

PRALHAD SHANKARRAO TAJALE & ORS.

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v.

STATE OF MAHARASHTRA THROUGH ITS  
SECRETARY (REVENUE) & ANR.

(Civil Appeal No. 2601 of 2018)

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MARCH 08, 2018

**[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]**

*Practice and Procedure – Procedural laws vis-a-vis substantive laws – Construction of – Writ petition filed by appellants challenging order passed by State Minister for Revenue, dismissed by Single Judge – Intra court appeal filed by appellants – Division Bench permitted the appellants to withdraw the said appeal with liberty to file review petition before Single Judge – Review petition filed by appellants along with application for condonation of delay in filing the review petition – Review petition had some defects in its filing and the appellants were directed by Registry of High Court to cure the defects – Defects not cured by appellants – Review petition listed before Registrar (Judicial-1) for passing appropriate orders – Registrar granted four weeks’ time to the appellants to cure the defects also directing that failing to cure the defects will result in refusing the registration of the review petition, i.e., it will result in rejection of the review petition – Application filed by appellants filed for setting aside the said order, dismissed by Single Judge on ground of delay – On appeal, held: As far as possible, procedural laws should not be construed like a penal provision to punish the parties – Having regard to the nature of controversy involved in the case, High Court should have been liberal and condoned the delay and granted the appellants one more opportunity to cure the defects – Impugned order set aside – Delay in filing the application filed by appellants before High Court is condoned.*

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**Allowing the appeal, the Court**

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**HELD: 1.1 Procedural laws should not be construed like a penal provision to punish the parties as far as possible. Having regard to the nature of controversy involved in the case, the High Court should have been liberal in taking a view in the matter and accordingly should have condoned the delay and granted the**

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A **appellants one more opportunity to cure the defects. The interest of justice demanded one more opportunity to the appellants to comply with the orders of the Registry. [Paras 16, 17] [631-B, G]**

*Sangram Singh v. Election Tribunal Kotah & Anr.*,  
AIR 1955 SC 425 : [1955] SCR 1 – relied on.

B **1.2 The delay in filing the application filed by the appellants before the High Court is hereby condoned. The appellants are granted one month's time as an outer limit to cure the defects pointed out by the Registry in their Review Application. [Para 19] [632-A]**

C **Case Law Reference**

**[1955] SCR 1                      relied on                      Para 16**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2601 of 2018.

From the Judgment and Order dated 18.07.2017 of the High Court of Judicature at Bombay in Civil Application No.120/2016.

Ms. Deeplaxmi S. Matwankar, Dr. Ravindra Chingale, Chander Shekhar Ashri, Advs. for the Appellants.

E Nishant Katneshwarkar, Ms. Deepa M. Kulkarni, Advs. for the Respondents.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

F 2. This appeal is directed against the final judgment and order dated 18.07.2017 passed by the High Court of Judicature at Bombay in Civil Application No.120 of 2016 in Rejected Case No.149 of 2016 in Rejected Case No.148 of 2016 whereby the Single Judge of the High Court dismissed the appellants' application on the ground of delay.

G 3. In order to appreciate the short question involved in the appeal, few facts need mention *infra*.

4. The appellants herein were the Writ/Review Petitioners before the High Court in the proceedings out of which this appeal arises. On 28.08.2012, the appellants filed a petition being Writ Petition No.8516 of

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2012 before the High Court of Bombay questioning therein the legality and correctness of the order dated 14.05.2012 passed by the State Minister for Revenue (MH). It was in relation to a certain land dispute whereby the appellants' revision application was dismissed. A

5. On 27.11.2012, the Single Judge of the High Court dismissed the appellants' writ petition. The appellants felt aggrieved and filed intra court appeal (L.P.A.No.33 of 2013) before the Division Bench. B

6. By order dated 22.03.2014, the Division Bench permitted the appellants to withdraw the intra court appeal and granted them liberty to file review petition before the Single Judge against the order by which their writ petition was dismissed. C

7. The appellants accordingly filed review application (Review Application No.3330/2015 in W.P.No.8516/2012) on 17.04.2014. The appellants also filed application for condonation of delay in filing the Review application. D

8. According to the Registry of the High Court, the Review Application had some defects in its filing. The appellants were, therefore, directed to cure the defects so that the Review Application could be listed for orders before the appropriate Bench.

