

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

Civil Application No. 6065 of 2014
(In First Appeal Stamp No. 6097 / 2014)

Sakharam s/o. Dattuji Balkhande,
Age : 80 years,
Occupation : Agriculture,
R/o. Borja, Taluka : Kalamnuri,
District : Hingoli. .. Applicant.

versus

1. The State of Maharashtra,
Through Collector, Parbhani,
Now Hingoli.
2. The Special Land Acquisition Officer,
Upper Penganga Project No.1,
Parbhani, Now District Hingoli. .. Respondents.

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Mr. S.K. Adkine, Advocate, for the applicant.

*Mr. S.B. Yawalkar, Assistant Government Pleader, for
respondent no.1.*

Respondent no.2 served (Absent).

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CORAM : A.M. BADAR, J.

DATE : 16TH NOVEMBER 2015

PER COURT :

1. By this application, applicant is seeking condonation of delay

in filing First Appeal whereby he is challenging the judgment and award dated 20-7-1989, in L.A.R. No. 335/1984, passed by the Additional District Judge, Hingoli.

2. Heard the learned Counsel for the applicant and perused the pleadings. He submitted that similar application preferred by the claimant was allowed by this Court on 10th January 2014 by condoning the delay of 6659 days in filing appeal. He further submitted that some of the appeals filed by the land owners from this project were allowed. According to the learned Counsel for the applicant, as the applicant was illiterate and as his house property as well as land was acquired, he could not prefer appeal within time.

3. The learned Assistant Government Pleader appearing for non-applicant no.1 submitted that inordinate delay of more than 8000 days is not at all explained sufficiently by the applicant and, therefore, the application deserves to be rejected.

4. It is seen that the judgment and decree passed by the reference Court on 20-7-1989 is sought to be challenged by filing appeal accompanied by application for condonation of delay. The delay is of 8904 days. This inordinate delay is not at all explained by the applicant. The only averment which could be found in the application is to the effect that the applicant is a poor agriculturist and due to acquisition of land, his financial condition became very weak. This cannot be a reason for seeking condonation of inordinate delay of more than 8900 days. The applicant must have received compensation awarded by the Land

Acquisition Officer, so also enhanced compensation as per the judgment and award passed by the learned Additional District Judge, Hingoli. In the wake of these facts, it cannot be said that poor financial condition prevented the applicant from filing appeal within limitation.

5. True it is, that primary function of the Court is to adjudicate the dispute on its own merits rather than adhering to the technicalities of law. But for condoning delay, sufficient cause is required to be established. In the case in hand, applicant has failed to establish sufficient cause.

6. It appears that this Court by an order dated 10th January 2014 has condoned delay in some other matters and the delay in those appeals appears to be of 6659 days. It is well settled that the discretion vested with the Court is required to be exercised according to law and not arbitrarily. Unless and until sufficient cause is shown, the delay cannot be condoned because in some other cases, the delay was condoned. Similarly, allowing of some other appeals cannot be construed as sufficient cause for condonation of delay in the case of present applicant.

7. In the result, the Application is rejected. Consequently, registration of the First Appeal is refused.

(A.M. BADAR)
JUDGE

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