(1968) 09 BOM CK 0018

Bombay High Court

Case No: Spl. C. Application No. 1022 of 1966

Jagpalsingh		APPELLANT
	Vs	
Digamber and others		RESPONDENT

Date of Decision: Sept. 13, 1968

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Limitation Act, 1963 - Section 12, 5

Citation: (1969) MhLj 347

Hon'ble Judges: N.L. Abhyankar, J

Bench: Single Bench

Advocate: S.V. Natu and N.S. Munshi, for the Appellant; M.S. Agarwal for Respondents Nos. 1 to 3 and Respondent No. 4 was not represented, for the Respondent

Final Decision: Allowed

Judgement

N.L. Abhyankar, J.

The petitioner, who is the landholder, invokes the jurisdiction of this Court under Article 227 of the Constitution, challenging an order of the Maharashtra Revenue Tribunal holding that his revision application against the order of the Special Deputy Collector in appeal, which order in its turn reversed the order of the Naib-Tahsildar in favour of the petitioner, was barred by limitation and therefore rejected.

2. The petitioner claims to be the landholder of field survey No. 18/2, area 24 acres, 30 gunthas of Koltek, tahsil Amravati. He filed an application on 27-3-1961 for possession of land having previously given a notice u/s 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. The petitioner wanted the land for personal cultivation. The respondent Tulsiram who was originally impleaded as the respondent died on 17-10-1961 and in his place the present respondents, Digambar and Ambadas sons of Tulsiram and Deokabai wife of Tulsiram, were brought on record at their instance. The respondents resisted the application on

several grounds, one of the grounds being that the petitioner had claimed the right to terminate the lease of the field on the ground that the field had been allotted to him in a family partition on 26-6-1959. The Naib-Tahsildar, on a consideration of the material before him, held that the petitioner was entitled to possession of one-half area of land from survey No. 18/2. The application to that extent was therefore allowed.

3. Against this order which was passed on 9-9-1963, the respondents preferred an appeal. It seems to have been argued before the appellate authority that the claim of the petitioner was hit by the provisions of section 38 (7) of the new Tenancy Act and the application was therefore not tenable. The appellate authority, in a short order, disposed of the appeal on its view of the effect of sub-section (7) of section 38 of the new Tenancy Act. It was held that inasmuch as the petitioner had acquired the field as a result of the partition dated 26-6-1959, he had no right to terminate the tenancy of the respondents. The order of the Naib-Tahsildar was set aside and the application of the petitioner was dismissed. This order was passed on 30-6-1964.

4. Against this order, the petitioner preferred a revision application u/s 111 of the new Tenancy Act The application was presented through counsel on 22-9-1964. It is common ground that this application was accompanied by a certified copy of the order of the appellate authority but not also with a certified copy of the order of the Naib-Tahsildar.

5. The Deputy Registrar of the Revenue Tribunal issued a notice to the counsel for the petitioner who had presented the revision application calling upon him to appear before him on 9-10-1964. There is a printed pro forma on record under the signature of the Deputy Registrar dated 9 10-1964 showing that the Deputy Registrar found certain defects and one of the defects was that a certified copy of the Naib-Tahsildar''s order was not filed along with the revision application- The order states that the revision application involves defects and the revision application was therefore to be returned. It however appears that the actual order directing the petitioner through his counsel that the revision application may be re-filed within a period of 15 days from the date of the receipt of this letter after curing the defects which have been pointed out was passed on 23-9-1964. The revision papers however seem to have been actually returned on 28-10-1964.

6. It i.e. the case of the petitioner that he had applied for a certified copy of the order of the Naib-Tahsildar as far back as 9-12-1963 through his counsel at Amravati. But the copy was not received till the revision papers were returned to his counsel at Nagpur. He waited for some more time for the receipt of the copy of the order of the Naib-Tahsildar but ultimately made a fresh application on 26-3-1965 through post for a certified copy of the order of the Naib-Tahsildar again. The copy was dispatched on 30-10-1905 and purports to be received on 1-11-1965 at Nagpur and the revision was re-presented along with the certified copy on 9-11-1965.

