



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6273 OF 2023**

1. Kamlabai W/o Keval Patil,
Age:- 65 years, Occu:- Agri.,
2. Ravindra S/o Keval Patil,
Age:- 42 years, Occu:- Agri.,

Both R/o. Chitegaon, Tal. Chalisgaon,
Dist:- Jalgaon.

..Petitioners

Versus

1. Laxman S/o Trambak Patil,
Age:- 44 years, Occu:- Agri.,
2. Pandharinath S/o Nimba Baviskar,
Age:- 62 years, Occu:- Agri.,
3. Ganesh S/o Pandharinath Baviskar,
Age:- 45 years, Occu:- Agri.,
4. Ramlala S/o Trambak Kavade,
Age:- 62 years, Occu:- Agri.,
5. Changdev S/o Rama More,
Since died through his Lrs.
- 5-A. Rahibai Wd./o Changdev More,
Age:- 55 years, Occu:- Agri.,
- 5-B. Sambahji S/o Changdev More,
Age:- 43 years, Occu:- Agri.,
6. Ranjana W/o Satish Hire,
Age:- 35 years, Occu:- Agri.,

Respondent Nos. 1 to 6
R/o. Chitegaon, Tal. Chalisgaon,
Dist:- Jalgaon

7. The Sub-Divisional Officer,
Chalisgaon, Tal. Chalisgaon,
Dist: Jalgaon.

8. Tahsildar Chalisgaon,
Chalisgaon, Tal. Chalisgaon,
Dist:- Jalgaon.

..Respondents

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Mr. U. S. Patil, Advocate for Petitioners.

Mrs. Kalpana Kulkarni (Sonpawale), Advocate for Respondent No.1 (appointed through legal aid).

Mr. N. D. Raje, AGP for Respondent Nos.7 and 8.

Respondent Nos.2 to 4, 5A, 5B and 6 are served (absent).

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 26th JULY 2024.

ORDER:-

1. The petitioners impugn the order dated 31.05.2023 passed by the Sub Divisional Officer, Chalisgaon, Dist. Jalgaon in Revision Application No.29/2023, by which prayer of petitioners to condone the delay of 107 days caused in filing Revision Application against order of Mamlatdar has been rejected.

2. Mr. Patil, learned Advocate appearing for petitioners submits that the Mamlatdar passed order dated 04.11.2022 in Vahiwat Case No.92/2021 under Section 5 of the Mamlatdar's Courts Act and directed petitioners not to obstruct respondent nos.1 to 6 from using customary way. He submits that aforesaid order was challenged in Revisions before the Sub Divisional Officer. Since there was delay in filing Revision, separate application was moved to condone the delay. However, learned Sub Divisional Officer rejected prayer and consequently, dismissed Revision Application. He would submit that substantive rights of the parties are involved in the matter. The petitioners had made out sufficient cause. However, learned Sub Divisional Officer took hyper-technical view and rejected prayer to condone the delay.

3. Per contra, Mrs. Kulkarni (Sonpawale), learned Advocate appearing for respondent no.1 opposes prayer in the writ petition.

She would submit that petitioners could have explained day to day delay. However, they have made vague application. The Sub Divisional Officer has rightly rejected the same.

4. Having considered submissions advanced, it is apparent that respondent nos.1 to 6 had approached the Mamlatdar claiming customary way and consequential orders under Section 5 of the Mamlatdar's Courts Act. The said application has been allowed. The petitioners filed Revision Application before Sub Divisional Officer alongwith application for delay condonation. The petitioners have given reason that they belong to the family of farmers and financially weak persons. They lack requisite knowledge of the law and suffered from illness. Consequently, delay of 107 days has been caused.

5. It is true that petitioners have not explained delay of each and every day, but in substance adequate reasons are given. While considering application for delay condonation, it is necessary to consider nature of litigation and bonafide of the parties seeking delay condonation. In present case, the parties are litigating for civil rights to customary way. It is not discernible from record that petitioners have derived any advantage by making delay. Apparently, delay is not intentional. It appears that, learned Sub Divisional Officer has ignored aforesaid aspects of the matter and technically refused to condone delay. Even length of delay is not inordinate. In such cases, party can be compensated by imposing cost. In that view of the matter, order passed by the Sub Divisional Officer is not sustainable in law and deserves to be quashed and set aside. Hence, the following order:

ORDER

a. Writ Petition is partly allowed.

b. The order dated 31.05.2023 passed by the Sub Divisional Officer, Chalisgaon, Dist. Jalgaon is quashed and set aside.

c. Delay of 107 days caused in filing Revision Application No.29/2023 is hereby condoned on payment of cost of Rs.2000/- to the High Court Legal Services Sub-Committee, Aurangabad within a period of four weeks. The Revision Application filed by petitioners be registered.

d. The petitioners shall appear before the Sub Divisional Officer, Chalisgaon, Dist. Jalgaon on 05.08.2024. The Sub Divisional Officer after issuing notices to respondents in Revision Application shall endeavour to decide the proceeding within a period of three months from the date of petitioners' appearance.

e. Writ Petition is disposed of.

f. Since Mrs. Kalpana Kulkarni (Sonpawale), learned Advocate appearing for respondent no.1 is appointed through legal aid, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.1 as per schedule.

(S. G. CHAPALGAONKAR)
JUDGE