9. As the appellants did not cure the defects pointed out by the Registry of the High Court, the Review Application was listed before the Registrar (Judicial-1) on 19.10.2015 for passing appropriate orders in filing the Review Application. E

10. The Registrar, by his order dated 19.10.2015 further granted four weeks' time to the appellants to cure the defects and at the same time directed that failing to cure the defects will result in refusing the registration of the Review Application, i.e., it will result in rejection of the Review application. F

11. Felt aggrieved by the order dated 19.10.2015 passed by the Registrar, the appellants filed an application being Civil Application No.120 of 2016 and prayed therein for setting aside of the order dated 19.10.2015 passed by the Registrar and for restoration of Review Application No. St. 3330 of 2015, which was dismissed due to non-compliance of the Registrar's mandatory order dated 19.10.2015. G

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A 12. By impugned order, the Single Judge dismissed the appellants' application essentially on the ground of delay, which has given rise to filing of the present appeal by way of special leave by the Writ/Review petitioners in this Court.

B 13. On 05.03.2018, we requested Ms. Deepa M. Kulkarni, learned counsel for the State of Maharashtra, who was present in Court, to accept notice on behalf of the Respondent-State to enable us to dispose of the appeal finally on that day having regard to the short issue involved in the appeal. Learned counsel, on our request, accepted the notice on behalf of the respondent-State.

C 14. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside of the impugned order, we restore the review Application No. (St. 3330/2015) for its hearing by the appropriate Bench in accordance with law.

D 15. Paras 8, 12 and 13 of the impugned order, which deal with the issue, read as under:

E **“8. In Review Petition, office raised objections on 14<sup>th</sup> July, 2015. On 1<sup>st</sup> June, 2015 as the Applicants failed to remove all office objections, Section Officer made noting that all office objections are not removed on 14<sup>th</sup> July, 2015. Thereafter the matter appeared before the learned Registrar (Judicial-I) on 15<sup>th</sup> July, 2015, 19<sup>th</sup> August, 2015, 21<sup>st</sup> September, 2015 and 19<sup>th</sup> October, 2015. No one appeared on behalf of Applicants before the Registrar (Judicial-I) for removal of office objections. Hence, the Registrar (Judicial-I) passed conditional order on 19<sup>th</sup> October, 2015 granting four weeks time to remove all office objections, failing which, matter will stand rejected.**

G **12. As the Applicants failed to disclose the sufficient cause for delay, I am of the opinion that Applicants have not made out any case for allowing the Civil Application.**

H **13. Hence, Civil Application stand rejected.”**

16. This case reminds us of the apt observations made by the learned Judge of this Court, Vivian Bose J., in **Sangram Singh vs. Election Tribunal Kotah & Anr.**, AIR 1955 SC 425. His Lordship, speaking for the Bench, in his distinctive style of writing with subtle power of expression reminded the Courts as to how the code of procedure should be construed in the context of rights of the parties to the *lis*, which affects their lives and properties. His Lordship reminded that procedural laws should not be construed like a penal provision to punish the parties as far as possible. The following is the classic passage, which is always followed for doing substantial justice to the parties to the *lis*:

**“A code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.”**

17. In our opinion, keeping in view the aforementioned observations and further having regard to the nature of controversy involved in the case, the High Court should have been liberal in taking a view in the matter and accordingly should have condoned the delay and granted the appellants one more opportunity to cure the defects. The interest of justice demanded one more opportunity to the appellants to comply with the orders of the Registry.

18. As a consequence, the appeal succeeds and is, accordingly, allowed. The impugned order is set aside.

A 19. The delay in filing the application filed by the appellants before the High Court is hereby condoned. The appellants are granted one month's time as an outer limit to cure the defects pointed out by the Registry in their Review Application.

B 20. On curing the defects by the appellants, the Review Application be placed before the appropriate Bench for passing orders in accordance with law.

Divya Pandey

Appeal allowed.