7. On 17-11-1965 the Deputy Registrar of the Tribunal has noted in the order-sheet that the revision application should be put up before the Bench for orders on admission on 9-12-1965. The counsel for the petitioner was informed of this date also. On 9-12-1965 it appears the respondents were also represented by their counsel and opposed the admission of the revision application on the ground that it was time-barred. To this objection, it was urged on behalf of the petitioner through his counsel that the delay in re-filing the revision application was due to the fact that the petitioner had twice applied for a certified copy of the order of the Naib-Tahsildar and that while on his first application he was informed that the record was not traceable, a copy was supplied on his second application late. The petitioner was directed to file an application with affidavit, stating the grounds for delay within a month with necessary documents and the respondents were to file a reply, and subject to consideration of limitation, the revision application which was already admitted was fixed for hearing parties on 10-2-1966.

8. On this date, the counsel for the petitioner filed a certified copy of the application dated 9-12-1963 which his counsel Mr Kadu had made at Amravati. The respondents filed a reply to the application for condoning the delay. The matter was ultimately heard on 29-7-1966 and the Tribunal dismissed the revision application as time-barred. It is this order which is under challenge in this petition.

9. The Tribunal has found that the revision application when originally filed on 22-9-1964 was within limitation. But the papers were returned on 28-10-1964 and the revision application was re-filed on 9-11-1965, and the question that was posed for decision was whether this period from 28-10-1964 to 9-11-1965 should be condoned. The Tribunal has observed that the petitioner should have filed an application for a copy of the Naib-Tahsildar''s order about the same time when he applied for a copy of the order of the Deputy Collector for filing the revision application before the Tribunal. It is also observed that the petitioner did not file the application till long after 28-10-1964 when the papers were returned by the Deputy Registrar of the Tribunal. When the copy was received by the petitioner on 30-10-1965, the Tribunal has observed that the revision papers were not filed till 9-11-1965, and this delay of nine days has also not been explained.

10. In paragraph 6 of its order, the Tribunal has observed:

It is thus clear that the revision application was re-filed after the inordinate delay. Part of it is not properly explained in the applicant''s affidavit. An instance of this is the period from 30-10-65 to 9-11-65, Another instance is when the revision application had been returned to the applicant on 28-10-64, a copy of the Naib-Tahsildar''s order had not been applied for till 28-3-65.

The Tribunal has further observed that the petitioner could not claim to have been diligent throughout the period from 28-10-1964 till 9-11-1965 when the revision application was re-filed.

11. In support of this petition, it is contended that the Tribunal has acted in excess of its jurisdiction in rejecting the revision application as barred by limitation. It is contended that the period of limitation within which the revision application has to be filed before the Tribunal under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, is fixed by statute u/s 114 of the Act, and that period is 60 days from the date of the order of the Tahsildar or the Collector as the case may be. In this case, it is the order of the Collector which is revisable by the Tribunal in exercise of its powers u/s 111 (1) of the Tenancy Act. There is no specific provision in the Act enabling the Tribunal directly to exercise its revisional power over the orders of the Tahsildar or the Mamlatdar in the first instance. The revisional powers are so provided that they operate only on the orders of the Collector though that order may itself come to be passed in exercise of its appellate jurisdiction u/s 107 of the Tenancy Act. It is further pointed out that section 114 does not require a copy of the order sought to be revised to be filed. In contradistinction with this, attention was invited to sub section (2) of section 107 which speaks of appeals against the order of the Tahsildar or the Tribunal to be filed before the Collector. That sub-section says that every petition for an appeal under sub-section (1) shall be in the prescribed form and shall be accompanied by a certified copy of the order to which objection is made unless the production of such copy is dispensed with. It is therefore contended that the statute providing for revision not having made it incumbent on the applicant to file a certified copy, or, for the matter of that, a copy of any order, the Tribunal was not justified in making the right of revision given to the petitioner more onerous on account of the rules framed u/s ill (2) of the Tenancy Act prescribing the procedure to be followed by the Revenue Tribunal in deciding applications u/s 111. Alternatively, it is contended that even under the rules so framed, there is no provision entitling the Tribunal or any authority to dismiss an application for revision if it is otherwise filed in time to reject it on the ground that any other documents or papers which are required to accompany the revision application by virtue of these rules came to be filed at a later date, that is, beyond the period of limitation prescribed by section 114 of the Tenancy Act.

