

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

WRIT PETITION NO.8384 OF 2018

1. Mir Khairuddin s/o. Mir Habibuddin,
Age : 73 years, Occu: Retired,
At present R/o Majalgaon,
Tq. Majalgaon, Dist. Beed.
2. Mir Mubashiruddin s/o. Mir Habibuddin,
Age : 68 years, Occu: Nil,
At present R/o Majalgaon,
Tq. Majalgaon, Dist. Beed.
3. Mir Mashihuddin s/o Mir Habibuddin,
Age : 60 years, Occ: Retired.
At present R/o Majalgaon,
Tq. Majalgaon, Dist. Beed.
4. Mir Maheboobuddin s/o. Mir Habibuddin,
Age : 54 years, Occu: Advocate,
at present R/o Majalgaon,
Tq. Majalgaon, Dist. Beed.
5. Mir Saleemuddin s/o. Mir Habibuddin,
Age : 50 years, Occ: Service,
At present R/o Majalgaon,
Tq. Majalgaon, Dist. Beed.
6. Mir Alimuddin s/o Mir Habibuddin
Age : 48 years, Occ: Business,
At present R/o. Majalgaon,
Tq. Majalgaon, Dist. Beed.
7. Mir Kaleemuddin s/o. Mir Habibuddin
Age : 45 years, Occu: Service,
At present R/o. Majalgaon,
Tq. Majalgaon, Dist. Beed.

... PETITIONERS

VERSUS

1. Bhujang s/o Parvata Mahadak
Died through his L.Rs.
- 1-A Shivaji s/o Bhujang Mahadak
Age : 55 years, Occu: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
- 1-B Murlidhar s/o Bhujang Mahadak,
Age : 53 years, Occu: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.

- 1-C Abhiman s/o Bhujang Mahadak,
Age : 50 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
2. Mainuddin s/o Pachulal Shaikh,
Since died through his L.Rs.
- 2-A Riyazuddin s/o Mainuddin Shaikh,
Age : 48 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
Now at present R/o Chaudri Nagar,
Mohamadiya Colony, Barshi Road,
Tq. & Dist. Latur.
- 2-B Shahnoor Begum Mainuddin Shaikh,
Age : 68 years, Occu: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
Now at present R/o Chaudri Nagar,
Mohamadiya Colony, Barshi Road,
Tq. & Dist. Latur.
3. Subabai w/o Bali shinde,
Died through her L.Rs.
- 3-A Prayagabai w/o Shahurao Sable,
Age : 49 years, Occu: Household
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
- 3-B Keshabai w/o Kashinath Narde,
Age : 46 years, Occu: Household
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
4. Gopinath s/o Sahdu Khatal,
Died through his L.Rs.
- 4-A Harishchandra s/o Gopinath Khatal,
Age : 60 years, Occu: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
- 4-B Abhiman (Abhimanyu) s/o Gopinath Khatal,
Age : 55 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
- 4-C Bibishan s/o Gopinath Khatal,
Age : 48 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & Dist. Latur.
- 4-D Umakant s/o Gopinath Khatal,

- Age: 45 years, Occu: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 4-E Vishvanath s/o Gopinath Khatal,
Age : 42 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 4-F Satish s/o Gopinath Khatal,
Age : 40 years, Occu: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 4-G Savitribai w/o Gopinath Khatal,
Age : 75 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
5. Bhaguram s/o Santuk Alapure,
died through his L.Rs.
- 5-A Ram s/o Bhaguram Alapure,
Age : 48 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 5-B Shriram s/o Bhaguram Alapure,
Age : 46 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 5-C Saheb @ Parmeshwar s/o Bhaguram Alapure,
Age : 44 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
6. Narhari s/o Dashrath Uphade,
Since died through his L.Rs.
- 6-A Dattu s/o Narhari Uphade,
Age : 55 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 6-B Madhukar s/o Narhari Uphade,
Age : 53 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 6-C Bhagywant s/o Narhari Uphade,
Age : 50 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 6-D Vinayak s/o Narhari Uphade,
Age : 48 years, Occ: Agri.
R/o. Takli (Bardapur),

