

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

20 WRIT PETITION NO.9521 OF 2015

Aajinanath s/o Asaram Adsare,
Age; 27 years, Occ; Agriculture,
Through it's GPA holder
Asaram S/o; Madhav Adsare
Age; 65 years, Occ; Agril,
R/o; Amrapur, Tq. Shevgaon,
District; Ahmednagar.

...Petitioner
(Original Applicant)

VERSUS

1. The State of Maharashtra,
Through the Sub Divisional Officer,
At Pathardi, Division; Pathardi.
2. Tehsildar Shevgaon,
Tq.Shevgaon, District; Ahmednagar
3. Namdeo s/o Yamaji Gaikwad,
Age; Major Occ; Agril,
4. Bhagchand s/o Mohan Khaire,
Age; Major Occ; Agril,
5. Jaggannath s/o Narayan Javle,
Age; Major Occ; Agril,
6. Aminabee w/o Ibrahim Shaikh,
Age; Major Occ; Agril,Deleted.
7. Ashok s/o Shripati Nawale,
Age; Major Occ; Agril,
8. Karbhari s/o Chandrabhan Nawale,
Age; Major Occ; Agril,
9. Ramdas s/o Dagadu Sarode,
Age; Major Occ; Agril,

10. Vishwanath s/o Sawleram Garad,
Died through LR's
 - A. Ashok s/o Vishwanath Garad,
Age; Major Occ; Agril,
 - B. Sukhdev s/o Vishwanath Garad,
Age; Major Occ; Agril,
 - C. Harischandra s/o Vishwanath Garad,
Age; Major Occ; Agril,
11. Chatrapati s/o Dagadu Khaire,
Age; Major Occ; Agril,
12. Dropadabai B. Gaikwad,
Age; Major Occ; Agril,Deleted.
13. Vitthal S/o Khandu Bodkhe
Age; Major Occ; Agril,
14. Suresh s/o Asaram Chaudher
Age; Major Occ; Agril,

Respondent Nos. 3 to 14 all resident of
Amrapur, Tq. Shevgaon, Dist.Ahmednagar. ...Respondents.
(Original Respondents)

...

Advocate for Petitioner : Mr. S.G.Dodya
AGP for Respondent Nos. 1 & 2/State : Ms. D.S.Jape
Advocate for Respondent Nos. 3,4,5,7 to 9,10A to 10C,11 and13 :
Mr.Narwade N.B.

...

CORAM : KISHORE C. SANT, J.

DATE : 27.07.2023.

PER COURT :

1. Heard the learned Advocate for the parties.

2. This petition is directed against the order dated 26.05.2015, passed by the learned Sub Divisional Officer, Pathardi, Dist. Ahmednagar.

3. By way of Review Application, the petitioner had sought a review of the order dated 21.01.2015 rejecting an application for condonation of delay that was filed by the petitioner under Section 23 (2) of the Mamlatdar's Court Act. The order against which a revision was filed is the order passed under Section 5 (2) by the Mamlatdar's Court Act, dated 14.09.2005, where by, the Mamlatdar's Court has directed to give right of way to the respondents from the land of petitioner. It is the case of the petitioner that he never got knowledge of the order passed by the Mamlatdar's Court Act and only in 2013 for the first time he noticed that the respondents are disturbing his possession. Thereafter, he made an inquiry and in the inquiry he came to know about the order passed by the Mamlatdar's Court Act. He submits that an application came to be filed after nine years.

4. The learned SDO considered the application and by order dated 21.01.2015 rejected the application for delay condonation. The learned SDO observed that the petitioner has

filed Regular Civil Suit No.325 of 2010 against respondents on 22.12.2010. The respondents filed their written statement on 27.06.2011. In the said suit the learned SDO, therefore, came to a conclusion that at least from the date of the knowledge, reasons for the delay ought to have been given, however, no explanation is given and rejected the application. In the Review Application the said order is confirmed.

5. The learned Advocate for the petitioner vehemently argued the case stating that in the application before the Mamlatdar's Court Act no cause of action was mentioned even the Tahsildar has not followed the procedure as prescribed under Section 7, 8, 9, 10 of the Mamlatdar's Court Act and therefore, on the merits the order needs to be set aside as this material aspect has not considered by both the authorities. He relies upon the judgment reported in **2003 (Supp.2) Bom. C.R. 342** Sharadchandra Malharrao Ajinkya and Lrs. Vs. Markus Philips Mendosa. He further relies upon the decision of this Court in **Writ Petition No. 10346 of 2012** in the case of Bhagwat Namdeo Nirmal and Anr. Vs. The Sub Divisional Officer and Ors., wherein, this Court had considered the consequences of lack of action of non filing of complaint within six months from

the date of cause of action. The Court also considered Section 8 and 9 of the said Act.

6. Another judgment is relied upon by the learned Advocate for the petitioner is in **2023 DGLS (Bom.) 1156** in the case of Dagadu s/o Laxman Bhangal and Ors. Vs. Sub Divisional Officer, Sangamner Region and Ors. There is no second opinion about the ratio laid down in these judgments. However, presently in the case, wherein the order is passed on the application seeking condonation of delay is under challenge. It is, therefore, necessary to see as to whether the petitioner has given sufficient explanation for condonation of delay.

Though it is submitted that for filing the Revision Petition under Section 23 (2) of the Act, no limitation is prescribed this Court has to see as to whether, even if no limitation is prescribed whether the petition can be entertained after such long delay. Though, no limitation is provided, the parties are expected to approach within reasonable time, which is considered to be three years. However, this Court, looking to the remedy provided for the purpose of agricultural to approach the r Revision oad and when in the main proceedings the cause of action is given only within six months, the limitation provided

six months for cause of action for filing a Revision Application also needs to be considered in the context of limitation provided in Section 5 of the Act. Further it also needs to be considered that the procedure to be adopted is a summary procedure. Thus, the entire scheme of the Act shows that the parties are expected to approach immediately on getting the knowledge of the cause of action. When the limitation for commencing of the proceedings is given only of six months, it cannot be said that the parties expected the Revision to be filed after long gap.

7. Secondly, when the delay condonation is to be considered, it is always to be condoned by taking into consideration the sufficient reason or sufficient explanation. Taking the case as it is, the petitioner came to know about the order passed by the Mamlatdar's Court Act at least on 27.06.2011 when the Written Statement was filed by the respondents in the suit filed by the petitioner. Thus, it was expected that the petitioner to approach immediately to the Revisional Authority. On the contrary he has given imaginary cause of action stating that he came to know about the order only in 2013 when he approached the authorities in 2013. Thus, the case is not only that he approached beyond time, it is

also that he has given imaginary date of knowledge of the order. As he has not given the exact date when he came to know about the order in the office of Tahsildar, therefore, considering all the above aspects, this Court finds that, no proper explanation coming forth for the delay.

8. The learned Advocate for the respondents vehemently opposes the petition by submitting that the authority below has rightly considered all the aspects. The Court has rightly considered that the petitioner got the knowledge of filing of the Written Statement, which was filed on 27.06.2011, still he has not specifically given the date of knowledge and therefore, the delay application needs to be rejected.

9. The learned AGP also opposes the petition. From the original record it is pointed out that in the original proceedings the notices were issued to the petitioner by the Mamlatdar. The Writ Petition, therefore, deserves to be dismissed with no order as to costs.

(KISHORE C. SANT)
JUDGE