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

WRIT PETITION NO. 7453 OF 2024

Nutan Rajiv Pradhan

.. Petitioner

VS.

Ambikaraje Sambhusing Desai

Mahagaonkar and anr.

.. Respondents

Mr. Sandesh Shukla , Mr. Vivek Patil, Mr. Afsar Ansari, Mr. Devesh Sawant, Ms.Sayali Patil i/b Vivek Patil & Associates, for the Petitioner.

Ms. Sanjukta Dey a/w Mr.Yash Dinde and Ms. Rhea Rajesh, for Respondent No.1.

Mr. Anand S. Patil, for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 21, 2025

P.C.:

1. Heard learned counsel for the Petitioner, learned counsel for Respondent No.1 and learned counsel for Respondent No.2.

The challenge in this Petition is to an order dated 22/03/2024 passed by the District Superintendent, Land Survey, Kolhapur (for short 'DSLS') condoning the delay of 8 years in filing the appeal challenging the mutation entry no. 27188 dated

16/03/2015 recorded in favour of the Respondent No.1. It was the case of the Respondent No.1 before the DSLS in Appeal that instead of specifying the area of 11200 sq.ft to which the Petitioner and Respondent No. 2 were entitled to, mutation entry wrongly records the entitlement of the Petitioner and the Respondent No.2 as 26260 sq.ft. To explain the delay of 8 years, the Petitioner stated that the mutation entry dated 31/12/2014 was effected on 16/03/2015. Respondent No.1 was not aware of the mutation entry as they continued to be in peaceful possession of the portion in excess 11200 sq. ft. The Respondent No.1 recently came to know about the mutation entry. It was therefore claimed that delay should be condoned.

2. While condoning the delay, in the impugned order it is observed that the Respondent No.1 has a good case on merits and therefore opportunity should be granted to Respondent No.1 to contest the claim on merits by condoning the delay.

3. Learned counsel for the Petitioner assailing the impugned order submitted that there are hardly any reasons assigned for condoning the delay. It is therefore submitted that even in the

application for condonation of delay, there is hardly any sufficient cause shown to condone such delay. According to learned counsel, the explanation is not at all satisfactory. It is further submitted that merely because the Respondent No.1 has a good case on merits, cannot be a reason to condone the delay unless the explanation for such delay is found to be plausible and satisfactory.

4. On perusal of the impugned order, it is seen that the DSLS was swayed by the fact that the Petitioner has a good case on merits. In all fairness to the learned counsel for the Petitioner, it must be stated that there are hardly any reasons in the impugned order recording a satisfaction accepting the explanation offered by the Respondent No.1 to condone the delay. However, it needs to be kept in mind that the challenge in Appeal is to the revenue entry which has a presumptive value which does not confer title.

5. I have perused the application for condonation of delay. The reason stated is that six months prior to the filing of the Appeal, the Respondent No.1 came to know about the mutation

entry no. 27188. It is stated that the Respondent No.1 continues to be in possession of that part of the land in excess of 11200 sq. ft claimed to have received by the Petitioner under the orders of this Court. I am of the opinion that the Petitioner should be given an opportunity to contest the Appeal on merits having regard to the reasons stated in the application for condonation of delay before DSLS. In the facts and circumstances of the present case, I am not inclined to interfere with the impugned order. The Writ Petition is rejected.

6. Needless to mention that all contentions of the parties on merits are kept open.

7. Further, it needs to be clarified that it is the contention of the learned counsel for the Petitioner that even the area in excess of 11200 sq. ft i.e. a total of 26260 sq.ft. (including 11200 sq.ft) was purchased by the mother of the Petitioner by virtue of various registered sale deeds from time to time. These contentions can always be taken up by the Petitioner before the DSLS. I am not expressing any opinion on the merits of the contentions.

8. It also needs to be mentioned that the observations made by the Appellate Authority in the impugned order on merits are obviously prima facie in nature and the Appeal shall be decided by the Appellate Authority on its own merits and in accordance with law without being influenced by any of the observations made in the impugned order or in this order.

9. Keeping all contentions of the parties open to be raised before the appellate authority, the Petition is rejected. No cost.

(M. S. KARNIK, J.)