- Tq. & dist. Latur.
- 6-E Samindrabai Narhari Uphade,
Age : 70 years, Occ: Agri.
R/o. Takli (Bardapur),
Tq. & dist. Latur. {deleted as per Court order dtd 28.02.2020}
7. Fattu s/o Nabi Shaikh,
Died through his L.Rs.
- 7-A Shaikh Mustafa s/o Fattusab
Age : 37 years, Occ: Service.,
R/o. Takli (Bardapur),
Tq. & dist. Latur.
- 7-B Shaikh Shakilabee Baban,
Age : 40 years, Occ: Household,
R/o. Rameshwar, Tq. & dist. Latur.
- 7-C Shaikh Jakirabee Ayub,
Age : 42 years, Occ: Household,
R/o. Near Amba Hanuman, Latur,
Tq. & Dist. Latur.
- 7-D Saeberabee Noorali Pathan,
Age: 48 years, Occ: Household,
R/o. Katgaon, Tq. & dist. Latur.
- 7-E Shaikh Rabiyaabee Gaffar,
Age : 55 years, Occ: Household,
R/o. Gangapur, Tq. & dist. Latur.
- 7-F Shaikh Raisabee Shabbir,
Age : 43 years, Occ: Household
R/o. Khajanagar, Osmanabad,
Tq. & Dist. Osmanabad.
- 7-G Shaikh Aslam Shabbir,
Age : 27 years, Occ: Nil,
R/o. Khajanagar, Osmanabad,
Tq. and Dist. Osmanabad.
- 7-H Shirin Aslam
Age : 25 years, Occ: Household,
R/o. Khajanagar, Osmanabad,
Tq. & Dist. Osmanabad.
- 7-I Shaikh Awes Shabbir,
Age : 19 years, Occ: Nil
R/o. Khajanagar, Osmanabad,
Tq. & Dist. Osmanabad.
- 7-J Shaikh Sofiyan Shabbir,
Age : 21 years, Occ: Nil,
R/o. Khajanagar, Osmanabad
Tq. & Dist. Osmanabad

7-K Shaikh Gausiya Sultan,
 Age : 23 years, Occ: Household
 R/o. Khajanagar, Osmanabad
 Tq. & Dist. Osmanabad.

... **RESPONDENTS**

...
 Advocate for Petitioners: Mr. Milind Patil (Beedkar)
 Advocate for Respondent No.1C, 3A, 4A to 4G, 1B : Mr. S.P. Katneshwarkar
 ...

CORAM : MANGESH S. PATIL, J.

Reserved on : 08.06.2022

Pronounced on : 14.06.2022

JUDGMENT :

Heard. Rule. At the joint request of the parties, the matter is taken up for final disposal.

2. The petitioners claimed that the lands Gut No.264 to 267 and 270 of Village Takli (Bardapur), Tq. and District Latur are the Service Inam Lands. Their father Mir Habibuddin was performing the service of yearly Niyaz (Fateha) of Janab Rasul-e-Kareem (sel-ali-sallam). He expired on 05.10.1986. After his demise they have been performing the service. By moving application before Atiyat Deputy Collector, Latur they claimed succession. By the order dated 28.01.1992, the application was allowed. Succession was granted in their favour. One of them was declared as Inamdar, whereas, other six were declared as sharers.

3. The respondent No.1 Bhujang, respondent No.2 Mainuddin and respondent No.3 Subabai challenged the order of the Atiyat Deputy Collector before the Atiyat Collector, Latur, under Section 11 of the Hyderabad Atiyat Inquiries Act, 1952, contending that the lands were given

to Habibuddin as Madad Mash and it was abolished in view of the provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954. By the judgment and order dated 21.09.1992 the appeal was allowed and the order of Atiyat Deputy Collector was set aside.

4. The petitioners sought to challenge the order of the Atiyat Collector, Latur in a revision before the Maharashtra Revenue Tribunal. However, since there was delay of 11 years and 9 months, they preferred an application under Section 5 of the Limitation Act, 1963 for condonation of delay.

5. It was averred that the Atiyat Collector had lastly posted the appeal on 21.09.1992. Since thereafter no date was assigned in the matter and the judgment and order was pronounced abruptly. Whenever they made attempt to ascertain as to if the matter was decided they were told that the matter was not traceable. After long persuasion by them the file could be traced after number of years on 05.10.2004 and it is on that day that they got the knowledge of the decision. Soon thereafter they applied for certified copy of the order and preferred the Revision, without losing further time soon after receipt of the certified copy.

6. The petitioners also contended that since their valuable rights were involved touching the immovable properties, the delay, if any, was required to be condoned and the purpose of the grant would be lost as the service they are rendering would be stopped resulting in affecting public sentiments adversely.

