IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4142 OF 2022

1. Appasaheb Pandurang Yadav (Deceased)]
Through his legal heir / representative]
1-a. Smt. Sharada Appasaheb Yadav]
Age – 70 years, Occ. : Household,]
R/o. 1441, 'A' Ward, Sarnaik Galli,]
Shivaji Peth, Kolhapur.]

2. Balasaheb @ Shivaji Pandurang Yadav (Deceased)]
Through his legal heir / representative]
2-a. Smt.Shobha Balasaheb @ Shivaji Appasaheb Yadav]
Age – 59 years, Occ. : Household,]
R/o. 1441, 'A' Ward, Sarnaik Galli,]
Shivaji Peth, Kolhapur.]
2-b. Sou. Geeta Sharad Patil]
Age – 38 years, Occ. : Household,]
R/o. 1168/2, Plot No.4, Ashtavinayak Colony,]
Near Shelake Colony, Kolhapur – 416 012.]
2-c. Sandeep Balasaheb @ Shivaji Yadav]
Age – 35 years, Occ. : Agriculturist,]
R/o. 1441, 'A' Ward, Sarnaik Galli,]
Shivaji Peth, Kolhapur.]
2-d. Sou. Rajashree Vishal Shinde]
Age – 33 years, Occ. : Household,]
R/o. C/o. Sandeep Balasaheb @ Shivaji Yadav]
1441, 'A' Ward, Sarnaik Galli, Shivaji Peth,]
Kolhapur.]
2-e. Sou. Deepali Pratik Nalavade]
Age – 31 years, Occ. : Household,]
R/o. Plot No.12, Radhakrushna Colony,]
Sane Guruji Vasahat, Kolhapur.] … Petitioners

Versus

1. Appasaheb Virupaksh Tandale]
Age : 75 years, Occ. : Agriculturist,]
R/o. Vadgaon, Tal. Hatkanangale, Dist. Kolhapur.]

2. Ramesh Baliram Yadav]
Age : 70 years, Occ. : Agriculturist,]
R/o. 1932, 'A' Ward, Rankala Tower, Shivaji Peth,]
Kolhapur.]

3. Ashok Baliram Yadav]
Age : 65 years, Occ. : Agriculturist,]
R/o. 1932, 'A' Ward, Rankala Tower, Shivaji Peth,]
Kolhapur.]

4. Smt. Vijaya Ramchandra Dongale]
Age : 70 years, Occ. : Household,]
R/o. 1642, 'E' Ward, 7th Lane, Rajarampuri]
Kolhapur.]

5. Vishwas Baliram Yadav]
Age : 75 years, Occ. : Agriculturist,]
R/o. 36/B-5, Flat No.9, Ranjigandha Apartment,]
'E' Ward, Near Phalake Hospital, Kolhapur.] … Respondents

Mr. Manoj Patil i/b Mr. Gaurav G. Nankar for Petitioners.
Mr. Drupad S. Patil for Respondents.

CORAM :- SANDEEP V. MARNE, J.
DATE :- 23 OCTOBER, 2023

JUDGMENT :

1. ***Rule***. Rule made returnable forthwith. With the consent of the learned Counsel for parties, Petition is taken up for hearing.

2. Petitioners challenge the Judgment and Order dated 12/11/2021 passed by the Maharashtra Revenue Tribunal ('**MRT**'), Camp Kolhapur, allowing the Revision Application filed by Respondent No.1 and setting aside the order dated 23/11/2020 passed by the Sub-Divisional Officer ('**SDO**') condoning the delay in filing Tenancy Appeal No.71/2020. The MRT has rejected the application for condonation of delay filed by the Petitioners in Tenancy Appeal No.71/2020. That Tenancy Appeal was

filed by the Petitioners challenging the order dated 28/05/2018 passed by the Agricultural Lands Tribunal-cum-Tehsildar ('**ALT**'), Panhala.