12. The learned counsel for the respondents has generally supported the order of the Tribunal. His contention is that if the rules require an application for revision to be filed in the prescribed form containing the prescribed details and to be accompanied by prescribed documents, failure to file the application in conformity with the rules amounts to failure to file the revision application at all. It is therefore urged that the revision should be treated to be filed only when all the papers required to accompany the revision application come to be filed, and if such finding is beyond the period of limitation fixed by law, then unless the applicant satisfied the Court that there was sufficient cause for not filing the revision application in accordance with the rules, the revision application must fail on the ground of limitation.

13. Before examining the rival contentions, it is necessary to notice what the rules made by the State Government in exercise of the powers u/s 111 (2) of the New Tenancy Act actually require a litigant to do when he has to file a revision application u/s 114 of that Act. It appears that the existence of these rules framed as far back as January 1960 and published in the Bombay Government Gazette Extraordinary 19-1-1960 is not known sufficiently even to the counsel practising before the Tribunal or this Court much less to the litigants. Arguments proceeded up to a stage on the footing that there are no such rules and that the Tribunal purported to follow the Regulations made under the Bombay Revenue Tribunals Act. The learned Standing counsel appointed to appear before the Tribunal however assisted in finding out the relevant rules and a copy of the Gazette containing the rules was made available at the hearing at a later stage. These rules are called the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Bombay Revenue Tribunal Procedure Rules, 1959. Chapter III of these rules makes provision for presentation, registration and admission of applications. The rules relevant for our consideration are rules 9 and 11. Under rule 9 an application for revision may be presented in person by the applicant or by his duly appointed agent or lawyer to the Registrar or sent to him by post. There are certain requirements of sub-rule (2) of rule 9 which are prescribed to be observed, such as writing of the application in ink in legible hand, specification of the name and address of the applicant and the opponent, specification of the provisions of law under which it is filed, the grounds of application and the relief claimed. Under clause (f) of sub-rule (2) of rule 9, if the application is filed after the expiry of the period of limitation, then the applicant has to state how the applicant claims that it is in time. The Registrar is enjoined not to accept any application unless it complies with the requirements laid down in clauses (a) to (g) of sub-rule (2) of rule 9. Then follows sub-rule (4) which is as follows:
Every application presented under sub-rule (I) shall be accompanied by-

(a) the decision or order (either in original or a certified copy thereof) in respect of which such application is made;

(b) if the decision or order referred to in clause (a) is itself made in appeal against any decision or order, then also such latter decision or order either in. original or a certified copy thereof; and

(e) as many copies thereof legibly written in ink or typewritten as there are opponents.

14. The original rule 11 of these rules was substituted by a new rule 11 by an amendment effective from 29-7-1963 and it is this substituted rule which would govern the petitioner''s application for revision in this case. It may be mentioned that these rules have again been substituted by a fresh rule 11 effective from 16-2-1968, but we are not concerned with this latter rule in this petition. Rule 11 in divided into seven rub-rules. Under sub-rule (1) the Registrar receiving the

application has to fix a date on which the applicant, or his agent or lawyer is required to appear. Under sub-rule (2) the Registrar has to examine the application within seven days and to satisfy himself that the person presenting it had authority to do so and that it conformed to the provisions of the Act, the Tenancy Rules and these rules. Thus, the Registrar has to satisfy himself, among other things, that the provisions of rule 9 (4) have been complied with. Then follows sub-rules (4), (5) and (6) which require consideration and they are in the following terms:-

(4) Where the Registrar is of opinion that the application does not conform to any of the conditions specified in sub-rule (2), he shall, on the date on which the applicant is required to attend before him, return the application to the applicant or his duly authorised agent or lawyer with an endorsement specifically pointing out the defects on account of which the application could not be registered. If the defects are such as can be remedied, the endorsement shall also state the period not exceeding fifteen days within which the application may be refilled after curing the defects.