7. The respondents opposed the application for condonation of delay and prayed to reject it.

8. By the order under challenge in this Writ Petition the learned Member of the Maharashtra Revenue Tribunal has rejected the Application.

9. The learned advocate Mr. Milind Patil for the petitioners would submit that the copy of Roznama of the Office of Atiyat Collector would clearly demonstrate that after 21.09.1992 the matter had remained undated. The petitioners were never informed about the date of decision which was rendered abruptly. In spite of strenuous efforts the file was not traceable. It was not in the hands of the petitioners to trace out the file. After long persuasion it was traced out and from the date of knowledge the revision was preferred before the Maharashtra Revenue Tribunal promptly. The delay was neither deliberate nor were there any *mala fides*. The petitioners were not to gain anything by allowing their right to succeed to be lost by passage of time and this important aspect was not considered by the learned Member of Maharashtra Revenue Tribunal.

10. Mr. Milind Patil would further submit that in parallel proceeding in the form of Writ Petition Nos.2462/1996 and 2464/1996, this Court has already held that the very lands involved in the present dispute were Service Inam Lands. The order passed by the Atiyat Collector clearly runs counter to the decision of this Court and the patent illegality could have been corrected if the delay would have been condoned and the revision was allowed to be decided on merits. The meritorious claim of the petitioners would be lost

for sheer technicalities which is not the purport of providing a limitation. The learned Member of the Maharashtra Revenue Tribunal has overlooked all these important aspects and has not considered the trite legal position in respect of request for condonation of delay. The order is illegal and is liable to be set aside.

11. Learned advocate Mr. Katneshwarkar would strongly refute the arguments on behalf of the petitioners by referring to the affidavit-in-reply. He would submit that the matter was reserved for decision by the learned Atiyat Collector after hearing the arguments of both the sides who were represented by their respective advocates, therefore, the reason being put forth by the petitioners for not getting the knowledge of the decision is factually not tenable. They were fully aware that the matter was finally heard and was to be decided.

12. The learned advocate would further submit that except the bald statement about the petitioners having made several attempts over a period of many years but the file was not traceable is also factually incorrect and has not been substantiated. The petitioners could have demonstrated with tangible material that they had indeed made attempts to ascertain if the matter was decided by the Atiyat Collector. Such uncorroborated and unsubstantiated ground was being put forth as a lame excuse for the delay and latches.

13. The learned advocate would further submit that the petitioners since inception have been aware about the long standing dispute that has

been going on between the two sides and could have been expected to be on guard in respect of the matter that was heard by the Atiyat Collector. The delay is enormous, of 11 years and 9 months and it is highly improbable and unbelievable that the petitioners could have kept mum in spite of being aware that the learned Atiyat Collector had heard the matter finally. Thus according to him, no sufficient cause was demonstrated before the Maharashtra Revenue Tribunal and the application for condonation of delay has been rightly rejected.

14. The learned advocate for the respondents would further submit that though the Writ Petition Nos.2462 and 2464 of 1996 were decided, the respondent Nos.1 and 3 in both those petitions had died during pendency of the petitions and those were decided without bringing on record their legal representatives and the decisions were, therefore, not binding on them.

15. The learned advocate would further submit that only the land Gut Nos.264 and 265 were involved in those two writ petitions whereas the decision by the Atiyat Collector was touching three other lands as well. He would further submit that apart from those two writ petitions, Writ Petition No.2463/1996 was also filed by the petitioners for a similar relief in respect of land Gut No.266 but the Writ Petition was dismissed as abated as a whole.

16. The learned advocate would also submit that the fact that the learned Atiyat Collector by the order dated 24.01.1993 had already decided the issue as to the nature of the lands was not brought to the notice of this

Court while deciding writ petition Nos.2462/1996 and 2464 of 1996. These writ petitions were decided on 04.07.2008, whereas, the petitioners had already preferred the Revision before the Maharashtra Revenue Tribunal against the order of the Atiyat Collector in the year 2004 still they had not disclosed this fact before this Court while the Writ petitions were being decided. The decisions were obtained by suppressing material fact and the conduct of the petitioners is clearly *mala fide*.

17. The learned advocate Mr. Katneshwarkar would, lastly, submit that as per the usual practice followed by the Revenue Authorities, the decision in the Atiyat Appeal was communicated to the learned advocates of both the sides including that of the petitioners and even a photocopy of that communication dated 21.01.1993 has been produced.