3. Facts of the case are that Petitioners and Respondent Nos. 2 to 5 are tenants in respect of the land admeasuring 57 R of Gat No.103 and 4 Hector 10 R of Gat No.175 situated at Village Waloli, Tal. Panhala, Dist. Kolhapur. Respondent No.1 is the landlord in respect of that land.

4. Respondent No.1 filed Tenancy Case No.30/1985 under section 43B of The Maharashtra Tenancy and Agricultural Lands Act, 1948 ('**Tenancy Act**') before the Tehsildar for fixation of reasonable rent in respect of the land. The Tehsildar fixed the reasonable rent of Rs.6,379/- for the year 1985-86. Respondent No.1 challenged Tehsildar's decision before the SDO. By the Order dated 16/03/1988, the SDO dismissed the Tenancy Appeal upholding the Order of the Tehsildar. Respondent No.1 thereafter filed Tenancy Revision Application No. 150/1989 before the MRT challenging the decisions of SDO and Tehsildar. The MRT allowed the Revision Application by the Order dated 25/01/2016 and fixed the rent in respect of the land @ Rs.10,000/- per year from the year 1985-86 onwards.

5. Despite fixation of rent @ Rs.10,000/- per year from 1985-86 onwards, Petitioners and Respondent Nos. 2 to 5 failed to pay the due amount of rent from the year 1985-86. Respondent No. 1 thereafter served Notice dated 30/06/2016 on tenants stating that an amount of Rs.2,87,500/- was due and payable towards the rent as on 31/05/2016. Respondent No.1 therefore terminated tenancy by giving 3 months' notice i.e. w.e.f. 30th June 2016. Despite receipt of notice, the tenants failed to pay the outstanding rent to Respondent No.1, who therefore filed Tenancy

Case No.2/2017 before the ALT seeking possession of the land in question. The tenants resisted the said tenancy case by raising a vague defence that they had paid rent in respect of land from time to time, but Respondent No.1 had failed to issue receipts. The ALT-cum-Tehsildar passed order dated 28/05/2018 under the provisions of section 25(1) of the Tenancy Act holding that the amount of rent due and payable by the tenants to Respondent No.1 was Rs.3,15,250/- for the period 1985-86 to 2017-18. The ALT directed tenants to pay the amount of Rs.3,15,250/- within 3 months, failing which they would be removed from possession of the land, which would be put in the possession of Respondent No.1. The tenants neither paid the rent as directed by the Order dated 28/05/2018 nor challenged that order. After waiting for some time, Respondent No.1 filed Tenancy Application No.3/2018 seeking possession of land on account of failure to pay rent within the time stipulated in the Order dated 28/05/2018. Instead of paying the rent due, the Respondents resisted the said execution proceedings by filing reply. By Order dated 13/07/2019, the Tehsildar directed removal of land from possession of the tenants and handing the same in favour of Respondent No.1. The Petitioners filed Tenancy Appeal No.99/2019 before the SDO, Panhala, which came to be rejected by the Order dated 13/02/2020.

6. The Petitioners filed further Revision before the MRT challenging the SDO's decision dated 13/02/2020, but later they withdrew the same as they realized that there was no point in pursuing orders passed in execution proceedings. The Petitioners changed the track and filed Tenancy Appeal before the SDO to challenge ALT-cum-Tehsildar's order dated 28/05/2018. Since there was delay of 1 year 6 months and 2 days in filing that Appeal, they filed application for condonation of delay. The SDO proceeded to condone the delay, on account of which the Appeal

was numbered as Tenancy Appeal No.71/2020. Respondent No.1 got aggrieved by the SDO's decision in condoning the delay by Order dated 23/11/2020 and filed Revision Application No.36/2020 before the MRT, Kolhpur. By Judgment and Order dated 12/11/2021, the MRT has proceeded to allow the Revision Application filed by the Respondent No.1 and has set aside the SDO's decision in condoning the delay. Petitioners have filed the present Petition challenging the MRT's Order dated 12/11/2021.

