



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15752 OF 2023

Rajendra Kashinath Bhusare And Others

VERSUS

Sumanbai Motiram Patil And Others

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Advocate for Petitioners : Mr. S.T. Mahajan

Advocate for Respondent 1 : Mr. S B. Yawalkar

Respondent No.2-Served.

AGP for Respondents no.3,4 : Mr. D.R. Korade

Advocate for Respondent 5-7 : Mr. P. H. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 11, 2025

FINAL ORDER :-

1. Petitioners impugn the order dated 20.8.2018 passed by the learned Maharashtra Revenue Tribunal, Aurangabad in case No.90/B/2015/Jalgaon, by which the petitioners prayer for condoning delay caused in filing appeal against the order dated 30.6.2014 passed by the Sub Divisional Officer, Pachora, in Tenancy Appeal No.2 of 2011 has been declined.

2. Respondent nos.1 and 2 instituted Tenancy Appeal No.2 of 2011 before the S.D.O., Pachora in which directions were issued to Tahsildar to hand over possession of suit land gat no.238 situated at village Vadgaon to them. Aggrieved

petitioners filed revision No.90/B/2015 Jalgaon before the Maharashtra Revenue Tribunal, Aurangabad alongwith an application to condone the delay. Said application has been dismissed vide impugned order dated 20.8.2018 observing that sufficient cause is not made out. It has been observed that learned S.D.O. Pachora on 30.6.2014 ordered under section 84 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short said act) to evict petitioners from suit land and put respondent nos.1 and 2 in possession. The limitation for filing appeal expired on 30.12.2014. Execution proceeding of said order was initiated by Tahsildar on 16.10.2014 and thereafter revision was filed before the Tribunal. It is further observed that reasons mentioned for condonation of delay are insufficient and lacks bonafide. Consequently, dismissed revision without admission.

3. Mr. S.T. Mahajan, learned advocate appearing for petitioners vehemently submits that learned Maharashtra Revenue Tribunal (for short MRT) adopted hyper-technical approach. According to him, petitioners have strong case on merit. Although, application submitted by respondent nos.1 and 2 before Sub Divisional Officer was barred by limitation, it

has been erroneously entertained. Mr. Mahajan submits that petitioners are rustic persons. They were not properly advised. Many other proceedings between parties in relation to subject matter were pending. They were under bonafide belief that they need not assail impugned order.

4. Mr. Mahajan would submit that suit land was possessed by one Shankar. He was declared as protected tenant. He was residing with one Kashinath and before his death executed a registered sale-deed in his favour. Eventually, Kashinath acquired ownership of the land. Thereafter, son of Kashinath namely Rajendra transferred land in favour of one Machindra under registered sale-deed. Machindra developed said land by carving out plots and sold out in favour of different persons. When, third party rights are created in favour of large number of persons, respondents initiated present proceedings in the year 2002 claiming that they are daughters of Shankar and sought eviction of persons in possession invoking section 84 of the said Act. He would submit that, in this situation, decision on merit is solicited.

5. Per contra, Mr. Yawalkar, learned advocate appearing for respondent nos.1 vehemently opposed the prayer

to condone the delay. According to him, petitioners have failed in the proceeding seeking grant of probate of alleged will. Even, they have failed to establish their claim in civil proceeding. Respondent nos.1 and 2 are daughters of Shankar, who was protected tenant and recipient of certificate dated 17.1.1955 under section 32(g) of the Act. Shankar executed registered sale-deed dated 5.1.1962 in favour of Kashinath and in turn Kashinath executed will deed in favour of petitioner no.1.

6. Mr. Yawalkar, would rely upon observations of the Honourable Supreme Court in case of *State of Madhya Pradesh Vs. Ramkumar Choudhary in Special Leave Petition © Diary No.48636 of 2024* decided on 29.11.2024 and judgment in case of *PK. Ramachandran Vs. State of Kerala and another* reported in AIR 1998 SC 2276.

7. Having considered submissions advanced, it can be observed that learned Maharashtra Revenue Tribunal refused to condone delay of 462 days caused in filing revision against the order dated 30.6.2014 passed by the S.D.O. Pachora. Perusal of reasons supplied in support of condonation of delay would show that petitioners have averred that they

were not duly advised. After order of Sub Divisional Officer, they were under bonafide impression that revenue and civil proceedings touching to the subject matter of disputed land as filed by petitioner no.1 are pending before the appellate and revenue authority as well as this Court. Final outcome of those proceedings would take care of their rights. However, learned MRT found that reasons so employed lacks bonafide. As such, declined to condone the delay.

