(1975) 08 BOM CK 0019

In the Bombay High Court

Case No : Civil Application No. 212 of 1975

Gendu Biosan Lodhande APPELLANT

Vs

Shamrao Akaji Lokhande RESPONDENT

Date of Decision : 07-08-1975

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 114
Limitation Act, 1908 — Section 12

Citation : AIR 1976 Bom 109

Hon'ble Judges : Lalit, J

Bench : Single Bench

Advocate : A.M. Gordey, for the Appellant; V.M. Kulkarni, for the Respondent

Judgement

1. The respondent filed an application against the petitioner u/s 100 (2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, for a declaration that the petitioner was not a tenant . In these proceedings an order was made on July 26, 1973 , by the Additional Tahsildar, Balpur, holding that the petitioner was not a tenant of the concerned land. This decision was communicated to the parties on July 312, 1973. The petitioner filed an appeal on October 9, 1973 challenging the decision of the Additional Tahsildar. The appeal filed by the petitioner came up for disposal before the Sub-Divisional Officer, Balapur, who by his order dated January 31, 1974. held that the appeal was barred by limitation. He, therefore, disallowed the petitioner''s appeal. The petitioner filed a revision application before the Maharashtra Revenue Tribunal. However, that application also came to be dismissed on September 30 1974. The petitioner has filed the present application challenging that decision.

2. The only question in this matter is whether the appeal filed by the petitioner before the Sub-Divisional Officer, Balapur, was within limitation or not.

3. The dates relevant for the consideration of the question of limitation are these: The decision of the Additional decision was communicated on July 31, 1973. In this petition the petitioner has made a specific averment that he

required 11 days for obtaining the certified copies of the judgment of the Additional Tahsildar. In this return filed on behalf of the respondent, there is no denial of this averment. When the petitioner filed a revision application before the Maharashtra Revenue Tribunal, he had made a specific statement that he required 11 days for obtaining the copies of the Judgment Mr. Gordey, the learned advocate appearing for the petitioner, submits that if these 11 days required for obtaining the copies are excluded, the appeal is well within limitation. Section 114 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act , 1958 provides a period of limitation of 60 days for filing an appeal. It also provides that the provisions of Section 12 of the Limitation act would apply to the filing of an appeal and an application for revision. u/s 12 of the Limitation Act the days required for obtaining certified copies of the judgment against which an appeal is to be filed are excluded while computing the days for limitation. It, therefore, follows that the petitioner is entitled to 11 days. His appeal filed on October 9, 1973 cannot be barred by time. In view of the fact that the statement made by the petitioner in this petition are not denied and there is no other statement made on behalf of the respondent to challenge the statement of the petitioner, it will follow that the petitioner required 11 days for obtaining the copies. The appeal will, therefore, be within limitation.

4. Mr. Kulkarni, the learned advocate for the respondents has argued that the limitation will have to be computed from July 26, 1973, which is the date of decision. He argues that the parties were given intimation of the date of decision and therefore, the limitation would really start from July 26, 1973 . It is not possible to accept this statement of Mr. Kulkarni. The decision was given at Ural, which is not the regular office of the Additional Tahsildar. Even the Sub-Divisional Officer found that as the decision was given at Ural the period of limitation would start from July 31, 1973 which is the date of communication of the result. If the limitation starts from the July 31, 1973 and 11 days are excluded the appeal would be clearly within limitation. Mr. Kulkarni wanted to argue that in the judgment of the Sub-Divisional Officer and also of the Maharashtra Revenue Tribunal there is no reference to the fact that 11 days were required for obtaining the copies. It may be that there is no such reference. However, as already noted above, since I accept the petitioner ''s statement that 11 days were required for obtaining the copies, it has to be held that the appeal filed by the petitioner was within the statutory period of limitation.: It is ,therefore, could not be disallowed by the Sub-Divisional Officer. The decision of the Sub-Divisional Officer and the Maharashtra Revenue Tribunal is, therefore, clearly wrong and will have to be set aside.

5. I , accordingly, set aside the decisions of the Sub-Divisional Officer and the Maharashtra Revenue Tribunal and send the appeal back to the Sub-Divisional Officer, Balapur with a direction that the appeal should be registered. The Sub-Divisional Officer will hear the appeal on merits in accordance with law. The rule is made absolute . In the circumstances of the case, there will be no order as to costs.

6. Application allowed.