7. Mr. Manoj Patil, the learned counsel would appear on behalf of the Petitioners and contend that the ALT has erred in interfering in the discretionary order passed by the SDO condoning the delay in filing the Tenancy Appeal. That, the Petitioners must be permitted to set up a challenge to ALT's order dated 28/05/2018 on merits and that they may not be thrown out on technical grounds of delay. That, the order passed by the ALT on 28/05/2018 is *ex facie* erroneous and therefore, decision to condone the delay would give a stamp of approval to the erroneous order of ALT-cum-Tehsildar. He would submit that the ALT-cum-Tehsildar erred in passing an Order under section 25(1) of the Tenancy Act. According to him, tenancy can be terminated only in the event of 3 consecutive defaults of payment of rent, for which separate notices are required to be issued under sub-section (2) of section 25. Inviting my attention to the provisions of section 14 of the Tenancy Act, he would submit that without issuance of 3 months' notice in writing under section 14(1)(b), the tenancy cannot be terminated. That, the notice issued by the Respondent No.1 on 30/06/2016 cannot be treated as notice under section 25(1). That recovery of arrears of rent and termination of tenancy due to default in payment of rent are two concepts independent of each other.

8. Mr. Manoj Patil would further submit that a specific defence was taken about payment of rent by the tenants. That, details of such payment were also pointed out in execution proceedings. That, there is no willful negligence on the part of the tenants in payment of rent. That, in such circumstances, the statutory remedy available to the Petitioners cannot be taken out for the reason of short delay. That, the delay occurred on account of wrong advice given to the Petitioners to challenge the Orders passed in execution proceedings. That, therefore, *bona fide* mistake on the part of the Petitioners was a fit ground for condoning the delay. In support of his contention, Mr. Manoj Patil would rely upon the following Judgments:

(a) ***Sonajee Krishnajee Mujumdar Vs. Nathu Yadav Patil***[1],

(b) ***Jagannath Pilaji Raut Vs. Kashinath Angu Thakur***[2], and

(c) ***Hari Sakharam Dhanavate (Dead) By LRs. Vs. A. N. Patil Tukarane (Dead) By LRs and Another.***[3]

9. *Per Contra*, Mr. Drupad Patil, learned counsel appearing for Respondents would oppose the Petition. He would submit that no case was made out by the Petitioners for condonation of inordinate delay of 1 year 6 months and 2 days. That, contention of wrong advise is not pleaded in the application for condonation of delay. The only ground sought for seeking condonation of delay was old age of the Petitioners. That, very same Petitioners pursued challenge to orders passed in execution proceedings before the SDO and MRT and therefore the reason of old age cannot be permitted to be cited for seeking condonation of delay.

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1 *1958 SCC OnLine Bom 172 : (1959) 61 Bom LR 156*
2 *1963 DGLS (Bom.) 45 : 1963 Mh.L.J. 851*
3 *1995 Supp (4) Supreme Court Cases 616*

10. Mr. Drupad Patil would further submit that the Petitioners have consistently defaulted payment of rent to the Respondent No.1 since the year 1985. That, despite grant of repeated opportunities, they have failed to deposit the rent. That, termination of tenancy under sub-section (1) of section 25 is a deeming fiction which triggers the moment the tenant fails to pay rent to the landlord within 3 months from the date of Tehsildar's Order. That, this period of 3 months cannot be extended by any Court or authority. That, the Respondent No.1 did not seek possession from tenants either under the provisions of section 25(2) of the Tenancy Act. That, termination of tenancy was not sought by the Respondent No.1 on account of 3 consecutive defaults and that, therefore, the provisions of section 25(2) are inapplicable. In support of his contention, Mr. Drupad Patil would rely upon the following Judgments.