(5) If the party concerned or his duly authorised agent or lawyer re-files the application within the period prescribed under sub-rule (4) and cures all the defects pointed out, the application shall on payment of the fee provided by sub-rule (4) of rule 47 be registered.

(6) If the party concerned or his duly authorised agent or lawyer rents the application after the period prescribed under sub-rule (4) or fails to remedy or explain any of the defects pointed out while refilling the application, the Registrar shall, after registering the application, proceed under rule 13.

Under sub-rule (7), if it appears to the Registrar that the application conforms to all the conditions specified in sub-rule (2) and with the provisions of the Act, but has been presented after the expiry of the limitation prescribed therefore by or under any law, the Registrar shall, after giving notice to the opponent, place it before the Tribunal for orders.

15. The contention of the learned counsel for the petitioner in the first instance is that rule 11, or rule 9, or for the matter of that, any of the rules framed u/s 111 (2) of the new Tenancy Act does not contain any provision that failure to observe these rules will entail dismissal of the revision application if it is otherwise tenable, that is, made within the time prescribed by section 114 and otherwise maintainable. It is further contended that the defect in the instant case of the petitioner was his failure to file a certified copy of the order of the Naib-Tahsildar. It was not possible for the Deputy Registrar to fix a period of 15 days only for obtaining such a copy and in view of the previous experience of the petitioner, he could not have obtained a copy within 15 days. In this connection, it is pointed out that an application for a copy made to the Naib-Tahaildar as far back as 9-12-1963 was not disposed of nor rejected nor a copy supplied for almost over a year till the revision application came

to be filed. The petitioner also points out that even when the fresh application for a copy was made to the Naib-Tahsildar on 26-3-1965, no copy was available till as late as 30-10-1965, i. e. after a period of seven months.-In other words, what is complained of is the fact of inordinate delay and gross carelessness in the matter of delivering copies in the offices of subordinate authorities-it could not be said that the petitioner could have by normal procedure obtained a copy within 15 days and been able to file it. But apart from this aspect, it is contended that sub-rule (6), of rule 11, in terms states that if the party concerned refills the application after the period prescribed under sub-rule (4), the Registrar shall, after registering the application, proceed under rule 13- Rule 13 requires that where an application has been registered, the Registrar shall, as soon thereafter as possible, place it before the Tribunal for preliminary hearing. It is urged that there is no provision either in sub-rule (6) of rule 11 or in any other rule that the filing of the revision application after due compliance, though beyond the period fixed by the Registrar under sub-rule (4) of rule 11, entails any penalty such as dismissal for late filing, provided the initial application has been filed within the time prescribed by law. In my opinion, there is considerable force in this contention and it must be accepted.

16. But what is even more clear to me is that the Legislature itself having fixed the limitation within which a revision application has to be filed u/s 114 of the Act, the rules made u/s 111 (2) cannot possibly be interpreted in any manner restricting that right by requiring the applicant to file some documents on the peril of his application being considered beyond time if such filing comes to be made after the period of limitation fixed by the statute. The moat important fact that stares one in the face in this petition is-and there is no dispute about it-that the petitioner had filed his revision application with a certified copy of the order challenged, namely, the order of the Deputy Collector, well within time. The petitioner''s contention therefore is that he had complied with the provisions of the Act by filing the revision application in time and his failure to comply with the other provisions of the rules such as filing accompaniments etc., for which on account of the provision made in the rules, the revision application was returned to him for being re-filed along with the accompaniments, cannot entail the consequence of the rejection of his revision application as time-barred when the original filing was well within time.

17. It is also urged-for which again there was no reply-that there is no limit of time fixed by the rules for re-filing of an application for revision with the necessary accompaniments if the sub-rule could not have been properly called in aid. Even assuming that sub-rule (4) has been properly used, sub-rule (6) of rule 11 does not prescribe any period of time; but on the contrary, assumes that if a party concerned refiles the application after removing the defects such application has necessarily to be registered and put up for admission.

