

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3179 OF 2013
IN
FIRST APPEAL ST.NO.14256 OF 2012

Maharashtra Krishna Valley Development
Corporation thru its Executive Engineer
Pimpalgaon Joga Project .. Applicant

Vs.

Vasant Paraji Mali & Ors. .. Respondents

Mr.V.S.Tadke i/b Mr.D.D.Shinde for the applicant

Mr.A.R.Patil, A.G.P for the State

CORAM : K.K.TATED, J.
DATED : APRIL 24, 2014

PC:

1. Heard the learned counsel for the applicant and learned A.G.P for the State
2. This application is preferred by the claimant for condonation of 1606 days delay in preferring the First Appeal against the judgment and award dt.30/08/2007 passed by Reference Court in L.A.R. No.735/2002.
3. The learned counsel for the applicant in support of the application contends that the advocate of the applicant appearing in the Reference did not apply for certified copies of the impugned

judgment and award. When the applicant learnt about it, they applied for the copies of the judgment and award on 25/10/2010. Those copies were ready on 21/12/2010 and they were collected by the applicant's clerk on 23/12/2010. The applicant forwarded them to their advocate in the Trial Court and sought his opinion and the applicant received their advocate's opinion for preferring Appeal in this Court. Thereafter, the Executive Engineer, Pimpalgaon Joge Dam Division Naryangaon-Junnar issued letter dated 20/04/2011 to the Legal Advisor of Maharashtra Krishna Valley Development Corporation to file an Appeal before this court. Thereafter, the Corporation decided to file First Appeal in this court. Concerned authority issued a letter dated 14/07/2011 to the Advocate for filing First Appeal. Concerned Advocate received an intimation for filing First Appeal along with amount towards court fee and Misc. expenses on 18/02/2012. Thereafter, concerned advocate filed First Appeal in this court on 25/04/2012.

4. Learned counsel for the applicant submits that because of mistake on the part of their Advocate who appeared before the Reference Court and failed to file application for certified copy of judgment and award immediately, the applicant should not be penalised. He submits that in the present proceedings, the Reference Court awarded compensation in respect of the acquired land on higher side. He further submits that applicant has good chance of success in the present matter. Hence, delay in preferring the present First Appeal be condoned in the interest of justice. He submits that if delay is not condoned, irreparable loss and injury would be caused to the applicant.

5. Heard Mr.Tadke, learned counsel for the applicant at length. In the present proceedings, admittedly, the applicant filed application for certified copies of judgment and award after three years. There is no sufficient explanation why there is a delay of more than three years in applying the certified copies. The applicant stated that the Advocate who appeared on behalf of them failed, to file application for certified copy immediately. There is no explanation in the present Civil Application why that Advocate took time of more than three years to apply for certified copy. Moreover, when the certified copy was ready for delivery on 21/12/2010 and the same was collected on 23/12/2010 First Appeal filed on 25/04/2012 i.e. after more than 2 years. The explanation given for this delay is that they had to take opinion from their Advocate, Executive Engineer and from Corporation. That cannot be a reason for condonation of delay. Even though the papers were handed over to the Advocate for filing First Appeal in this Court on 18/02/2012, the First Appeal was filed on 25/04/2012. There is no explanation for this delay, except that the Corporation took some time to forward the necessary amount for payment of Court fees and other expenses.

6. This Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice just because the applicant happen to be a Corporation.

7. The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or

injustice is not a ground for extending the period of limitation.

8. This Court in the matter of **Special Land Acquisition Officer & Anr. Vs Jose Prezares De Piedade Pinto, 2006(2) Bom.C.R 773** held that delay caused due to movement of file from one table to another cannot be a reason for condonation of delay.

9. The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

10. The Apex Court in the matter of **Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara & Anr, 2009(3) SCC pg 525** held that while dismissing an Appeal on the ground of limitation, going into the merits of the case is not allowed.

11. The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

12. The Apex Court in the matter of **Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai reported in 2012 (5) SCC 157**, held that no premium be given for total lethargy or utter negligence of State officers/machinery/agency/ instrumentality and condonation of delay caused by such officer cannot be allowed as a matter of course by accepting the plea that dismissal on the ground of limitation will caused injury to public interest.

13. The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

14. The Apex Court in the matter of Office of **Chief Post Master General and Others Vs. Living Media India Ltd & Anr, 2012 All SCR 892** held that delay attributed in personal machinery and methodology, cannot be condoned in view of modern technology use.

15. Recently, the Apex Court in the matter of Esha Bhattacharjee Vs. Managing Committee of **Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay is rejected.

16. Considering the facts as stated hereinabove, and the law declared by the Apex Court, I am of the opinion that applicant has failed to show sufficient cause for condonation of 4 years and 113 days delay in preferring the First Appeal.

17. Hence, Civil Application is rejected.

18. In view thereof, the registration of the First Appeal is rejected.

(K.K. TATED, J)