

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9731 OF 2024

Dhula S/O Bolhu Kolpe (Decd.) Thr. Lrs.

Appaso Dhulaji Kolpe and Ors.

... Petitioners

Versus

Nana Yashwant Jarad and Ors

... Respondents

Mr. Amit Sale *a/w Shriprasad Veenekar for the Petitioners.*

Mr. S. D. Rayrikar, AGP *for the Respondent Nos.2 to 4 / State.*

Mr. Mohit Khanna *i/b Mr. Pravin B. Patil for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

DATE : 3 FEBRUARY 2025.

P.C. :

1) The Petition challenges order dated 10 April 2024 passed by the Additional Divisional Commissioner, Pune dismissing the Revision filed by Petitioner holding the same as not maintainable.

2) I have heard Mr. Sale, the learned counsel appearing for the Petitioners and Mr. Khanna, the learned counsel appearing for the Respondent No.1 and Mr. Rayrikar, the learned AGP appearing for Respondent Nos. 2 to 4 -State.

3) After having considered the submissions canvassed by the learned counsel appearing for parties and after going through the impugned order dated 10 April 2024, it appears that the Additional Divisional Commissioner has refused to decide merits of the Revision preferred by the Petitioner by recording a solitary reason that the order passed by the Additional Collector merely condones the delay in filing Appeal before the Sub Divisional Officer and that the Sub Divisional Officer is yet to decide the Appeal on merits. What the Petitioner sought to challenge before the Additional Divisional Commissioner was the wisdom of the Additional Collector in condoning delay of 34 years in filing Appeal before the Sub Divisional Officer. The Sub Divisional Officer had thought it appropriate not to exercise his discretion in condoning inordinate delay of 34 long year. The Additional Collector has reversed the finding recorded by the Sub Divisional Officer and has condoned the delay of 34 years by recording reasons. Correctness of those reasons was the subject matter of challenge before the Additional Divisional Commissioner, who ought to have examined the correctness of those reasons on merits while deciding the Revision Application. The Additional Divisional Commissioner has however proceeded to reject the Revision Application by recording an erroneous finding that the Sub Divisional Officer is yet to decide the Appeal on merits. If the order passed by the Additional Divisional Commissioner is permitted to stand, the same would virtually mean that the Petitioner would lose the right of questioning the wisdom of the Additional Collector in condoning the delay forever. In my view, the Additional Divisional Commissioner has committed a jurisdictional error in not deciding the Revision Application filed by the Petitioner on merits, thereby warranting interference by this

Court in exercise of jurisdiction under Article 227 of the Constitution of India.

4) The Petition accordingly succeeds. Order dated 10 April 2024 passed by the Additional Divisional Commissioner is set aside. The Revision is restored on the file of the Additional Divisional Commissioner, who shall proceed to decide the same afresh on merits without being influenced by any of the observations made either in the order dated 10 April 2024 or in the present order. In order to enable the Petitioner to effectively prosecute his Revision application as well as the application for stay filed before the Additional Divisional Commissioner, the interim order granted by this Court on 15 July 2024 shall continue to operate for period of four weeks. The Petitioner would be at liberty to press his application for stay before the Additional Divisional Commissioner. With the above directions, the Writ Petition is partly **allowed and disposed of**, with no order as to costs.

5) All rights and contentions of the parties on merits are expressly kept open.

6) Parties to appear before the Additional Divisional Commissioner on 10 February 2025 and obtain further directions in the matter.

[SANDEEP V. MARNE, J.]