18. Learned advocate Mr. Milind Patil for the petitioners referring to the re-joinder filed on their behalf submitted that the copy of the notice informing the decision addressed to their learned advocate Mohd. Rashid Patel does not clearly demonstrate as to if he had received it or to have acknowledged its receipt and therefore that piece of document cannot be safely relied upon.

19. I have carefully considered the rival submissions and perused the papers. One need not burden this judgment with the catena of decisions rendered by the Supreme Court and various High Courts touching the aspects of factors to be taken into consideration while deciding the applications for condonation of delay. With respect, one can only refer to

the decision of the Supreme Court in the matter of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.; (2013) 12 SCC 649**, wherein, by referring to catena of judgments, the principles have been culled down in paragraph Nos.15 and 16, which read as under:

- “15.(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
 - iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
 - iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
 - v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
 - vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
 - vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
 - viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
 - ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
 - x) If the explanation offered is concocted or the grounds urged*

in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

- xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”*

20. Bearing in mind these principles if one takes into consideration the facts and circumstances of the matter in hand, there cannot be any dispute that there was a huge delay of 11 years and 9 months for the petitioners to prefer the Revision. Pertinently, application that was preferred by the petitioners was as vague as it could be. The affidavit in support of

the application was also equally vague. It was vaguely averred that the appeal before the Atiyat Collector was not given a specific date for pronouncement of judgment. It was not their stand that the arguments of both the sides were not heard by the learned Atiyat Collector. Though it was mentioned that several inquiries were made with the Office of the Collector, there are absolutely no particulars as to the date and manner in which such inquiries were made. Considering the long delay of almost 12 years that had caused, the petitioners who were keen enough to engage an advocate and the dispute has been long standing could have taken precaution to make written request to the concerned office if the file was not really traceable. Even if it is believed that the documents placed on record showing that the intimation regarding decision was communicated to their advocate are not sufficient, the application for condonation of delay was absolutely silent as to if they had ever approached their advocate who had argued the matter on their behalf. Though it is submitted by their learned advocate that their learned advocate who had argued the matter before the Atiyat Collector is no more, it is not clear as to what had prevented the petitioners in at least making some averment in the application about having ever approached their advocate so as to inquire about the decision. If such is the poor state of affairs in the form of scant and vague averments in spite of the delay being enormous, it cannot be said that learned Member of the Maharashtra Revenue Tribunal has not exercise the discretion properly in refusing to condone the delay.

21. It would be very convenient for a party to take a stand regarding lack of knowledge but it is certainly difficult to prove as to what attempts were made to acquire the knowledge more so when the delay is enormous and inordinate.

22. Perusal of the application for condonation of delay clearly demonstrates that the application was filed casually and clearly demonstrates utter lack of sincerity and *bona fides*. The petitioners even were not ready to accept that there was such an enormous delay and were conveniently avoided to count the period of delay. It was vaguely averred that in case it was found that there was some delay that it be condoned. The party must be clear in claiming reliefs and cannot be permitted to make the request in serious matters like condonation of delay contingent upon the view of the concerned court or the authority which is empowered to condone the delay. If such is the state of affairs, the delay was indeed deliberate and had occasioned because of the latches.

23. The law of limitation is certainly harsh in as much as it defeats even the genuine claims on sheer technicality. However, the law of limitation has a distinct place in every society governed by rule of law. The law would only help the persons who are diligent about their rights. There is one more angle, the litigants would have a legitimate expectation regarding termination of *lis*. If a party is allowed to challenge the orders after an enormous delay, that would certainly affect the legitimate expectation of its adversary as regards finality of the decision. Therefore

though harsh, the law of limitation has its own place and its provisions will have to be applied irrespective of the consequences even of defeating genuine and legitimate claims.

24. This Court has decided the Writ Petition Nos.2462/1996 and 2464 of 1996 in the year 2008. These were the petitions preferred by the petitioners themselves. The common judgment passed in those writ Petitions does not demonstrate about the petitioners having brought to the notice of this Court the decision rendered by the Atiyat Collector which was rendered in the year 1993 and even though they had allegedly acquired its knowledge in the year 2004. They had preferred the revision along with the application for condonation of delay before the Maharashtra Revenue Tribunal in the year 2004.

25. Besides, the specific contention of the respondents herein that the respondent Nos.1 and 3 in those two writ petitions had died during pendency of those petitions and their legal representatives were not brought on record has not been controverted by the petitioners in their rejoinder.

26. In view of the above state of affairs, no exception can be taken to the order passed by the Maharashtra Revenue Tribunal refusing to condone the delay.

27. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)