(a) ***Raja Ram Mahadev Paranjype & Others Vs. Aba Maruti Mali & Others***[4], and

(b) ***Dattatraya Vasudev Kulkarni (Deceased by his heirs) Anil Dattatraya Kulkarni Vs. Ghama Chavadas Bendale (Since deceased by his heirs) Chamelibai Kashinath Patil & Others***[5].

11. Rival contentions of the parties now fall for my consideration.

12. Though a relatively insignificant issue of condonation of delay is involved in the present Petition, the extensive submissions made by Mr. Manoj Patil about interplay between the provisions of section 14 and 25 of the Tenancy Act, has necessitated delivery of this Judgment. Therefore, before proceeding to decide whether any valid ground existed for condonation of delay, it is necessary to first deal with the contentions

4 *1962 Supp (1) SCR 739 : AIR 1962 SC 753*
5 *2009 (2) Mh.L.J. 708*

raised by Mr. Manoj Patil about saving of tenancy rights of Petitioners in the land in question. Ordinarily, while deciding the issue of condonation of delay, this Court would not have ventured into the merits of the case. However, I have proceeded to do so only with a view to verify whether any arguable case exists for Petitioners to pursue their Appeal before the SDO, which now stands dismissed for delay on account of MRT's Order.

13. In the present case, rent in respect of the land in question came to be fixed by the Order of MRT passed on 25/01/2016 @ Rs.10,000/- per year from the year 1985-86 onwards. On account of failure of the Petitioners to pay the arrears of rent, the Respondent No.1 served notice dated 30/06/2016 to the tenants terminating the tenancy on expiry of period of 3 months i.e. w.e.f. 30/09/2016. Termination of tenancy can be effected under section 14 of the Tenancy Act, which provides thus:

> "*14. Termination of tenancy for default of tenants*
>
> *(1) Notwithstanding any law, agreement or usage, or the decree or order of a court, the tenancy of any land shall not be terminated---*
>
> *(a) unless the tenant---*
>
> *(i) has failed to pay the rent for any revenue year before the 31st day of May thereof;*
>
> *(ii) has done any act which is destructive or permanently injurious to the land;*
>
> *(iii) has sub-divided, sub-let or assigned the land in contravention of section 27;*
>
> *(iv) has failed to cultivate it personally; or*
>
> *(v) has used such land for a purpose other than agriculture or allied pursuits; and*
>
> *(b) unless the landlord has given three months' notice in writing informing the tenant of his decision to terminate the tenancy and the ground for such termination, and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.*

(2) Nothing in sub-section (1) shall apply to the tenancy of any land held by a permanent tenant unless by the conditions of such tenancy the tenancy is liable to be terminated on any of the grounds mentioned in the said sub-section."

14. However a special protection is extended to tenants whose tenancy is still protected even after service of notice of termination of tenancy. After serving notice of termination of tenancy, the landlord has to follow procedure prescribed under section 25 of the Tenancy Act. Section 25 of the Tenancy Act provides thus :

"***25. Relief against termination of tenancy for non-payment of rent***
[1] Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within [three months] from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated;

*[**Provided** that if the Mamlatdar is satisfied that in consequence of total or partial failure of crops or similar calamity the tenant has been unable to pay the rent due, the Mamlatdar may, for reasons to be recorded in writing, direct that the arrears of rent together with the costs of the proceedings if awarded, shall be paid within one year from the date of the order and that if before the expiry of the said period the tenant fails to pay the said arrears of rent and costs, the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted.]*

[(2) Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default.

15. Thus, under sub-section (1) of section 25, even though the landlord terminates the tenancy for failure to pay rent, the termination does not take effect immediately. Proceedings are required to be initiated before the ALT-cum-Tehsildar by the landlord. The ALT-cum-Tehsildar again cannot directly issue an order of termination of tenancy. He is obliged to grant opportunity to the tenant in the form of 3 months' time to pay the arrears of rent. It is only after the tenant fails to pay arrears of rent within the said period of 3 months that the deeming fiction of termination of tenancy triggers. Proviso to sub-section (1) carves out an exception where the period of 3 months can be extended upto one year in the event of total or partial failure of crops or similar calamities.

