

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10907 OF 2018

BABURAO VITHOBA ZAVRE
VERSUS
MANDA DATTATRAYA KOKATE AND OTHERS

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Advocate for the Petitioner : Shri Gawali Amol K..
Advocate for Respondent Nos.1 to 6 : Shri H.U.Dhage.
AGP for Respondents 7 and 8 : Shri S.R.Yadav.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th February, 2019

Per Court:

1 This matter was heard on 06.02.2019 and again today.

2 The Petitioner is aggrieved by the order passed by the
Revisional Authority dated 24.04.2018 under Section 23(2) of the
Mamlatdar's Courts Act, 1906. By the said order, the Revisional Authority
has refused to condone the delay caused by the Petitioner in filing the
revision proceeding.

3 It is undisputed that after the Mamlatdar passed an order on
20.04.2016 under Section 5(2) of the Mamlatdar's Courts Act, 1906, the
Petitioner being aggrieved, filed Special Civil Suit No.60/2016.
Subsequent to the same, the Petitioner approached the Revisional
Authority under Section 23(2).

4 Having considered the submissions of the learned Advocates and since the issue, which is *subjudice* under the Mamlatdar's Courts Act, 1906, is also the subject matter of the civil suit, it was brought to the notice of the Petitioner that he would have the choice of resorting to either of the proceedings. He places reliance upon the judgment of this Court delivered at Nagpur Bench in ***Shankar Govindrao Sarnaik and another vs. Sub Divisional Officer, Washim and others, 2012 (3) ALL MR 669***, wherein, it is concluded that the decision of the revisional authority under the Mamlatdar's Courts Act, 1906 would be subject to the decision of the civil court.

5 Considering the above, the Petitioner was called upon to make a statement as to whether, he would prefer to continue to prosecute the suit or the revisional remedy. It is stated, on instructions, that the Petitioner would prosecute the suit and not the revisional remedy.

6 In view of the above, this Writ Petition is rendered infructuous and stands disposed of.

7 All contentions of the litigating sides in the civil suit are kept open.