

(1967) 03 GUJ CK 0007
In the Gujarat High Court

Devcahnd Shivram Patel and Another	APPELLANT
Vs	
Smt. Bai Babu and Others	RESPONDENT

Date of Decision : 15-03-1967

Acts Referred:

Bombay Revenue Tribunal Regulations, 1958 — Regulation 9(4)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 79
Limitation Act, 1908 — Section 5, 5

Citation : (1968) 9 GLR 251

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.N. Bhagwati, J.—The short question which arises in this petition is whether a petitioner who prefers a revision application to the Revenue Tribunal against an order of the Collector is entitled to exclusion of the time required for obtaining a certified copy of the order of the Mamlatdar. The order of the Collector in the present case was made on 19th February 1963 and intimation of the order was received by the petitioner on 1st April 1963. The petitioner applied for a certified copy of the order on 8th April 1963 and the certified copy was given to him on 18th April 1963. Now u/s 79 of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Act), the period of limitation provided for an application for revision against the order of the Collector is sixty days from the date of the order and therefore taking the date of intimation of the order of the Collector as the date of the order for computing the period of limitation, the application for revision against the order of the Collector was required to be filed within a period of sixty days from 1st April 1963. But Section 79 provided that the provisions of Sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of a revision application and, therefore, u/s 12 Sub-section (2) of the Indian Limitation Act, the time requisite for obtaining a copy of the order of the Collector which was sought to be revised was liable to be excluded. Excluding this time the petitioner should have preferred an application for revision against the order of the Collector on or before 10th May 1963. But

the petitioner did not do so and the reason given by him was that he was advised by his lawyer that since a certified copy of the order of the Mamlatdar was also required to be filed along with the application for revision, he would be entitled to exclusion of the time required for obtaining a certified copy of the order of the Mamlatdar in computing the period of limitation. It seems that the petitioner had applied for a certified copy of the order of the Mamlatdar on 11th April 1963 and the certified copy was received by him on 20th June 1963. But even after receipt of the certified copy of the order of the Mamlatdar, the petitioner did not immediately prefer an application for revision. It was only on 23rd July 1963 that the petitioner filed an application for revision and the explanation given by the petitioner for the delay from 20th June 1963 to 23rd July 1963 was that he was lying ill from 21st June 1963 upto 19th July 1963 and that he had therefore not been able to file the revision application upto 23rd July 1963. At the hearing of the revision application a preliminary contention was raised on behalf of the respondents, namely, that the revision application was beyond the period of limitation provided u/s 79 of the Act and was therefore liable to be dismissed in limine. The petitioner attempted to give a twofold answer to this contention of the respondents. The first answer was that in computing the period of limitation provided u/s 79 of the Act, the petitioner was entitled to exclusion of the time required for obtaining a certified copy of the order of the Mamlatdar and if this time was excluded, the revision application was within the period of limitation and assuming that the revision application was beyond the period of limitation, the second answer given was that the delay in filing the revision application should be excused u/s 5 of the Indian Limitation Act, 1908, as the petitioner had sufficient cause for not filing the revision application within the period of limitation. Both the answers were found by the Revenue Tribunal to be unsatisfactory and the Revenue Tribunal held that the revision application was beyond the period of limitation since the petitioner was not entitled to exclusion of the time required for obtaining a certified copy of the order of the Mamlatdar and sufficient cause was not made out by the petitioner for not filing the revision application within the period of limitation so as to justify excuse of delay u/s 5 of the Indian Limitation Act, 1908. The Revenue Tribunal in this view of the matter rejected the revision application as barred by limitation u/s 79 of the Act. This view of the Revenue Tribunal is challenged on the present petition.

2. Now out of the two grounds which were urged by the petitioner before the Revenue Tribunal, the second ground, namely, that the petitioner had sufficient cause for not preferring the revision application within the period of limitation and the delay should, therefore, be excused u/s 5 of the Indian Limitation Act, 1908 was not pressed by Mr. C.C. Patel, learned advocate appearing on behalf of the petitioner. In fact he was not in a position to press this ground since the cause shown by the petitioner for not preferring the revision application within the period of limitation was disbelieved by the Revenue Tribunal and the finding of the Revenue Tribunal on this point being a finding of fact, it was not open to the petitioner to challenge it in a petition under Article 227 of the Constitution.

