

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

Presided over by : V.B.Kulkarni, Member (Judicial)

No.NS/VIII/2/2017

Shri Laxman @ Dhau Malu Jarag,
R/o.Kadve Bk. Malwadi,
Tal.Patan, Dist.Satara.

.....Applicant

VS.

Govind Gopal Bhudake

D/H—

Shri.Dattu Govinda More & otrs.,
R/o.Bhurkewadi, Tal.Patan, Dist.Satara.

.....Respondents

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

Appearance :- Adv. Shri U.N.Shinde for Revision Applicant
Adv. Shri G.T.Jadhav for Respondents

DATE:- 27th FEBRUARY, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Patan Sub Dn.,Patan (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.5/2015, dt.11/8/2017, the aggrieved landlord 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 R&P from both the tribunals below, I heard Ld.Adv.Shri.U.N.Shinde for the applicant and Ld.Adv.Shri.G.T.Jadhav for the Respondent / tenant. After perusing R&P received from both the tribunals below and arguments advanced by respective advocates, it has become evident that, the impugned order is passed by the Ld.appellate tribunal, rejecting the condonation of delay u/s of Limitation Act, and thereby, given conformity to the order passed by Ld.trial tribunal, in the proceeding of tenancy file No.32G/486/67. After considering the submissions at length by respective advocates, it has become evident that, the Ld.advocate for the revision petitioner by keeping reliance on following two precedents strongly submits that the Ld.trial tribunal, while passing the order u/s 32G of the Act, has ignored the mandate of Law. No legal proceedings initiated against the landlord and effective notice of the proceeding was not issued to the landlord. Therefore, the entire proceeding is nullity in eye of Law. Therefore, Law of Limitation is either not applicable and if at all delay is caused to be counted it should not be applied strictly for the condonation of delay. In support of his submissions Adv.Shri.Shinde kept his reliance on the following precedents.

- (i) Collector, Anantnag / Katiji, AIR 1987-SC-1353
- (ii) Madhav Khuspe / Sundrabai Phadtare, 1978 MhLJ-289

3. As against this Adv.Shri.Jadhav, strongly submitted that the applicant was diligent since beginning. He was duly served with effective notice and represented through his mother. Not only that, but sufficient documentary

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evidence was already available with the Ld.trial tribunal, so as to consider the majority of the landlord on the date of passing the order. Not only that, but by keeping reliance on the documents such as, adoption-deed, statement of the applicant in different proceedings and the observations made by then ALT in the original proceedings, he has strongly submitted that the fact of majority of the landlord on the date of the proceedings has been sufficiently proved. Therefore, the proceedings are conducted in legal form with effective notice to the landlord. Therefore, there is no illegality at the face of record, so as to ignore the mandate of Law of limitation. On this touchtone, he has kept his reliance on the following precedents laid down by our Hon'ble Supreme Court.

(i) *Brijesh Kumar Vs. State of Haryana, AIR 2014-SC-1612*

(ii) *2010(6)-SCC-786*

(iii) *Basavraj / SLAO, 2014-SC-746*

4. By keeping reliance on the above precedents Ld.advocate for the respondents strongly submitted that bear perusal of the entire application accompanied with the affidavit, it amply suggests that though the delay was of 48 years the application was moved only for condonation of 40 years, that indicates that the applicant has not drafted the application diligently and failed to give daywise explanation about the delay caused. Therefore, as the delay is not properly explained without giving "sufficient cause" in support thereof, the order passed by tribunal below is proper and correct. Therefore, by keeping in mind the limitations of this Tribunal to interfere in the order of

Ld.appellate tribunal, the revision is devoid with merits and therefore, prayed for dismissal thereof.

5. After considering the submissions made at length from both the sides 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 the Ld.appellate tribunal, is proper, correct and legal, so as to sustain it on the point of forecorners of Law?	Negative
2. If not, whether it calls for interference therein within the limited revisional jurisdiction of this Tribunal as per Sec.76 of the Act?	Yes, As per final order

Reasons

6. **Point No.1&2:** Before commenting the factual aspects involved in the matter, I would like to refer certain documentary evidence which has been placed on record and was available before the Ld.appellate tribunal and i.e. in form of judgment & order passed by the then ALT in tenancy file No.32G/486/Tarale. After perusing the record submitted by the Ld.trial tribunal, it has become evident that, the proceeding being quite old, the documents and R&P, except the judgment passed by the tribunal other papers are destroyed and therefore, only original judgment passed by the tribunal made available even to the Ld.appellate tribunal as a part of record.

After perusing the original judgment passed in case No.32G/486/Tarale, it has become evident that, the judgment has been passed in a prescribed form and

by using the format prescribed under the Rules and Format prescribed under the Act, for passing the orders u/s 5 of Mamlatdar's Courts Act, 1906. In the Nomenclature of the parties to the proceeding, the landlord- Laxman Malu Jarag, shown as minor under guardianship of Smt.Kondabai Malu Jarag, amply suggests that the landlord was represented through his natural guardian Kondabai. Therefore, notice against the landlord was issued and presumed to be served to the guardian of the minor to whom the notice was issued. In short, the proceedings has been initiated and conducted by showing the landlord as minor. Therefore, there was no possibility to issue individual notice to the landlord Laxman Malu Jarag.

