



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

35 WRIT PETITION NO. 933 OF 2017

WAHAB SHAH MOHIYUODDIN SHAH MUJAWAR

VERSUS

SHAHABUDDIN HASHIMODDIN MUJAWAR AND OTHERS

WITH

WRIT PETITION NO. 1148 OF 2017

WAHAB SHAH MOHIYUODDIN SHAH MUJAWAR AND ANOTHER

VERSUS

SHAHABUDDIN HASHIMODDIN MUJAWAR AND OTHERS

Mr. S.P. Salgar h/f. Mr. A.R. Devakate, Advocate for the petitioner.
Mr. M.M. Mulla, Advocate for respondent No.1.
Mr. G.O. Wattamwar, AGP for the respondent-State.

CORAM : KISHORE C. SANT, J.
DATE : 03.12.2025

PC :-

01. Heard learned Advocate for the petitioner, learned Advocate for respondent No.1 and learned AGP for respondent Nos. 2 to 4.

02. Writ Petition No. 933 of 2017 is filed challenging an order passed by the learned Dy. Commissioner (Revenue) dated 04.07.2016, rejecting an application filed by the petitioner seeking condonation of delay caused in filing proceeding under the provisions of Atiyat Inquiries Act for Virasat. There is delay of 35 years caused in filing the proceeding. While rejecting the application, though the learned Collector,

Osmanabad had recommended to condone the delay, still the delay condonation application came to be rejected. It is rejected for the reason that the petitioner could not produce substantive evidence in support of his claim in the Virasat.

03. Learned Advocate for the petitioner vehemently argued that while rejecting the application, the learned Authority has considered merits of the main matter, the same is not permissible. He invites attention to the heirship certificate issued by the learned Civil Judge, Junior Division, Paranda dated 21.08.2012. In his submission, earlier claims were not entertained as he could not produce heirship and it is only upon insistence of the Authorities he applied for heirship certificate and same is now granted in his favour. He thus submits that the delay ought to have been condoned and the petitioner needs to be given an opportunity to prosecute the main matter on merit.

04. The petition is vehemently opposed by learned Advocate Mr. Mulla for respondent No.1. He submits that the petitioner had earlier filed various proceedings and lost in all those proceedings. He had even filed suit for injunction in the Wakf Tribunal. There also he could not secure any relief. He also invites attention to the judgment of the Civil

Judge, Senior Division, Paranda in Misc. Application No. 11 of 2011, seeking Succession Certificate. Same also came to be rejected. He thus submits that before every Authority the petitioner has failed to show his right. He submits that in the present case, there is no sufficient cause shown for condonation of delay, which is of more than 35 years. Said cannot be condoned for any reason. He prays for dismissal of the petition.

05. This Court has considered that while rejecting the delay condonation of application, learned Dy. Commissioner has even made certain observations on merits. There was recommendation by the learned Collector to condone the delay. By considering merits of the main matter, he rejected the application. The reason assigned is that there cannot be two Mutawalis on one Muntkhab. However, it needs to be decided as to which of the applicant is entitled to be Mutawali. By not condoning the delay, he refused opportunity to the petitioner to prove his claim at the threshold. At the same time, this Court needs to keep in mind that there is delay of 35 years caused in filing the proceeding. It is necessary for the petitioner to give some more reason for condonation of delay showing as to what prevented him to approach the Authority. There is some justification that earlier applications were rejected as he could

not produce heirship certificate and it was asked by the Authorities themselves that the petitioner to approach only on getting some document showing his relation.

06. Considering the above, this Court finds that this petition needs to be allowed, however, with some costs. Therefore, Writ Petition No. 933 of 2017 is allowed subject to costs of Rs. 20,000/- (Rupees Twenty Thousand) to be paid to respondent No.1 – Shahabuddin s/o. Hashimoddin Mujawar, within four weeks from today. The impugned order is quashed and set aside. Authorities to register the Virasat proceeding on satisfaction that the costs as stated above is paid to respondent No.1.

07. So far as Writ Petition No. 1148 of 2017 is concerned, this Petition is filed challenging an order passed by the Dy. Commissioner (Revenue) dated 04.07.2016, whereby delay caused in filing Virasat proceeding by respondent No. 1 is condoned. The delay is of 3 years, 3 months and 15 days. This petition is vehemently opposed by learned Advocate for the petitioner in WP 933/2017. However, this Court does not find any illegality or perversity in the order passed by the Dy. Commissioner. While considering the matter of condonation of delay,

Authorities are always expected to adopt liberal approach. This Court is therefore not inclined to allow this Writ Petition.

08. Delay of 35 years on the part of the petitioner is already condoned in connected petition. For this reason also this Court is not inclined to allow this petition. Therefore, Writ Petition No. 1148 of 2017 is dismissed.

[KISHORE C. SANT, J.]