16. An exception is carved out under sub-section (2) of section 25 wherein the protection or opportunity to make good the default is not available to the tenant when termination of tenancy is for non-payment of rent for 3 years and the landlord gives an intimation to that effect to the tenant within a period of 3 months of each default. Thus, in cases covered by sub-section (2) of section 25, the special protection extended to tenant of grant of opportunity to pay arrears of rent within 3 months, is not available. In cases covered by section 25(2), the termination of tenancy is automatic and instant. Neither the landlord is required to file proceedings for ejectment nor Tehsildar can grant opportunity to tenant to make good the default. Upon service of the intimation of default for the third year, tenancy stands automatically terminated.

17. Thus, when a landlord finds that tenant makes default in payment of rent, he has two options.

Option 1: Landlord can opt for automatic termination of tenancy under section 25(2) by giving intimations to the tenant within 3

months of each default for 3 years. Here the tenancy gets immediately terminated upon service of the last of the three intimations.

Option 2: Landlord can issue only one notice of termination for singular or multiple defaults in payment of rent and file proceedings before the ALT-cum-Tehsildar for ejectment of the tenant. Here, the tenant gets a special protection in the form of an opportunity to clear the arrears of rent within 3 months/ 1 year of passing of Order by Tehsildar. The moment tenant pays rents within that period, the notice of termination is rendered otiose.

This is how the provisions of sub-section (1) and sub-section (2) of section 25 operate in different fields. Both provisions are essentially aimed towards benefit of tenant who is given opportunities to make good the default in payment of rent.

18. Mr. Manoj Patil has sought to rely on provisions of section 14 of the Tenancy Act, which in my view, does not take his case any further. Under section 14(1)(a)(i), tenancy can be terminated for failure to pay rent for any revenue year before the 31st day of May of that year. The landlord, in such a situation, may give 3 months' notice in writing informing the tenant of his decision to terminate the tenancy. Once a default occurs under section 14(1)(a)(i) and a notice is issued under section 14(1)(b), the landlord can file proceedings for ejectment of tenant under section 25(1). In the present case, the default has occurred, and the landlord has issued notice of 3 months to the tenant and has thereafter filed proceedings for ejectment under section 25(1). Therefore, the twin conditions of issuance of notice of termination of tenancy under

section 14 (1) (b) and filing proceedings for ejectment under section 25(1) are met with. Mr. Manoj Patil expects that the landlord ought to have given 3 notices within 3 months of each defaults. However, since the landlord was not opting for termination of tenancy under sub-section (2) of section 25, it was not necessary for him to serve 3 notices for 3 successive defaults. The landlord in the present case has taken a chance by opting for proceedings under section 25(1) and thereby gave an opportunity to the tenant to make good the default of rent within 3 months of Tehsildar's Order.

19. Petitioners have contended that the proceedings filed before the Tehsildar were essentially for recovery of rent, which is an altogether different concept than termination of tenancy. I am unable to agree. The initial proceedings were filed for determination of amount of rent. After the rent was fixed, the landlord issued notice for termination of tenancy after expiry of three months under section 14(1)(b). Tenants had opportunity to make good the default after receipt of notice. However, they failed to pay the rent. The landlord therefore filed proceedings for ejectment under section 25(1), in which Tehsildar passed order and granted opportunity to tenants to clear the arrears within 3 months. The tenants again defaulted. The deeming fiction of termination of tenancy under section 25(1) thus got triggered. Therefore Petitioners cannot attempt to escape out of consequences of deeming fiction by branding the proceedings as the one filed for recovery of rent.