He, therefore, confined his arguments to the first ground, namely, that there was no delay in filing the revision application and the revision application was within time since the time required for obtaining a certified copy of the order of the Mamlatdar was liable to be excluded in computing the period of limitation provided u/s 79 of the Act. He urged that under Regulation 9 Clause (4) of the Bombay Revenue Tribunal Regulations, 1958, an application for revision presented to the Revenue Tribunal was required to be accompanied by the decision or order (either in original or a certified copy) in respect of which the revision application was made and if such decision or order was itself made in appeal against any decision or order, then also by such latter decision or order (either in original or a certified copy) and, therefore, in computing the period of limitation for filing the revision application, the petitioner was entitled not only to exclusion of the time required for obtaining a certified copy of the order of the Collector sought to be revised but also to exclusion of the time required for obtaining a certified copy of the order of the Mamlatdar. The argument was stressed in the form of an interrogation: how could the petitioner prefer the revision application unless he had a certified copy of the order of the Mamlatdar as required under Regulation 9 Clause (4)? And the conclusion sought to be drawn from this argument was that if any time was taken up in obtaining a certified copy of the order of the Mamlatdar without which the revision application could not be preferred, such time should be excluded in computing the period of limitation. Presented in this form the argument does appear to be attractive but a little scrutiny will reveal that it is wholly without substance. Section 79 of the Act provides a period of sixty days as the period of limitation for filing a revision application and the revision application must, therefore, necessarily be filed within a period of sixty days from the date of the order of the Collector. Having regard to the manner in which orders are pronounced by the Collector, the date of the order of the Collector would be the date on which intimation of the order of the Collector is received by the parties and, therefore, the revision application must be filed within a period of sixty days from the date of receipt of intimation of the order of the Collector. But this period of sixty days is not to be mechanically computed from the date of receipt of intimation of the order of the Collector, for Section 79 of the Act says that the provisions of Sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of the revision application and these provisions have, therefore, to be taken into account in computing the period of sixty days. Now Section 4 does not provide for exclusion of time in computing the period of limitation and it has, therefore, no bearing on the present, question. Section 5 permits excuse of delay in filing the revision application if the applicant shows that he had sufficient cause for not filing the revision application within time. This section was relied upon by the petitioner before the Revenue Tribunal but the argument based upon it was not pressed at the hearing of the petition. Sections 12 and 14 provide for exclusion of certain time in computing the period of limitation and the only question which, therefore, requires to be considered is whether the present case falls within any of these sections. Section 14 is admittedly not applicable and no

reliance was placed upon it. The argument of the petitioner was based solely on Section 12 and particularly Sub-section (2) which provides:

In computing the period of limitation prescribed for an appeal, on application for leave to application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

The petitioner contended that since Section 12 Sub-section (2) is nude applicable to the filing of a revision application, the time requisite for obtaining a copy of the order of the Mamlatdar was liable to be excluded in computing the period of limitation prescribed for filing the revision application. This contention, however, ignores the plain language of Section 12(2). Section 12(2) undoubtedly applies to an application for revision against the order of the Collector by virtue of Section 79 of the Act but the time which it permits to be excluded is only the time requisite for obtaining a copy of the order sought to be revised. Where, therefore, a revision application is preferred against an order of the Collector, the time which is liable to be excluded u/s 12(2) is only the time requisite for obtaining the copy of the Collector which is sought to be revised and not the time required for obtaining a certified copy of the order of the Mamlatdar. It is no doubt true that under Regulation 9 Clause (4), the revision application is required to be accompanied not only by a certified copy of the order of the Collector but also by a certified copy of the order of the Mamlatdar, but that does not mean that the time taken up in obtaining a certified copy of the order of the Mamlatdar must be excluded. Whether such time is liable to be excluded or not must depend upon the provisions of Section 79 of the Act and unless the exclusion of such time is justified under any of the sections of the Limitation Act referred to in Section 79, it cannot be claimed by the petitioner. The only section under which the exclusion of such time was sought to be brought was Section 12, but as pointed out above, that section does not permit exclusion of such time and the claim of the petitioner to have such time excluded in computing the period of limitation must, therefore, be rejected. Harsh though it may seem, this conclusion does not in my view involve any practical difficulty in the way of filing of a revision application. The petitioner in filing a revision application has undoubtedly to file along with the revision application a certified copy of the order of the Mamlatdar but he can do so without any difficulty for he would have filed a certified copy of the order of the Mamlatdar along with the appeal to the Collector and he can always obtain such certified copy back from the Collector and file it along with the revision application. Moreover, if there is any difficulty in regaining the certified copy of order of the Mamlatdar from office of the Collector and he has to apply afresh for another certified copy of the Mamlatdar "and that occasions any delay in the filing of the revision application, he can apply for excuse of delay u/s 5 of the Indian Limitation Act, 1908. It may also be pointed out that as a matter of practical proposition the petitioner need not wait for a certified copy of the order of the Mamlatdar before filing the revision application.

Regulation 9 Clause (4) undoubtedly requires that the revision application must be accompanied by a certified copy of the order of the Mamlatdar but that is not a provision which results in rejection of the revision application. The petitioner is given an opportunity under the regulations to file a certified copy of the order of the Mamlatdar subsequently and to set right the lacuna in filing the revision application. The petitioner was, therefore, not entitled to exclusion of the time taken up in obtaining a certified copy of the order of the Mamlatdar, in computing the period of limitation provided for filing the revision application u/s 79 of the Act.

In the result the petition fails and the rule is discharged with costs.