18. In contrast with this, the provisions of tub-rule (7) of rule 11 may be compared. Under rub-rule (7), an application filed beyond time, though with the necessary

accompaniments and compliance with the other provisions of the rules, has to be placed before the Tribunal for orders on the point of limitation after hearing the opposite side. Thus, the only case in which the question of limitation can be properly raised for adjudication is where the initial filing of the revision application is itself beyond the limitation prescribed u/s 114. It does not appear that in any other case i. e. where the accompaniments are filed or other removal of defects is done late, the rules intend to penalise an applicant for revision who has filed his application for revision in time by non-suiting him on the ground that the compliance with the rules has been made beyond a particular time.

19. The learned counsel for the respondents relied upon the following decisions on the assumption that this was a case governed by either section 5 or section 12 of the Limitation Act. These decisions are:

1. Thirumala v. G. K, Anavemareddi A I R 1934 Mad. 306 (F B);

2. Nemichand Uttamchand Vs. Chaturbhuj Damji, ;

3. Karsondas Dharamsey v. Bai Gungabai I L R 30 Bom. 329;

4. Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, ;

5. Charity Commissioner Vs. Padmavati and Others, ; and

6. Imperial Tobacco Co. of India Ltd. Vs. The Assistant Labour Commr. and Others, .

I do not think it is necessary to consider any of these decisions because they do not assist the respondent in view of the Pull Bench decision of this Court in Chunnilal Jethabhai v. Dahyabkai Amulakh ILR 32 Bom. 14. In that case a second appeal came to be filed within time accompanied by the judgment of the lower appellate Court but not accompanied by a copy of the order of the first Court in execution proceedings as required by rule 25 of the rules framed in this Court. A copy of the order of the first Court was supplied much later, that is almost a year and two months after the appeal was filed. The Registrar treated the second appeal as presented on the later date when the copy of the order of the first Court was filed, and treating it as time-barred, directed that it should be returned, Against this order a civil application was filed which was heard by a Bench of four Judges including the acting Chief Justice. On a consideration of the relevant provisions, it has been ruled that the accompaniments directed under rule 25 of the Bombay High Court Rules are extraneous to the memoranda of appeals, applications and appeals in execution and the rule expressly does rot fix any time at which the documents mentioned in clauses (2) and (3) are to accompany the memoranda etc., and therefore an appeal etc., if presented in time, is validly presented for the purposes of the Limitation Act if it is accompanied by the copies required by the Code of Civil Procedure. In my opinion, this decision fully covers the principle to be followed in interpreting the obligations of the litigant in filing a revision application under the provisions of section 111 read with section 114 of the Tenancy Act, vis-a-vis the rules framed u/s

111 (2) of that Act. The limitation for filing a revision application having been fixed by the statute itself and further that provision not requiring the petitioner to file the documents accompanying the application for revision, the rules made u/s 111 (2) regulating the procedure before the Tribunal cannot, as it were, indirectly be read as part of section 114, so as to make the right of filing a revision more onerous in the matter of limitation. If a rule of this Court requiring certain copies to be filed with a memorandum of second appeal, which copies are not required to be filed under the CPC which gives the right of appeal, cannot be treated as a necessary requirement in exercising the right of filing an appeal, on parity of reasoning, the petitioner could well claim that he has complied with the provisions of section 114 read with section 111 of the new Tenancy Act and his revision application should not be treated as time-barred. When this decision of this Court was brought to the notice of the learned counsel for the respondents, he was fair enough to state that he was unable to distinguish it on principle. It must therefore be held that if the rules framed u/s 111 (2) do not in any way affect the period of limitation fixed and if a revision application is filed within the period of limitation fixed by the statute, the failure of the applicant to comply with the provisions of any of the rules with the initial application presented within time will not entail rejection of the application on the ground of limitation because the compliance with the rules comes to be made at a later stage.

