



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

9 WRIT PETITION NO. 3770 OF 2015

1. Sayyad Chand S/o. Haidarsab Mulla
Age-76 years, Occu-Agriculture,
R/o. Near Mahadeo Mandir, Jalkot,
Tq. Jalkot, Dist. Latur
2. Sayyed Ali S/o. Akbarsab Mulla,
Age-60 years, Occu-Agril,
3. Allakbas S/o. Akbarsab Mulla,
Age-55 years, Occu-Agril,
4. Sayyed Rasul S/o. Akbarsab Mulla,
Age-50 years, Occu-Agril,
5. Sarwar Akbarsab Mulla,
Age-50 years, Occu-Agril,

All R/o. As Above.

...PETITIONERS

VERSUS

1. The State of Maharashtra
2. The Dy. Commissioner (Revenue)
Divisional Commissioner Office,
Aurangabad Division, Aurangabad
3. The Collector,
Collector Office, Latur
4. The Sub-Divisional Officer,
Udgir, Tq. Dist. Latur
5. The Tahasildar,
Tahasil Office, Jalkot,
Dist. Latur

...RESPONDENTS

Mr. C. D. Biradar, Advocate for the petitioners
Mr. S. S. Dande, AGP for the respondents/State

CORAM : ABHAY J. MANTRI, J.

DATE : 10th NOVEMBER, 2025

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard the learned advocate for the petitioners and the learned AGP for the respondents/State.

2. By this petition, the petitioners are challenging the order dated 12-02-2015 passed by the learned Deputy Commissioner (Revenue), Divisional Commissioner Office, Aurangabad (for short, the '*Commissioner*'), whereby the application for condonation of the delay of 58 years, 4 months and 4 days for sanctioning Virasat in the name of the petitioners was rejected.

3. The learned advocate for the petitioners vehemently contended that, as per the amendment in Rule 12 (2) of the Hyderabad Atiyat Inquiries Rules (1954), there is no limitation prescribed for filing the application seeking sanction of the Virasat. He has taken me through Rule 12 and submitted that, as per the amendment to Rule 12, the learned Commissioner can condone the delay beyond the one year.

4. To buttress his submission, he has relied on the judgment in Ahmed Shah and others vs Mohammed Ismail S/o. Gulam Hussain reported in 2013 (7) ALL MR 175, and submitted that, in view of the observations made in paragraphs 9 and 10 of the judgment, the Divisional Commissioner can condone the delay.

5. On the other hand, the learned APP has strenuously opposed the petition and submitted that if period of limitation is not prescribed, it should be considered as the reasonable time and as per the judgment in Mohammad Kavi Mohammad Amin Vs Fatima Bee Ibrahim reported in (1997) 6 SCC 71, said period is prescribed as three years by the Hon'ble Apex Court and therefore, the petitioners have to explain sufficient cause for causing the delay of 58 years. However, the petitioners have not given any satisfactory reasons or sufficient cause to condone the delay; therefore, the learned Divisional Commissioner's order is just and proper. No interference is required.

6. Having heard the contention, I have perused the impugned judgment and order and the judgments relied upon by the learned advocate for the petitioner. Also, gone through the original application filed by the petitioners before the Sub-Divisional Officer on 04-10-2013. I would like to reproduce paragraphs Nos. 1 to 3 of the said application:

“1. That, applicant filed this file for succession/virasat in the Hon’ble Court, which is pending before the Court.

2. That, in this case, the Muntakhab holder/deceased holder Sayed Husain S/o. Sayed Chand died on 01-12-1954. Thereafter, his son, namely Hydersab S/o. Syed Husain and his grandson Sayed Chand S/o. Sayed Hydersab was an illiterate person, and with the document of temporary Virasat sanctioned, he was under the wrong impression that the Virasat is sanctioned, hence could not move the file for sanction the Virasat above said inam. Hence, till today, permanent virasat is not sanctioned by the court or authority; hence, there is a delay of 58 years, 4 months, and 4 days.

3. That, above said delay is not intentional, but it is due to some unavoidable circumstances, hence it is just and proper to delay condone.”

7. A bare perusal of the application reveals that no sufficient cause as contemplated under the provision of the Limitation Act was averred in the application. The application is vague and cryptic. In fact, the petitioners should have stated sufficient cause in the application. Not providing sufficient reasons is itself sufficient grounds to reject the application in toto.

8. Perused the judgment in Ahmed Shah and others (supra) wherein this court has considered the judgment of the Hon’ble Apex Court in Mohammad Kavi Mohammad Amin (supra) and observed that as per the amendment in the Act, the power to condone the delay beyond the period of one year is with the learned Divisional Commissioner and there is no outer limit. *However, if the outer limit is not prescribed, then it should be considered as a three-year period as a reasonable time.* Moreover, the facts of the said case were that the

concerned authority had condoned the 36-year delay without issuing a notice to the other side. Therefore, this court set aside the order and remanded the matter to the authority for reconsideration. *However*, in the case at hand, the authority has rejected the application, holding that the petitioners failed to give sufficient reasons to condone the delay. Therefore, in my view, observations made in the said judgment are hardly of any assistance to the petitioners in support of their contention. On the contrary, it would be helpful to the respondents, as the petitioners have not given satisfactory reasons in the application for condoning the delay beyond 58 years.

9. Although the Limitation Act is not strictly applicable to a writ petition, the principles apply. It is also the settled principle of law that delay defeats equity. While exercising discretionary powers under Articles 226 and 227 of the Constitution of India, delay or latches are factors to be kept in mind, as a party guilty of delay and latches cannot be granted any relief. Thus, the doctrine of delay and latches should not be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court, it has a duty to protect the rights of the citizens, but simultaneously it is to keep itself

alive to a primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at belated stage should be entertained or not. Be noted, delay comes in the way of equity. Similarly, in most circumstances, inordinate delay would only invite disaster for the litigant who knocks at the door of the court. Likewise, a court is not expected to give indulgence to such indolent persons who slept over their right.

10. If the petitioners want to invoke the writ jurisdiction of this court, they should come to the court at the earliest reasonable possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such a discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled, or where the rights of third parties have accrued in the meantime.

11. Under the terms like 'liberal approach', 'justice oriented approach', the law of limitation cannot be flouted for no reason. The original holder of the Sanad or Muntakhab had expired on 01-12-1954, and after his death, valuable rights to claim Virasat accrued in favour of the petitioner. However, he failed to approach the competent authority within a reasonable period. But, he approached

the authority after 58 years and 4 months without assigning any sufficient reasons. On the contrary, the reasons mentioned in the application appear insufficient, inadequate, and vague, so I do not find substance in them. Moreover, by that time, the rights were accrued in favour of the other parties, which cannot be taken away for mere asking. Besides, it does not appear that the cause which is canvassed was bona fide.

12. Considering the provisions of Rule 12 as well as the facts of the case, I do not find any substance in the petition. Consequently, the writ petition, being devoid of merit, stands dismissed with costs of Rs. 5,000/-.

13. The petitioners are directed to pay the said cost to the High Court Legal Aid Services Sub-Committee, Aurangabad, within a period of four weeks from today.

14. In view of the dismissal of the writ petition, pending applications, if any, are also disposed of.

[ABHAY J. MANTRI, J.]