

IN THE HIGH COURT OF BOMBAY AT GOA.

**Misc. Civil Application No.63 of 2015 in Stamp Number Main
No.2231/2014 and STM No.2234/2014.**

Land Acquisition Officer and another. .. **Applicants**

Versus

Shri Kalidas Atmaram Savaikar .. **Respondent**

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Ms. Priyanka Kamat, Additional Government Advocate for the
applicants.

Mr. D.J. Pangam, Advocate for the respondent.

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CORAM : K.L. WADANE, J.

Date of Reserving the order : 24th July, 2015.

Date of Pronouncing the order : 6th August, 2015.

ORDER:

1. Heard Ms. Priyanka Kamat, learned Advocate appearing for the applicants and Mr. Pangam, learned Advocate appearing for the respondent.
2. The present application is filed by the applicants under the provisions of Section 5 of the Limitation Act, for condonation of delay of 157 days caused in filing an appeal. According to the applicants, the judgment and award was passed on 21st December, 2013 and it was made available to the applicants on 12th May, 2014.
3. The applicants being State has to move the file of appeal proposal from one Officer to another. So, on 17th June, 2014 the file

was moved to the Superintendent (Legal) who thereafter forwarded the same to Under Secretary on 19th June, 2014 and the Under Secretary (Legal) opined that the appeal should be filed. The same opinion was given by the Secretary (Legal) on 23rd June, 2014. Therefore, the file was again referred to the PWD on 25th June, 2014 and was forwarded for approval of the Government and it was obtained on 28th June, 2014. Thereafter, the file was referred to the opinion of the learned Advocate General on 30th June, 2014.

4. The file was then referred to the Superintendent (Legal) after obtaining opinion of the learned Advocate General on 2nd July, 2014 and Under Secretary (Legal) opined on 3rd July, 2014. The Government approval was obtained on 9th July, 2014. Then, a draft of the appeal was sent to the office of the Executive Engineer and the same was forwarded to the Government approval. So, there is delay of 157 days caused for filing an appeal.

5. The petition is opposed by the respondent by filing his reply and the respondent has denied almost all the contents of the application and has contested the application on the ground that the delay is not at all explained.

6. I have heard the arguments of Ms. Priyanka Kamat, the learned Additional Government Advocate appearing for the applicants and Mr. Pangam, the learned Advocate appearing for the respondent.

7. During the course of the arguments, Ms. Kamat, the learned Additional Government Advocate, appearing for the applicants, argued that for filing an appeal, a proposal has to be sent from one office to another and in that process, some time was consumed. Therefore, the delay is caused in filing an appeal. According to Ms. Kamat, the delay caused is not intentional, therefore, the same may be condoned.

8. As against this, Mr. Pangam, the learned Advocate appearing for the respondent has strongly opposed the application and has argued that the delay of 21 days has only been explained and there is absolutely no explanation as to the remaining period of delay nor there is sufficient explanation for condonation of delay. Mr. Pangam further argued that some facts are suppressed by the applicants and, therefore, the applicants have not come to the Court with clean hands. Hence, the delay caused in filing an appeal should not be condoned.

9. Considering the contents of the application, it appears that delay is caused during the process of taking decision whether the appeal is to be filed or not. It is a common knowledge that if the litigant is the State Government, then one person is not taking decision as to whether the appeal is to be filed or not. Such proposal or file goes from one table to another and that too after the scrutiny of the various Officers and ultimately, the State Government takes decision depending upon the opinion of the various persons/officers concerning

the appeal proposal. In that process, some amount of time has been consumed and if such time is consumed, it cannot be said that the delay was caused due to negligence of the applicants.

10. Mr. Pangam, the learned Advocate, has argued that the applicants have no special entity than the ordinary litigant. It is true that who is litigant before the Court is absolutely no matter but, at the same time, which grounds are set out in the petition are material. Mr. Pangam, the learned Advocate has relied upon the observations reported in the case of Special Land Acquisition Officer & another Vs. Jose Prazeres de Piedade Pinto and others, reported in 2006(2) Bom. C.R. 773, which reads thus:-

“...mere statements regarding the movement of file from one office to other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal. Delay merely because it has occasioned in the matter relating to the land acquisition case involving public money, condonation thereof cannot be construed as a matter of right to the Government.”

11. As against this, Ms. Kamat, the learned Additional Government Advocate, has relied upon the observations in the case reported in the case of Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others reported in AIR 1987 SC 1353, in

which it is observed thus:-

“ The legislature has conferred the power to condone by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on `merits'. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk”.

12. Further Ms. Kamat relied upon the observations in the case of Indian Oil Corporation Limited and others Vs. Subrata Borah Chowlek and others reported in (2010) 14 SCC 419, which reads thus:-

“It is manifest that though Section 5 of the Limitation Act, 1963 envisages the explanation of delay to the satisfaction of the court, and makes

no distinction between the State and the citizen, nonetheless adoption of a strict standard of proof in case of the Government, which is dependent on the actions of its officials, who often do not have any personal interest in its transactions, may lead to grave miscarriage of justice and therefore, certain amount of latitude is permissible in such cases”.

13. Considering the observations made in these authorities cited by the learned Advocates appearing for the parties, I am of the opinion that while deciding the application for condonation of delay, irrespective of the fact that, it is filed by the State Government or an individual, a hyper technical approach should not be adopted. On the other hand, a liberal and practical approach has to be adopted by the Court. In the present matter, the applicants have explained delay from 17th June, 2014 till 9th July, 2014. The petition is silent about time consumed till 17th June, 2014 from the date of the judgment and award. However, one thing is very much clear that the judgment and award made available to the applicants on 12th May, 2014. Therefore, I am of the opinion that there may be some lapses on the part of the applicants to mention certain dates from the day on which the award was passed. Therefore, merely on that ground, the relief of condonation of delay cannot be refused to the applicants, if refused the applicants will be deprived from the right of appeal involving public money.

14. In such circumstances, the petition succeeds. Accordingly, the application is allowed and, in the interest of justice, the delay of 157

days caused in filing the appeal is hereby condoned. There shall be no order as to costs.

Application stands disposed of accordingly.

K.L.WADANE, J

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