

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6140 OF 2016
WITH
WRIT PETITION NO.6141 OF 2016
WITH
WRIT PETITION NO.6169 OF 2016**

Gaurishankar Govardhandas Todi
(deceased) through LRs & Ors. ... Petitioners

V/s.

Prabhavati Ramniklal Shah, through
C.A. Shailesh Shah & Anr. ... Respondents

Mr. Girish Godbole with Mr. Ashutosh Ravindra Gole
for the petitioners.

*Mr. Virag Tulzapurkar, Senior Advocate with Mr. Aditya
Shiralkar, and Mr. Mani Thevar i/by i/by Ganesh &
Co., for respondent No.1(a) to 1(c).*

Mr. Nimesh Bhatt for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 10, 2024

RC.:

1. The writ petitions arise out of proceedings under Sections 70B, 43 and 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948.

2. In the proceeding under Section 70B (Writ Petition No.6169

of 2016), the claim of the predecessor-in-title of the petitioners as a tenant was accepted by order dated 13 October 2006. The respondent No.1 through Power of Attorney “(PoA)” Sitaram Shetty challenged the order dated 13 October 2006 by filing Tenancy Appeal No.43 of 2007 which was withdrawn on 2 July 2009 along with statement of son of respondent No.1 stating that such PoA for filing appeal was not executed in favour of Mr. Shetty. Based on such statement, the Sub-Divisional Officer dismissed the appeal.

3. The respondent No.1 thereafter filed Tenancy Appeal through son Shailesh Shah who was present on 13 January 2009 before the Appellate Authority. The application for condonation of delay was based on the reason that the appellant was unaware of order dated 13 October 2006 and “he” got notice of the proceedings under Section 32G of the Act only on 19 December 2011.

4. The petitioners contested the application by filing reply by pointing out that the son of respondent No.1 was present before the Appellate Authority had already rejected the appeal and, therefore, the order has attained finality. Respondent No.1 filed rejoinder accepting presence of her son. However, it is stated that he was present for some other work.

5. The Sub-Divisional Officer dismissed the appeal holding that the appellant has failed to show sufficient cause. However, the Sub-Divisional Officer also considered merits of the matter. Against the order of the Sub-Divisional Officer, respondent No.1

approached the Revisional Authority.

6. The Tribunal condoned delay on the ground that the Sub-Divisional Officer has not dismissed the appeal only on the ground of delay but has considered the merits.

7. Prima facie question is whether the order of dismissal of earlier appeal would amount to merger of the order passed in favour of the petitioners; and whether the cause shown by respondent No.1 that she was unaware of the proceedings can be sufficient cause, particularly in view of the fact that in earlier appeal existing power of attorney had made a statement that the earlier power of attorney was not executed by the appellant.

8. Prima facie contention raised on behalf of the respondents that justifying order of the Sub-Divisional Officer before the Maharashtra Revenue Tribunal on merits dis-entitles him from challenging validity of the order of condonation of delay cannot be accepted.

9. Since rest of the writ petitions arose out of proceedings under Sections 43 and 32G, the fate of those writ petitions are dependent on the order passed in Writ Petition No.6169 of 2016.

10. Hence, **Rule.**

11. During the pendency of these writ petitions, the respondents shall not create third party rights in relation to the subject property.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 29 April 2024 to correct appearances.