8. It is trite that the courts are empowered to condone delay only when satisfactory explanation has been offered by party. It is also necessary to apply law of limitation with all its rigour and equitable grounds cannot be taken aid of.

9. In application filed by the petitioners they have given history of various legal proceedings between parties in relation to suit land. In paragraph no.9, it is stated that during pendency of RTC revision no.300 of 2011 before the Divisional Commissioner, respondent nos.1 and 2 initiated tenancy proceedings before S.D.O. pachora under section 84 of the Maharashtra Tenancy and Agricultural lands Act, 1948 for eviction of petitioners from disputed land on the ground that

mutation entry no.828 which was recorded in the name of deceased Kashinath i.e. father of the petitioner no.1 was cancelled vide order dated 29.2.2008 by Additional Collector, Jalgaon and confirmed by the Divisional Commissioner, Nashik vide order dated 15.6.2010 and eventually mutation entry no.1735 was recorded in the name of respondent nos.1 and 2. According to petitioners, they received a notice dated 16.10.2021 issued in pursuance to the impugned order dated 30.6.2014, by which they were asked to deliver possession of the disputed land to petitioners. Thereafter they took steps to assail order of the Sub Divisional Officer. Till then, they were under bonafide belief that pending revenue and civil proceeding touching to subject matter of the disputed land between parties, this Court would take care of their rights.

10. Apparently, petitioners have tendered explanation for delay that they were not properly advised or they were under misconception of law. Aforesaid reasons may be short to explain delay of each and every day, but fact remains that when there are multiple proceedings, particularly, in the tenancy matter, unless party is properly advised, there is possibility of committing default to carry forward the

proceeding decided by the revenue officers. Therefore, reasons as given in the application cannot be termed as improbable or lacking bonafides. At this stage, it is necessary to refer to the observations of the Honourable Supreme Court of India in case of **Collector, Land Acquisition Officer, Anantnag and another Vs. MST. Katiji and others reported in 1987 (2) SCC 107**, wherein Supreme Court has laid down certain principles for dealing with prayer for delay condonations. It is observed that ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Every day's delay need not be explained. However, the doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. It is further observed that, judiciary is respected not on account of

its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

11. In light of aforesaid observations of the Supreme Court unless delay is result of gross negligence or lacks bonafides, it deserves to be condoned. However, while condoning the delay, this Court will have to consider plight of respondents nos.1 and 2. They are claiming to be daughters of Shankar, who was original owner/tenant of the land. Relationship is not disputed whereas petitioners are claiming through the Kashinath, with whom Shankar was residing during his last days and alleged to have executed sale-deed dated 5.1.1962 in his favour. Lateron, Kashinath executed will-deed in favour of Rajendra i.e. petitioner no.1. It appears that litigation as regards to probate in respect of the will and other civil proceedings before revenue authorities were pending between parties. Present proceeding under section 84 of the Bombay Tenancy and Agricultural Lands Act has been instituted by respondent nos.1 and 2 on conclusion of the decision as regards to mutation entry between parties. The fact remains that petitioners are enjoying possession of the property as against claim of respondent nos.1 and 2. In result,

this Court finds it appropriate to condone delay by imposing costs of Rs.1.00 (Rs. One Lakh) upon petitioners as condition precedent to condone the delay of 462 days. Hence, following order.

O R D E R

- i. Writ Petition is **allowed** in terms of prayer clause “B” subject to condition that petitioners deposit costs of Rs.1,00,000/- (Rs. One Lakh) in this Court to be payable to respondent nos.1 and 2 within a period of four weeks from the date of this order.
- ii. On deposit of such costs, application for delay condonation shall be treated as allowed and the learned Maharashtra Revenue Tribunal shall proceed to decide the case no.90/B/2015/Jalgaon on its own merits within a period of (1) one year from the date of deposit of costs.
- iii. On deposit of costs amount, respondent nos.1 and 2 shall be entitled to withdraw the same.
- iv. Writ Petition stands disposed off.

(S. G. CHAPALGAONKAR, J.)

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