

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

WRIT PETITION NO.125 OF 2014

1. Hari S/o Tukaram Patole
Age. 65 yrs, Occu. Agriculture
R/o Mhalsapur, Tq. Dist. Beed.
2. Narayan S/o Tukaram Patole
Age. 55 yrs, Occu. Agriculture,
R/o R/o Mhalsapur, Tq. Dist. Beed.
3. Mahadev s/o Narayan Patole
Age. 38 yrs, Occu. Agriculture
R/o Mhalsapur, Tq. Dist. Beed.
4. Sitaram s/o Narayan Patole
Age. 22 yrs, Occu. Agriculture
R/o Mhalsapur, Tq. Dist. Beed.

... Petitioners
(Original Defendants)

Versus

1. The Sub-Divisional Officer,
Beed, Tq. Dist. Beed
2. The Sub-Divisional officer,
Ambejogai, Tq. Ambejogai, Dist. Beed
3. Deva s/o Massa Patole,
Deceased through his L.Rs.
- 3-A) Sumitra w/o Deva Patole,
Age 70 years, Occu: Household,
R/o Mhalsapur, Tq. & Dist. Beed.
- 3-B) Digambar s/o Deva Patole,
Age 49 years, Occu: Agril.,
R/o Mhalsapur, Tq. & Dist. Beed.
- 3-C) Kushvarta s/o Yadav Londhe,
Age 51 years, Occu: Household,
R/o Devdi, Ashok Nagar, Tq. Majalgaon,
District : Beed.
- 3-D) Godavari w/o Kailash Momin,
Age 40 years, Occu: Household,

R/o Pokhri, Tq. & Dist: Beed.

3-E) Padmin w/o Rajendra Londhe,
Age 35 years, Occu: Household,
R/o Devdi, Beed, Tq. & District:
Beed.

3-F) Kalinda w/o Vajinath Shinde,
Age 30 years, Occu: Household,
R/o Pimpri Harischandra,
Shastrinagar, Beed,
Tq. & District: Beed.

... Respondents

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Advocate for Petitioners : Mr. Rajendra L. Kute
AGP for Respondents – State : Mr. A. A. Jagatkar
Advocate for Respondent Nos. 3 : Mr. C. R. Deshpande
Advocate for Respondent Nos. 3A to 3F : Mr. C. C. Deshpande

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th NOVEMBER, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition challenges order dated 05-10-2010 passed by the Sub Divisional Officer, Beed in ROR Appeal 2010/ROR/WS below application for condonation of delay, thereby condoning the delay of more than 41 years.

3. Facts leading to this petition in the nutshell are thus :

On 09-02-1969 respondent No.3 executed partition deed thereby partitioning the property bearing Survey No.31, Gat No.116

situated at Mauje Mhalsapur, Tal. and Dist. Beed, (for short 'suit property') amongst his uncle Tukaram Pandu, brother Saheba s/o Massa and himself i.e. Deva s/o Massa. The partition deed bears his thumb impression and signature of five witnesses. Pursuant to the partition, at the instance of respondent No.3, M.E. No.75 was came to be certified on 24-06-1969. In the mutation extract it is mentioned that applicant Deva (respondent No.3), owner of the land has given 8 Ane land to Tuka Pandu and 4 Ane land to real brother Saheba. It is mentioned in the mutation extract that as per the partition deed Deva, Saheba and Tuka are in possession of their respective share.

4. On 06-08-1969, respondent No.3 and Tukaram, the predecessor of petitioners, sold some portion of their respective land which had fallen to their share in partition. Respondent No.3 thereafter by sale deed dated 14-03-1990 sold remaining portion of his land. It is the case of the petitioners that respondent No.3 has sold his entire share i.e. 1 Hectare 88 R.

5. On 23-08-2010 respondent No.3 filed appeal under Section 247 of the Maharashtra Land Revenue Code, bearing Appeal No. 2010/ROR/WS, thereby challenging M.E. No.75. Along with the appeal application for condonation of delay was filed seeking condonation of delay of more than 41 years. In the delay condonation application,

respondent No.3 has stated that he is illiterate and he was not aware of M.E. No.75. He was not given any notice at the time of certifying M.E. No.75. He has never executed a partition deed. When he was plowing the suit land on 14-05-2010 he was obstructed by the petitioners, he then went to the Talathi on 15-10-2010 and then he came to know about M.E. No.75. He further contended that he is shown as owner and cultivator of the suit land till the year 1969. However, since he is illiterate, he never saw the land record. Hence, he preferred the appeal challenging M.E. No.75.

The petitioners appeared in the said proceedings and resisted the delay condonation application. The Sub Divisional Officer by allowing the delay condonation application condoned the delay. The order of condonation of delay was unsuccessfully challenged by the petitioners before the Additional Collector, Beed, as well as before the Deputy Commissioner (Ent. Duty) Division, Aurangabad. The petitioners are, therefore, aggrieved by the order passed by the Sub Divisional Officer condoning the delay of more than 41 years.

6. Heard the learned advocate for the petitioners, the learned advocates for respondent Nos. 3 & 3A to 3F, and the learned AGP for Sub Divisional Officer.