20. In ***Dattatray Vasudev Kulkarni*** (*supra*), a Single Judge of this Court has discussed the difference between the provisions of sub-sections (1) and (2) of section 25 and has held in paragraphs 10, 11, and 12 as under :

> "***10.*** *Perusal of sub-section (1) of section 25 reveal that the said provision is for granting relief against termination of tenancy for non-payment of rent. The plain reading of the said section provides that the Mamlatdar is required to call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within a period of 3 months from the date of the order. It can further be seen that if the tenant complies with such order, then the consequences are self operative. The effect would be that the tenancy is not terminated and thereupon the tenant shall also hold the land as if the tenancy had not been terminated. It would thus be clear that if the tenant fails to make the payment of rent within a period of 3 months from the date of the order, the tenancy shall stand terminated and the landlord would be entitled to possession of the land in accordance with law.*
>
> ***11.*** *I am unable to accept the contention of the learned counsel for the respondent that the present case would fall under sub-section (2) of the said Act. Perusal of the said provision would reveal that the relief which is available to a tenant under sub-section (1) of section 25 would not be available to a tenant whose tenancy is terminated for non-payment of rent, if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default.*
>
> ***12.*** *Admittedly, in the present case, tenancy has been terminated by notice issued under section 14. The tenant has failed to remedy the breach by making payment of arrears of tent and as such, I find that the present case would squarely fall under sub-section (1) of section 25. As a matter of fact, I find that if the contention of the respondent has to be accepted that his case would fall under sub-section (2) of section 25, then he cannot claim a relief which is available to a tenant under sub-section (1) of section 25.*"

21. Thus, in my view, it was not at all necessary for the landlord to issue 3 notices for 3 defaults, though the landlord had an option to do so in the present case. If that option was to be exercised by the landlord, the tenants would be denuded of an opportunity to clear arrears of rent within 3 months under section 25(1).

22. Petitioners have relied upon judgment of Division Bench of this Court in ***Sonajee Krishnajee Mujumdar*** (*supra*) in which of this Court held that under section 29(3) of the Tenancy Act, Tehsildar exercises an

unfettered power including the power to extend the time for payment of rent. Though the issue involved before the Division Bench of this Court was slightly different, the issue got subsequently clarified by the Apex Court Judgment in ***Raja Ram Mahadev Paranjype*** (*supra*) wherein it is held :

> ***11***. *It was then said that section 29(3) gives ample power to the authorities to refuse to make an order for possession in the landlord's favour if the tenant pays up the arrears and the justice of the case requires that the tenant should not be deprived of the land. That subsection no doubt says that the Mamlatdar "shall ... pass such order thereon as he deems fit". We are however wholly unable to agree that this provision warrants the making of any order that the authority concerned thinks in his individual opinion that the justice of the case requires. We may here refer to R. v. Boteler where a statute which conferred power upon Justices to issue a distress warrant "if they shall think fit" was considered. In that case the Justices had refused to issue the distress warrant. Cockburn, C.J., observed:*
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> > *"They went upon the ground that the introduction of this extra-parochial place into the union was a thing unjust in itself; in other words, that the operation of the act of Parliament was unjust ... I think, therefore it amounts virtually to saying, - 'We know that we ought upon all other grounds to issue the warrant, but we will take upon ourselves to say that the law is unjust, and we will not carry out the law'. That is not such an exercise of discretion as this Court will hold, in accordance with the authorities cited, to be one upon which it will act. The Justices must not omit or decline to discharge a duty according to law."*
>
> *We think that that is what the authorities in the three cases before us have done. They have refused to carry out the Act because they felt that it worked hardship. They have refused to give to the landlords the relief which the Act said they should have.*
>
> ***12***. *Now, we feel no doubt that the Act provided that a tenant should be granted relief only in a case where he had not been in arrears with his rents for more than two years; in other words, if he had been in arrears for more than two years he was not to be given any relief against ejectment and the landlord would be entitled to an order for possession. First, we have to point out that the tenancy having been terminated in terms of the statute, the statute would necessarily create a right in the landlord to obtain possession of the demised premises. The tenancy having been terminated, the tenant is not entitled to remain in possession and the only person who would then be entitled to possession would be the landlord. The statute having provided for the termination of the tenancy would by necessary implication create a right*

