly rejected the revision application.

10. It is thus obvious that the order does not recognize the non-applicants before the Tribunal as owners. The question before the Tribunal was about nature of possession of the non-applicants over the property, whether the possession was lawful or unauthorized. The Tribunal found the possession to be authorized and, therefore, dismissed the revision application. The issue of ownership was neither raised nor answered by the Tribunal.

11. At this stage, Smt. Deshpande, learned counsel submits that since the predecessors of the non-applicants before the Tribunal were in possession on tillers date, the non-applicants would become owners.

12. When enquired as to where is the finding as regards tillers date and possession of predecessors of non-applicants over the property on tillers date, Smt. Deshpande could not give any satisfactory answer, nor could she show any document showing title of applicants over the suit properties. Further the subject matter before the Tribunal was one property as against three properties in the present case.

13. Put all together, Smt. Deshpande, learned counsel appearing for the applicants has not left any stone

untuned to attract favourable order by making incorrect and misleading submissions. It appears that the applicants have intentionally given misleading instructions to Smt. Deshpande which resulted into putting forth the aforesaid contentions.

14. Smt. Deshpande however, ought to be aware that the Advocate, who appears before the Court, is first and foremost officer of the Court and is expected to discharge duties in that capacity. She ought to have examined and scrupulously gone through the impugned orders before raising a plea that the applicants were not given opportunity of hearing; rather a picture is decorated to show that they were prevented from giving instructions to their counsel because of child's ailment. Smt. Deshpande not only failed to go through the orders but also failed to discharge her duty towards Court and made an attempt to get sympathy of the Court. This conduct is deprecated.

15. The counsel is cautioned to be careful in future while making submissions before the Court. She is put to notice that similar such conduct, if continued, will be viewed seriously and appropriate reference and recommendations will be made to the Bar Council of India and also the Bar Council of Maharashtra and Goa for taking appropriate action.

16. With the above note, the applicants having failed to justify the delay and having made an attempt to mislead the Court, the application is dismissed with exemplary costs of Rs. 5,000/- (Rupees Five Thousand)

to be paid to the High Court Library, Nagpur Bench at Nagpur. Costs be deposited within two weeks, failing which, the Registry shall forthwith take steps to recover the same in accordance with law.

Contempt Petition No. 426 of 2023

17. Learned counsel for the petitioners is not pressing for order. The contempt petition is accordingly disposed of as not pressed.

(Anil L. Pansare, J.)

wasnik