

(2005) 07 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 6571 of 2004

Nilesh Vijay Deshmukh and Another

APPELLANT

Vs

Mathurabai Bhikanrao Deshmukh deceased through LRs.
Aruna Vijayrao Deshmukh and Others

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Maharashtra Land Revenue Code, 1966 — Section 247, 257, 258, 258(1), 258(4)

Citation : (2005) 6 BomCR 909 : (2005) 4 MhLj 481

Hon'ble Judges : D.S. Zoting, J

Bench : Single Bench

Advocate : G.V. Wani, for the Appellant; R.R. Mantri, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Zoting, J.—Heard Shri G. V. Wani, Advocate for the petitioner and Shri R. R. Mantri, Advocate for the respondent.

2. Rule. Rule made returnable forthwith. With consent, taken up forthwith for hearing.

3. It is to be noted that the respondent Mathurabai died during pendency of this petition. The respondents Nos. 1(A) to 1(E) are the legal

representatives of the original respondent. By this petition, the present petitioners are challenging the order dated 17-9-2004 passed by the

Additional Commissioner, Nasik Division, Nasik in RTS/Review/187/04 condoning the delay in preferring the review petition by the deceased

Mathurabai.

4. Relevant facts are as under :

Mutation Entry No. 20740 came to be effected in favour of the present petitioner.

Being aggrieved by the said entry, deceased Mathurabai filed an appeal u/s 247 of the Maharashtra Land Revenue Code (hereinafter referred to as the Code) before the Sub Divisional Officer, Pachora which was decided on 17-4-2000 and the appeal was allowed. Being aggrieved by the said order, the present petitioner approached the Additional Collector, Jalgaon. However, the said proceedings were dismissed. The petitioner, being aggrieved, filed revision u/s 257 of the Code before the Additional Commissioner, Nasik Division, Nasik. The Additional Commissioner heard the matter on 13-1-2004 and passed the order on 16-1-2004. On 13-1-2004 i.e. at the time of hearing of the said revision, respondent Mathurabai was absent. Thereafter Mathurabai filed two applications dated 31-1-2004 and 24-2-2004 for recall of the said order. Along with the application dated 24-2-2004, she has enclosed the notice dated 26-12-2003 which was received by Mathurabai on 16-1-2004 and as such, she could not remain present on the date of hearing of the revision i.e. on 13-1-2004.

5. When the second application was filed by her on 24-2-2004, she was made to understand that the application for recall of the order cannot be entertained and at the most, review petition can be filed in the said matter. In the month of July, 2004, Mathurabai preferred the review petition u/s 258 of the Code along with an application for condonation of delay. After hearing both the parties, the Additional Commissioner condoned the delay in filing the review petition. In the order, the learned Additional Commissioner has observed that though the revision was posted on 13-1-2004, Mathurabai received the notice on 16-1-2004. Considering the facts and circumstances, the delay has been condoned by the Additional Commissioner. Aggrieved thereby, the present petitioner has challenged the said order in this writ petition.

6. It is contended on behalf of the petitioner that as per the provisions of clause (4) of sub-section (1) of Section 258 of the Code, no application for review can be entertained beyond the period of 90 days from the date of passing of the order. It is submitted that the order came to be passed on 16-1-2004. As the review petition is not filed within 90 days from the date of order, it is barred by limitation. It is further submitted that there is no specific provision in the Code for condonation of delay and as such, the

Commissioner has erred in law in condoning the delay.

7. As against this, Shri Mantri learned counsel for the respondent submits that there is no express bar in the Code thereby excluding the

"application for review" beyond the period of limitation as provided under the Limitation Act. He submits that in view of the provisions of Section

29 of the Limitation Act, the respondent is entitled to file application for condonation of delay. Sub-section (2) of Section 29 of the Limitation Act

is as under :

Section 29(2): Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period

prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the

purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained

in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

8. The scope of Section 29 is discussed by the Apex Court in the case of Mangu Ram Vs. Municipal Corporation of Delhi, . While dealing with

the said provision, the Supreme Court has observed that:

There is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2) is concerned.

Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose

of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the

application within the period of limitation.

In the said case, it is also pointed out by the Apex Court that it is only if the special or local law expressly excludes the applicability of Section 5

that it would stand displaced.

9. Applying the principle laid down by the Supreme Court, the irresistible conclusion is that where there is no express bar under the Act excluding

operation of the Limitation Act, if application for condonation of delay is filed by the party after coming into force the Limitation Act, 1963, Section

5 would be available to the said party, if he could show that he had sufficient cause for not preferring the application within the time limit prescribed

u/s 258(4) of the Code. In view of this well settled legal provision, there appears no substance in the contention raised by the learned counsel for

the petitioners and as such, it is rejected.

10. Now coming to the second contention as regards the sufficient cause for condoning the delay, learned counsel for the petitioners has

contended that though the authority had informed Mathurabai that the application for recall of order is not tenable, she waited for a considerable

time and filed application for review in the month of July. Thus, according to him, the delay is not sufficiently explained by the present respondent.

In this regard, it is to be noted that while considering the application for condonation of delay, sufficient cause needs to be construed liberally and

pragmatic approach is required to be taken rather than pedantic, as observed in the case of Collector, Land Acquisition, Anantnag and Another

Vs. Mst. Katiji and Others, . In this case, the Supreme Court has issued guidelines in para No.3 of the judgment which are as under:

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act, 1963 in order to enable the Courts

to do substantial justice to parties by disposing of matters on ""merits"". The expression ""sufficient cause"" employed by the legislature is adequately

elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence

of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court.

But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on

principle as it is realised that:

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As

against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. ""Every day's delay must be explained"", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's

delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

11. Looking to the facts of the present matter in the light of the above guidelines laid down by the Apex Court, there cannot be any doubt in the

present matter that the revision was posted for hearing on 13-1-2004. Respondent Mathurabai received notice on 16-1-2004. She made two

applications for "recall of the order which was passed in her absence without hearing her." Her applications were dated 31-1-2003 and 20-4-

2004. The Additional Commissioner in his order dated 17-9-2004 observed that the respondent was informed vide letter dated 19-4-2004 to file

a review petition. The respondent filed review petition on 12-7-2004 i.e. within 90 days from the date of the said letter (from the date of

knowledge). Thus considering the facts and circumstances, there cannot be any doubt that the respondent has made out a good and sufficient case

for condonation of delay. Moreover, it is to be noted that she was not likely to be benefited on account of such delay. The Commissioner was well

justified in condoning the delay.

12. The petition challenging the said order is devoid of any substance. It deserves to be dismissed and it is dismissed accordingly. Rule discharged.

13. Needless to mention that the interim relief dated 20th October, 2004 stands vacated. Both the parties are directed to appear before the

Additional Commissioner, Nasik Division, Nasik on 17-8-2005.