

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.884 OF 2015
IN
FIRST APPEAL (ST) NO.14335 OF 2014
WITH
FIRST APPEAL (ST). NO.14335 OF 2014**

Shri Chotelal Shivbahadul Gound and Ors. .. Applicant

vs

Mrs.Madhavi Maruti Kadam and Anr. .. Respondent

Mr.T.J.Mendon for the applicant

**CORAM : K.K.TATED, J.
DATED : 11/01/2016**

PC:

- 1 Heard the learned counsel for the applicant.
- 2 Though respondents are duly served, no one appeared on behalf of them when the matter was called out.
- 3 This application is preferred by claimant for condonation of 1 year 195 days delay in filing First Appeal challenging the judgment and award dated 8.6.2012 passed by MACT, Mumbai in Application No.3441 of 2006 for enhancement of compensation.
- 4 In application in paragraph 4 applicant stated that they are permanent resident of remote village in the State of Uttar Pradesh and

therefore there is a delay on their part to prefer the present Appeal.

5 The learned counsel for the applicant further submits that the respondent deposited the same compensation of Rs.2,20,500/- with 7% interest p.a. as awarded by Tribunal by award dated 8th June, 2012, in the month of September, 2013 and therefore there is a delay on their part to file First Appeal in this court. He submits that in the interest of justice this Hon'ble Court be pleased to condone the delay.

6 Heard the learned counsel for the applicant at length.

7 It is to be noted that in the present proceeding, applicant for obtaining order in their favour made incorrect statement in paragraph 4 of the Civil Application. In paragraph 4 applicant stated that they are permanent resident of remote village in the State of Uttar Pradesh whereas in the main application filed by them before MACT, the address was shown of Mumbai only.

8 The Apex Court in the matter of *Pundlik Jalam Patil (D) by Lrs. vs. Exe.Eng.Jalgaon Medium Project & Anr. 2008(6) ALL MR 954* held that that a party taking a false stand to get rid of the bar of limitation could not be encouraged to get any premium on the falsehood on his part by condoning delay. Paragraph 8 of the said judgment reads thus:

“11. Whether the respondent made incorrect statement in the application seeking condonation of delay?

There is no dispute whatsoever that the respondent being the beneficiary of the acquisition has been duly impleaded as a

party respondent in the reference cases as is required in law. It not only appeared in the matter through a properly instructed Counsel but also filed its written statement opposing the claim for enhancement of compensation but did not choose to lead any evidence whatsoever. In the application filed in the High Court the plea taken by the respondent is as under:

“The applicant submits that, although the applicant being Acquiring Body, was arrayed as opponent in the said reference, the opponent No. 4 herein (Original Opponent No. 1) S.L.A.O. or his subordinate contested the said reference by filing written statement. Therefore, this applicant was unaware about the stand taken by S.L.A.O. as well as the impugned judgment and award.”

This averment in the application on the face of it is totally incorrect. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See: AIR(1993) 1 SCC 572].”

9 As the applicant made incorrect statement on solemn

affirmation, they are not entitled to any relief from this court. Hence, Civil Application stands rejected.

10 In view thereof nothing survives in the First Appeal. Registration of First Appeal is rejected.

(K.K.TATED, J.)