7. The learned advocate for the petitioners strongly urged that there is no explanation given by respondent No.3 for inordinate delay of 41 years and the Sub Divisional Officer has erred in condoning the delay. He submitted that incorrect statements are made by respondent No.3 in the application for condonation of delay. The Sub Divisional Officer has erroneously condoned the delay by giving erroneous reasoning. He, therefore, submitted that impugned order of condonation of delay is liable to be quashed and set aside and the petition deserves to be allowed. In support of his submissions he placed reliance in **Pundlik Jalam Patil (deceased by Lrs.) Vs. Exe. Eng. Jalgaon Medium Project and Another, AIR 2008 SC (Supp) 1025** and **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, 2012(3) ALL MR 450 (S.C.)**.

8. The learned advocate for respondent No.3, on the other hand, supported the impugned order stating that respondent No.3 was illiterate, therefore, he had no occasion to go through the record. He further submits that the sale deeds placed on record are denied by respondent No.3 and therefore, the reason given by respondent No.3 in the delay condonation application that for the first time on 14-05-2010, when the petitioners objected to the cultivation of the suit land, respondent No.3 came to know about M.E. No.75 is sufficient and has rightly been accepted. According to him, the delay is properly explained

and the Sub Divisional Officer has rightly condoned the delay. He further submits that it is the settled legal position that delay is to be liberally condoned. He, therefore, submitted that there is no merit in the writ petition and the petition is liable to be dismissed.

9. The learned AGP adopted the arguments of respondent No.3 and supported the impugned order. He submitted that the Sub Divisional Officer has rightly exercised discretion in favour of respondent No.3 and therefore, the impugned order may not be interfered.

10. Perusal of the partition deed dated 09-02-1969 reveals that it bears thumb impression of respondent No.3. The partition was acted upon and at the instance of respondent No.3 M.E. No.75 was certified on 24-06-1969. It is mentioned in M.E. No.75 that in terms of the partition deed Deva Massa, Tukaram and Saheba are in possession of their respective shares.

11. The partition was further acted upon as Tukaram and respondent No.3 sold portion of their respective land which had fallen to their share in the partition, by common sale deed dated 06-08-1969.

12. Respondent No.3 executed sale deed on 14-03-1990 thereby selling 1 Hectare 21 R land in favour of Bhaguji P. Sonaji Bhakare. Thus,

the total land which came to the share of respondent No.3 i.e. 1 Hectare 88 R was sold by him. It therefore, appears that the petitioners are justified in contending that respondent No.3 exhausted his entire share by selling the land and his share got exhausted.

13. In the light of the above record, the contention of respondent No.3 that he had never executed a partition deed and he was unaware of M.E. No.75 is unacceptable. It appears that the delay condonation application was moved by respondent No.3 by making several incorrect statements, i.e. 'he had no notice of M.E. No.75 and he did not consent for the same, partition deed was never executed and he was not a party to the partition deed'. It also appears that only with a view to bring the case in limitation a statement is made that on 14-05-2010 the petitioners obstructed respondent No.3 in cultivation of the suit land and then he went to Talathi on 15-05-2010 and inquired and then he came to know about M.E. No.75.

14. The Sub Divisional Officer has failed to take into consideration that there is whatsoever no explanation offered by respondent No.3 for seeking condonation of inordinate delay of 41 years in filing the appeal. Though the Sub Divisional Officer has observed in the impugned order that in view of the sale deed executed by respondent No.3 on 14-03-1990 he was aware of M.E. No.75, he has

erred in holding that the important aspect of ownership of the land and with a view to verify about the changes made during the consolidation scheme, the matter is required to be entertained. The Sub Divisional Officer had no jurisdiction to go into the aspect of ownership. Thus, the Sub Divisional Officer has taken into consideration irrelevant factors and has passed the impugned order which is vitiated for recording erroneous reasoning.

15. It is settled legal position that if the explanation for delay which is offered is found to be concocted and if the applicant is found to be thoroughly negligent in its cause the delay cannot be condoned. Wrong statement in condonation application is sufficient to reject the application without any further inquiry. The ratio in **Pundlik Jalam Patil** (supra) and **Maniben Devraj Shah** (supra) supports the case of the petitioners.

16. For the aforesaid reasons the impugned judgment of the Sub-Divisional Officer is unsustainable. Hence the following order :

ORDER

(I) The impugned order dated 05-10-2010 (Exhibit A1) passed by the learned Sub Divisional Officer, Beed, in ROR Appeal 2010/ROR/WS below the application for condonation of

delay, is hereby quashed and set aside. Consequently, the impugned order dated 10-06-2012 (Exhibit A2) passed by the Additional Collector, Beed, in 2012/CD/Appeal/CR-9 and the order dated 11-11-2013 (Exhibit A3) passed by Deputy Commissioner (Ent. Duty) Division, Aurangabad in Case No.2012/ROR/REV/498, are hereby quashed and set aside.

- (II) Rule is made absolute the above terms.
- (III) No order as to costs.
- (IV) Needless to mention that the parties are at liberty to approach the Civil Court, if they are so advised.

(NITIN B. SURYAWANSHI, J.)