7. Now, after perusing the observations made in the judgment, it has become evident that, then Mamlatdar has observed that the part of deposition made by the mother of the landlord, wherein she might have admitted the age of landlord upto 20 years and therefore, the tribunal has recorded the finding that the landlord was not minor, contrary to these above observations and conduct of revision petitioner before the Ld.trial tribunal. For the first time before this Tribunal, the revision petitioner has produced Notarized copy of Birth & Death extracts in form No.14, wherein name of the child born shown as "Dhau Vithu Kharat". His date of death shown in the extracts speaks volume that it was 2/10/1950. After considering this date of birth, evidently it has become minutely clear that even on the date of passing of order by the Ld.trial tribunal, the landlord was minor.

8. Now, while considering the scope and evidentially value of all these documents, I am of the view that for the purpose of condonation of delay, this document ought to have been presented before the Ld.appellate tribunal, but not done so. Still then, fact remains unanswered that If the evidentially value of these documents has to be looked into and examined, It was necessary for this Tribunal to give finding about the relevancy thereof while deciding the revision. On this touchtone, it is pertinent to note here that, the fact of adoption of the present applicant in the family of Kondabai, after the death of original landlord is not at all in dispute, but he was made as a party to the original proceeding, but by showing minor, that means fact of birth of the applicant in his natural family, his adoption in the another family and subsequent entry of title in his favour during the lifetime of widow, all are unchallenged. Therefore, it has become evident that, the applicant was minor when the original proceeding was initiated before the Ld.trial tribunal and decided on the particular date, that means throughout the trial before the ALT, the landlord was minor and nothing more. Under these circumstances, I would like to state that the entire proceedings tried, conducted and decided during the minority of the landlord and recording the conclusion as the major are persay void and the act of the Ld.appellate tribunal refusing to use his judicial discretion to condone the delay by taking the note of illegality at the face of record makes it easy for me to invoke the revisional jurisdiction to correct the illegality at the face of record committed by the Ld.appellate tribunal.

9. At this juncture I would like to consider the Law laid down by our Hon'ble Supreme Court, in the precedents referred supra on behalf of the respondents. After going through all these three precedents, It has become evident that, the Hon'ble Supreme Court, has laid down as many as 15 guidelines while considering the applications on the point of limitation, strict requirement of drafting and explanation of delay caused by interpreting the term "*sufficient cause*" strictly. Even otherwise in view of the facts quoted supra, it has become evident that, the order under appeal Ld.appellate tribunal was persay illegal was either passed against the minor or against the landlord without effective service of notice to him. Therefore, entire proceedings suffers from illegality. Therefore, I am of the view that the principle laid down in the above precedents cannot be strictly applicable to the case at hand.

10. On the contrary the precedent referred by Ld.advocate for the revision petitioner quoted supra certainly guides me to hold that, herein this case though the period of delay caused is unreasonable, still then by keeping in mind the proposition of Law laid down by our Hon'ble High Court, in the case of *Ashok / Nagpur, quoted supra* I am of the view that, herein this case refusal to invoke the judicial discretion to condone the delay in the present case will continue the illegal order on record which is ever passed against the minor during his minority. The proposition of Law laid down by our Hon'ble High Court, in the above precedent certainly helps me to hold that, herein this

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case Ld.appellate tribunal has committed error of jurisdiction while refusing to condone the delay by taking hyper technical approach and being impressed by long period of delay caused for preferring appeal. Herein this case, if the order is passed against the minor during his minority recording the finding against him to such extent that he was major at the material time is a matter of enquiry and therefore, order passed by Ld.appellate tribunal does not sustain in eye of Law. If the power to condone the delay is not used judiciously the illegal thing would remain on record without judicial decision. On this touchtone, I may keep reliance on the following precedents laid down by our Hon'ble High Court.

- (i) *Ashok Vs. Nagpur Improvement Trust, Nagpur, 2004(3) MhLJ-659*
- (ii) *Dnyandev Vs. Sunita, 2013(4) MhLJ-957*

The proposition of law laid down therein can be summarized as under :-

"In the matter of "condonation of delay" the Court has to see, as to what shall get condoned if the delay is not condoned. It will have to be seen, what get condoned, is illegality, if delay is not condoned, which certainly cannot be allowed".

11. I have gone through the above precedents very carefully. By keeping reliance thereon I held that the order passed by Ld.appellate tribunal refusing to use judicial discretion is nullity and deserves to be set aside. Therefore, by invoking revisional jurisdiction as per Sec.76(1)(a) of the Act, I am of the view that the order deserves to be set aside with directions to the Ld.appellate tribunal to decide the matter as afresh as the delay caused in preferring an appeal is condoned by this Tribunal. With these observations, I answer the

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

ORDER

The revision application is allowed.

The judgment & order passed by Ld.appellate tribunal, refusing to condone the delay for preferring the appeal against the order of Ld.trial tribunal, is hereby set aside.

Delay caused in preferring the Tenancy Appeal No.2/2017 against the impugned order of ALT is hereby condoned.

Matter is remanded to the Ld.appellate tribunal to re-hear the matter as afresh without being influenced by the observations made by this Tribunal, after considering all relevant documentary evidence, which would be placed before him from both the sides in support of their rival contentions. The point of admissibility of birth & death extract produced by the revision petitioner before this Tribunal, is also kept open for the Ld.appellate tribunal while deciding the appeal as afresh.

No order as to costs.

R&P received from the tribunals below be sent back immediately.

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