in the landlord to recover possession. The statute recognises this right by providing by section 29(2) for its enforcement by an application to the Mamlatdar. Indeed, section 29(2) itself mentions this right expressly for it says that the application shall be made within two years from the date on which "the right to obtain possession of the land" accrued to the landlord. We repeat that this is a statutory right because it is the statute which fixes the term of the tenancy and also provides for its termination; it is not a contractual right which may be made subject to an equitable relief.

***13**. We turn now to section 25. Under sub-section (1) of this section the tenant has a right to an order continuing the tenancy in spite of its termination by notice under section 14 for non-payment of rent. Subsection (2) however provides that sub-section (1) shall not be available to a tenant if he has failed for any three years to pay rent. The result is that the statute itself provides for relief to a tenant where such a termination has taken place and prescribes the conditions on which relief would be available. It would follow that the statute indicates that the tenant would not have the relief in any other circumstances. The result of this would inevitably be that the statute confers a right on the landlord to recover possession where the right under section 25(1) is not available to the tenant, which right he can enforce in the manner indicated. That being so, section 29(3) cannot be read as conferring on the authorities a power to annul this intendment of the Act. The words "in lieu of making an order for ejectment" in sub-section (1) of section 25 support the view that the Act intends that except in the circumstances mentioned in it, the landlord is entitled as of right to get an order for possession from the Mamlatdar. This view is further strengthened by the proviso to section 25(1) which says that if the default in payment of rent had been caused by failure of crops or similar reasons, the Mamlatdar may give the tenant a year's time to pay up and shall then provide in the order to be made by him that on the tenant's failure to pay within that year, "the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted". In such a case the Mamlatdar could not by virtue of his supposed powers under section 29(3) give further relief if the tenant who failed to pay as directed, for the Act makes it incumbent on him to pass the conditional order of ejectment. There, of course, is no reason for the Act to have treated the cases under sub-section (1) and the proviso to it, differently. This again is another reason for saying that the Act provides that apart from the circumstances mentioned in sub-section (1) of section 25 and the proviso to it, the landlord has on a termination of the tenancy, a right to obtain an order for possession in his favour. It would be anomalous if the general words in section 29(3) were to be construed as conferring power on the authorities to deprive him of the right which the other provisions in the Act give him.*

> ***14****. We think, therefore, that section 29(3) only confers power to make an order in terms of the statute, an order which would give effect to a right which the Act has elsewhere conferred. The words "as he deems fit" do not bestow a power to make any order on considerations dehors the statute which the authorities consider best according to their notions of justice. Obviously, this provision has been framed in general terms because it covers a variety of cases, namely, applications by landlords and tenants in different circumstances, each of which circumstance may call for a different order under the Act."*

23. The learned counsel for Petitioners has also relied on judgment in ***Hari Sakharam Dhanavate (Dead) By LRs*** (*supra*), wherein the Apex Court has held in paragraph 2, as under:

> "***2.*** *The distinction between the two provisions is apparent. section 25(1) enables a Mamlatdar to grant relief against termination of tenancy for non-payment of rent by facilitating payment of rent on call to the tenant to pay it directly to the landlord or in court with costs of the proceedings within 15 days from the date of the order, and on failure of which to suffer an ejectment. In contrast, section 25(2) carves out an exception that if the tenant is in arrears on his failure to pay rent for any three years, the landlord has to give an intimation to the effect to the tenant within a period of 3 months of each default, and then ejectment must follow as a consequence and the remedial provision under section25(1) cannot come to the rescue of the tenant. The finding recorded by the High Court is that the instant was a case covered under section 25(2) and to save the tenancy on payment of arrears of rent within 15 days of the order. The High Court has given adequate reasons to come to that view. We see no justification to alter the same.*"

Thus, reliance of Petitioners on judgment in ***Hari Sakharam Dhanavate*** (*supra*), far from assisting their case, actually militates against them.

