
(2002) 06 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 1716 of 1985

Harishchandra Shankar Thakur

APPELLANT

Vs

Rockey Joseph Rebello and Another

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G
Constitution of India, 1950 — Article 227

Citation : (2002) 6 BomCR 99

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Seema Sarnaik, for the Appellant; Anuj Narula, instructed by Jhanglani Narula and Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—Heard both sides.

2. This writ petition under Article 227 of the Constitution of India takes exception to the order passed by the Maharashtra Revenue Tribunal, Bombay dated 31st January, 1985 in TEN:A: 275 of 1979.

3. Briefly stated the petitioner claims to be the brother of one Sunder Shankar Thakur, respondent No. 5 herein. According to the petitioner, respondent No. 5 had wrongfully surrendered the tenancy in respect of the suit land in favour of respondent Nos. 1 and 2, the landlords. This Court is really not concerned with the factual matrix of the matter, as the short question which arises for consideration in this writ petition is-whether in absence of a formal application for setting aside the abatement, and for condonation of delay in applying for setting aside the abatement accompanying the application for bringing the legal heirs of the deceased respondent in the proceedings which is unquestionably barred by time, can be entertained? As mentioned before, the petitioner challenged the factum of surrender of tenancy by the respondent No. 5 in favour of respondent Nos. 1 and 2 by an application before the tenancy authority. That

authority rejected the claim against which an appeal was preferred by the petitioner, which was also rejected. Against that order, the petitioner preferred revision application before the Maharashtra Revenue Tribunal on 2nd July, 1979. While the said revision application was pending, respondent No. 2, one of the landlords expired on 15th August, 1980. The revision application, however, came up for admission on 21st February, 1981 and the Tribunal was pleased to admit the same. Thereafter, the revision application came up for hearing on 16th July, 1984 on which date, according to the petitioner, for the first time he got the knowledge of death of respondent No. 2. It is the petitioner's case that after making necessary enquiries, he filed the subject application for bringing the heirs of respondent No. 2 on record on 24th July, 1984. Besides filing that application, an affidavit came to be filed by the petitioner before the Tribunal dated 19th December, 1984. Be that as it may, it is undisputed that there is no prayer for setting aside the abatement and for condonation of delay in applying for setting aside the abatement in the subject application filed before the Tribunal or for that matter having filed a formal application for such reliefs although the subject application was filed beyond limitation. In the circumstances, the Tribunal by the impugned order has not only dismissed the said application preferred by the petitioner for bringing the heirs of respondent No. 2 on record, but also the revision application as having abated as against that respondent. This order is the subject-matter of challenge in the present writ petition.

4. It would be apposite to advert to the relevant Rules 25 and 28 of the Bombay Revenue Tribunal Regulations, 1958. The same read thus:

"25. Procedure in case of death of one of several respondents or opponents or of sole respondent or opponent.---If a permanent or opponent dies while the appeal or application is pending, and it cannot be proceeded with unless his legal representative is made a party, to the appeal or application, the appellant or the applicant shall apply to the Tribunal for making the legal representative of such respondent or opponent a party to the appeal or application within ninety days from the date on which the respondent or opponent dies. If the appellant or applicant fails to do so, the appeal or application shall abate as regard the deceased. If the deceased be the sole respondent or opponent, the appeal or application shall be dismissed. Otherwise it shall be proceeded with as regards the remaining respondents or opponents."

"28. When abatement or dismissal under Regulations 24 and 25 may be set aside.---Where an appeal or application has abated or has been dismissed under Regulation 24 or 25, the appellant or a person claiming to be the legal representative of a deceased appellant or applicant, as the case may be, may apply within sixty days from the date of abatement or dismissal of the appeal or application, to have the abatement or dismissal set aside, and if it is proved to the satisfaction of the Tribunal that he was prevented by sufficient cause from applying within time, the abatement or dismissal shall be set aside by the Tribunal and the appeal or application proceeded with:

Provided that an application under this Regulation may be admitted after the aforesaid period of sixty days from the date of abatement or dismissal, where the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

On conjoint reading of the aforesaid Rules, it is evident that on the death of respondent No. 2, the petitioner who was the applicant in the pending revision application was obliged to file an application for bringing the legal heirs of the deceased respondent on record within a period of 90 days from the date on which the deceased respondent had died. Rule 25 expressly provides for the consequences of failure to do so. In that case, the appeal or application shall abate as regard the deceased. Rule 28, however, enables the appellant or applicant to apply for setting aside such abatement within 60 days from the date of abatement of appeal or application subject to showing sufficient cause. The proviso to Rule 28 further provides that when the appellant or applicant fails to avail of the sixty days period provided for making an application for setting aside abatement then he can maintain that application even beyond the prescribed period on satisfying the Tribunal that he had sufficient cause for not making the application within such period. In this case, undisputedly, the petitioner merely filed application praying for bringing legal heirs of deceased respondent on record, which was beyond the time provided under Rule 25 as well as Rule 28. Nonetheless, the same was not accompanied by a formal application or a prayer for setting aside the abatement coupled with request to condone the delay in applying for setting aside abatement. In absence of the latter, in view of the express language of the proviso to Rule 28, the subject application filed by the petitioner could not be "admitted". To overcome this position, the plea taken by the petitioner is that the petitioner had no knowledge about the death of respondent No. 2 and therefore, he could not file the application within the prescribed time. In such a case, the applicant could have availed of Rule 28 which enables filing of an application for bringing the legal representatives on record beyond a period of 90 days from the date of death of the deceased respondent. But in that case, the applicant was obliged to set out sufficient cause which prevented him from taking out the requisite application within the prescribed time. This rule, however, provides that the application for setting aside abatement in any case will have to be filed within 60 days from the date of abatement of the appeal or application. And in case there is delay, then the applicant is required to pray for condonation of delay in applying for setting aside abatement by showing sufficient cause therefor .

5. In the present case, the revision stood abated on expiry of 90 days from 15th August, 1980, i.e. the date on which the respondent No. 2 died. The petitioner was required to file application to set aside abatement within sixty days from the date of abatement and in any case apply for condonation of delay in applying for setting aside abatement subject to showing sufficient cause. The petitioner has neither prayed nor applied for setting aside the abatement or for condonation of delay in applying for setting aside the abatement. In such a case the application

filed simpliciter for the relief of bringing the legal heirs of deceased respondent on record cannot be said to be maintainable or admitted. The Tribunal has rightly adverted to the decision of the Apex Court reported in Union of India (UOI) Vs. Ram Charan and Others, , and in particular paragraphs 10, 12 and 14 thereof to reject the application for substitution preferred by the petitioner and dismissed the revision application having abated as against respondent No. 2. On this count alone no fault can be found with a conclusion reached by the Tribunal of rejecting the petitioner's application.

6. The learned Counsel for the petitioner, relied upon a decision of the Apex Court Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, . This decision, to my mind, however, is an authority on the proposition as to what is the meaning of expression "sufficient cause". This authority is, therefore, inapplicable to the matter in issue where the petitioner has not filed application for setting aside abatement and for condoning the delay in applying for setting aside the abatement.

7. In this view of the matter, writ petition fails and the same is dismissed with costs. Rule is discharged.

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