20. It was then urged, though somewhat faintly, that this Court should not exercise its extraordinary jurisdiction under Article 227 of the Constitution, even assuming that the order of the Tribunal was erroneous, because the Tribunal, it is urged, had the power to decide the question rightly as well as wrongly. I think that this is over-simplification of the issue involved in this case. Here the petitioner''s revision application has been dismissed on the ground that it is barred by limitation, which finding is not sustainable. By so dismissing the application, the Us has come to an end to the detriment of the interests of the petitioner as the application stands rejected. This is not a case where an interim order has been passed and has been challenged. As a result of the finding of the Tribunal that the revision application is barred by limitation, the petitioner''s remedy successfully to challenge the order of the Deputy Collector on merits has been denied to him. Thus in this case there is a failure to exercise jurisdiction vested in it by law. If the Tribunal by erroneous decision as to limitation declines to adjudge the matter on merits, I do not think that the jurisdiction of this Court it restricted in any manner from considering the validity of the order of the Tribunal under these circumstances.

21. The order under challenge before the Tribunal namely, the appellate order of the Deputy Collector, rejects the application of the petitioner on the short ground that he claimed the property as a result of family partition in 1959. The Deputy Collector could not have rejected the application of the petitioner on this ground in view of the decision of this Court in Shrirnati Salubai v. Ghanda 1966 Mh.L J 280. In view of this decision it is necessary not only to set aside the order of the Tribunal but

also the order of the Deputy Collector which is ex facie not correct, and remand the matter to the Deputy Collector for a fresh decision of the appeal according to law. The orders of the Tribunal and the Deputy Collector are therefore set aside and the matter is remanded to the appellate authority for being considered at the appellate stage.

22. During the course of the arguments it has been observed that the exact import of the various sub-rules of rule 11 cannot be properly appreciated. The rule-making authority may well consider whether it is advisable to make a provision of returning the original revision application itself only because the application does not comply with certain provisions of the rules. A better practice to regulate such matters would be to provide for retention of the revision application but give time to the erring party to comply with the provisions of the rules within a specified time. When a document or application is filed before the Tribunal the document and the application becomes a part of the record of the Tribunal and the Tribunal is in seisin of the matter judicially. It is not advisable in such circumstances that these papers should be allowed to be returned to the parties. A better course would appear to be to fix a time within which compliance with the provisions of the rules may be required to be made and failure so to comply may entail dismissal of the application for want of due prosecution. Return of papers involves many difficulties, there being no means of finding out at a later stage what documents were not in fact filed or were filed if a dispute is raised about such matters. The Registrar may be relieved of this onerous duty by a suitable modification of the rules if found necessary.

23. There is another rule which has been brought to my notice, namely, rule 45 which permits return of documents and certified copies filed by parties with the application. In fact, rule 45 seems to suggest that the certified or original copies of documents filed with the application shall ordinarily be returned to the party concerned. In framing this rule, it seems to have been lost sight of that more often than not, the orders of the Tribunal are brought before this Court invoking its superintending jurisdiction under Articles 226 and 227 of the Constitution. If a document comes to be filed before the Tribunal and its relevancy or admissibility or its effect is adjudicated upon, it is not proper that such a document should be returned. In fact, it is contrary to all accepted rules of procedure that such documents, even though they are certified copies, should be returned to the parties until the Us is finally decided. In fact, there is no reason why certified copies of the documents should be returned at all. I have come across many instances where even original documents are returned to the parties without taking care to retain certified copies of the documents on record. In fact, according to accepted rules of procedure in all tribunals exercising judicial power, documents filed by parties are not to be returned until the lis is finally decided, and even after the final decision, until such time as may be prescribed by the rules. A practice seems to have grown in the Tribunal perhaps in obedience to rule 45, and also in subordinate Courts like the Tahsildar, the Deputy Collector etc., in these proceedings where documents

solemnly admitted on record on behalf of either party are just returned for the asking. Return of documents makes it almost impossible fora superior Court to find out what the document was and what was its relevance or importance in the adjudication which comes in review. The State Government may well consider whether it is necessary to have a provision like rule 45, or at any rate in its present form. The documents filed before the Tribunal or the subordinate Courts are part of the record and must be preserved until the rights are finally decided.

24. The result is that the petition is allowed, the orders of the Tribunal and the Deputy Collector in appeal are set aside and the matter is remanded to the appellate authority for a fresh decision according to law. As the petition was opposed, the petitioner will be entitled to his costs.