24. ***Jagannath Pilaji Raut*** (*supra*) relied upon by Mr. Manoj Patil does not assist his case and that Judgment also recognizes principle that cases falling under sub-sections (1) and (2) of section 25 operates in entirely different spheres.

25. In my view, therefore, deeming fiction of termination of tenancy of Petitioners got triggered on account of their failure to pay arrears of rent with costs within the period of 3 months prescribed in Tehsildar's Order dated 28/05/2018.

26. Turning back to the issue of limitation in filing Tenancy Appeal before the SDO to challenge the Order dated 28/05/2018, I find that the SDO proceeded to condone the delay by the following cryptic Order :

> "*Heard Ld. Adv. for both parties on delay condonation application.*
> *Delay condonation application is accepted in the interest of justice.*
> *Keep main appeal on board.*"

27. SDO did not go into the aspect as to whether any sufficient cause was made out for condoning the delay of 1 year 6 months and 2 days. Perusal of the application for condonation of delay would show that the only reason cited was old age of the Appellants. However, very same Appellants were busy challenging the Order passed in the execution proceedings before the SDO and MRT during the period of delay. Therefore, the reason of old age of Petitioners cannot be accepted for condoning the delay.

28. In ordinary course, delay of 1 year 6 months and 2 days would not be considered inordinate particularly in a case where tenant is losing his land. This is exactly the reason why this court ventured into merits of the case both because of extensive submissions canvassed by Petitioners' counsel as well as to find out whether Petitioners have any arguable case before SDO if delay was to be condoned. In a case like

present one, if delay is condoned, parties would be put in the rigmarole of various of rounds of litigation before SDO, MRT and later before this Court. I am therefore of the view that a quietus is required to be given to the entire litigation at this stage itself so as to save the parties from various rounds of litigation. Since the Petitioners do not seem to have any arguable case on merits, no purpose would be served in condoning the delay and exposing the parties to further rounds of litigation.

29. The length of delay is immaterial in the present case. The issue is whether the landlord can be hauled in endless rounds of meritless litigations. By now there have been 10 rounds of litigations between the parties over the issue of payment of rent: (i) three rounds for fixation of quantum of rent before ALT, SDO and MRT (ii) one round before Tehsildar seeking ejectment under section 25(1) (iii) three rounds for seeking recovery of possession before Tehsildar, SDO and MRT. (iv) two rounds before SDO and MRT over issue of condonation of delay in challenging Tehsildar's decision under section 25(1) and (v) one round in the form of present petition. Public policy demands that a quietus needs to be given to litigation between the parties in the present case. This is a reason why this court went into merits of the contentions that Petitioners wish to argue before SDO. The Apex Court in its recent judgment in ***Sheo Raj Singh Vs. Union of India***[6], has held as under :

> "***31***. ……. *We find that the High Court in the present case assigned the following reasons in support of its order:*
>
> *a. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.*
>
> *b. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and*

6 ***Civil Appeal No. 5867 of 2015 decided on 9 October 2023***

technical considerations are pitted against one another, the former would prevail.

c. ***It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.***

d. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

e. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.

***32**. Given these reasons, we do not consider discretion to have been exercised by the High Court in an arbitrary manner. The order under challenge had to be a clearly wrong order so as to be liable for interference, which it is not.*"

30. In my view, therefore, the Revenue Tribunal has rightly allowed the Revision filed by the Respondent No.1 and has set aside the SDO's decision condoning the delay. I therefore find the Order of the MRT to be unexceptional.

31. Writ Petition being devoid of merits, is dismissed without any order as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)