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**BEFORE THE DESIGNATED MEMBER, MAHARASHTRA REVENUE  
TRIBUNAL, BENCH AT PUNE.**

Presided over by : V.B.Kulkarni, Designated Member

No.TNC/REV/266/B/2009/P

Kisan Savla Navghane

D/H—

Yashwant Kisan Navghane

D/H—

Smt.Laxmi Yashwant Navghane & otrs.,

R/o.Brahamanwadi (Sate),

Vadgaon-Mawal, Pune-412 106.

.....Applicants

**VS.**

Shri.Balu Shankar Navghane & otrs.,  
R/o.Bhisegaon, Po.Gundge, Tal.Karjat,  
Dist.Raigad.

.....Respondents

Revision Application U/s 76 of  
the B.T.& A.L.Act,1948.

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.  
Adv. Shri Badale for Respondents

**DATED:- 16<sup>th</sup> JANUARY, 2020**

**JUDGMENT**

Being aggrieved by the common judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Sub Dn., Mawal (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.14/2004 & 28/2004. dt.29/12/2008, the aggrieved party has preferred the present revision application by invoking the provisions of Sec.76 of

B.T.& A.L.Act, 1948 (hereinafter referred "the Act"), on the grounds more particularly set out in revision application.

2. After the receipt of record & proceedings from lower court, except the R&P of tenancy case No. क्र.तमक/वशी/६०२/२००२, which is lying at the office of MRT Office at Mumbai, the remaining record has been received by this Tribunal. After considering the non-availability of the R&P from file No. क्र.तमक/वशी/६०२/२००२, with consent of both the Ld.advocates, the Tribunal has proceeded to decide the matter on the basis of available record on merit.

3. I heard Ld.Adv.Shri.J.P.Dhaytadak for the Revision Petitioner & Ld.Adv.Shri.Badale for the Respondents. After perusing the judgment & order passed by Ld.appellate tribunal in both the appeals referred supra, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u>Points</u>	<u>Findings</u>
1. Whether the judgment & order passed by Ld.appellate tribunal in the impugned order through common judgment is proper & legal?	Negative
2. If not, whether it suffers from any jurisdictional error for deciding the appeal on merit?	Yes. As per final order

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Reasons

4. **Point No.1&2:** During the course of arguments and before touching to the merits involved in the matter, both the Ld.advocates for the respective parties have frankly made a statement at bar that unfortunately while presenting both the appeals, the appellant has failed to submit the "delay condonation application" u/s 5 of Limitation Act accompanied with the memo of appeal. After perusing both the orders passed by Ld.trial tribunal, it has become evident that first order passed u/s 32M of the Act, is of 20/3/1986 & another order is passed in the year 2004, which is in form of correction. Parties have not disputed the fact that both the orders which were challenged before the Ld.appellate tribunal were suffers from substantial delay and the procedural error has been committed by the appellant or their advocate, failing in their duty to submit the memo of appeal accompanied with "delay condonation application". In the given set of facts, Ld.Adv.Shri.J.P.Dhaytadak for the Revision Petitioner rightly called my attention towards the proposition of Law laid down by our Hon'ble High Court, in the case of ***Shankar Rangnekar Vs. Narayan Sawant, 2013 (1) MhLJ-706.***

The proposition of law laid down in the above precedent can be summarized as under-

*"The Tribunal has to first consider condonation of delay and thereafter to consider the matter on merits, if delay is condoned.*

*Consideration of matter on merits and prayer for condonation of delay simultaneously is not just and proper".*

5. I have gone through the above precedent and the proposition of Law laid down therein thoroughly. The Hon'ble High Court has ruled that, if the Ld.appellate tribunal has proceeded to decide the appeal on merit without deciding the "delay condonation application" or without condoning the delay caused for preferring appeal, that would amount a jurisdictional error. In short, Ld.appellate tribunal has failed to consider the statutory provisions of Law of Limitation before deciding the appeal on merit. After all, it is well settled principle of law that the appellate court is ever the last fact finding court and revisional court has very limited powers to re-appreciate the documentary as well as oral evidence while entertaining the revision. Therefore, if the decision of appeal suffers from any jurisdictional error, the party may loose its statutory right of first appeal and to get the finding on fact as well as Law by competent appellate authority on merit. In short, in the given set of facts, when the appellant / Respondents have failed to submit the memo of appeal against the impugned order accompanied with "delay condonation application", the order passed by Ld.appellate tribunal without deciding the "delay condonation application" is a jurisdictional error and therefore, the order under revision does not sustain in eye of Law. With these observations, I

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answer the 'Point No.1 in negative & Point.2 as per final order' and proceed to pass the following order.

### ORDER

The revision application is partly allowed.

The common judgment & passed by Ld.appellate tribunal in Tenancy Appeal No.14/2004 & 28/2004. dt.29/12/2008, is hereby set aside.

Matter is remanded for re-trial of the proceedings.

(i) Appellant / Respondent is at liberty to submit the "delay condonation application" accompanied with the respective appeals, (ii)the Ld.appellate tribunal is hereby directed to decide the "delay condonation application" on its own merit at first, and only in the event if the delay is condoned the appeals be decided on merit accordingly.

No order as to costs.

R&P received from the SDO Mawal & partial R&P received from Tahsildar Mawal be sent to SDO Mawal immediately.

Matter being petty old the Ld.appellate tribunal is hereby directed to decide the "delay condonation application" within six months from the receipt of record.

Intimation of this order be sent to both the parties & lower tribunals.

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