

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

CIVIL APPLICATION NO.3201 OF 2015

IN

FIRST APPEAL STAMP NO.25244 OF 2015

The Executive Engineer

Nandur Madhmeshwar Project,

Nashik Division

.. Applicant/Appellant

Versus

Shri. Ganpatrao Baburao Jamdhade

(Deceased through his legal heirs)

Shri. Harishchandra Ganpat Jamdhade

and others

.. Respondents

Ms. C. A. Deshmukh for the Applicant/Appellant.

Mr. S. S. Gite for the Respondent Nos.1A to 1F.

CORAM : R.M. SAVANT, J.

DATE : 3rd AUGUST 2016

PC.

1 The above Civil Application has been filed for condonation of delay of 3 years and 72 days in filing the above First Appeal. The Applicant is the acquiring body for whom lands have been acquired for the irrigation project known as Mukne Dam. The Claimants dissatisfied by the compensation offered by the Collector filed a reference under Section 18 of the Land Acquisition Act. The said reference was decided by the Reference Court i.e. 4th Joint Civil Judge, Senior Division, Nashik by the judgment and order dated 19.03.2012. The acquiring body aggrieved by

the enhancement granted by the Reference Court has proposed to file the instant Appeal. However, since there is a delay of 3 years and 72 days in filing the said Appeal that the above Civil Application has been filed for condonation of delay.

2 The reasons for the delay have been mentioned in paragraph 5 of the Civil Application in which paragraph the datewise developments have been mentioned. The said paragraph therefore discloses the steps taken by the Applicant from time to time to arrive at a decision to file the instant Appeal. The events disclosed in paragraph 5 therefore revolve around the administrative reasons on account of which the delay of 3 years and 72 days has occurred in filing the Appeal. The said events disclose that some time was lost in obtaining legal advice from the concerned authorities and also thereafter for arriving at a decision whether to file an Appeal or not. In my view, considering the fact that the Application is the acquiring body whereas the acquisition is carried out at the behest of the State some indulgence would have to be shown to the Applicant on the said ground. The reasons mentioned in paragraph 5 therefore can be said to be the plausible reasons for the delay of 3 years and 72 days occurring in filing the Appeal.

3 It would also be relevant to note that the First Appeals being

First Appeal No.751 of 2005 and First Appeal No.791 of 2005 concerning the same project and also arising out of the judgments rendered by the Reference Court on which judgments the Reference Court in the instant case has relied upon are pending in this Court. The judgment of the Division Bench of this Court reported in 2008(6) Mh.L.J. 239 in the matter of State of Maharashtra and others Vs. Vithu Kalya Govari and others would not further the case of the Respondent Nos.1A to 1F in the instant case in view of the fact that the said First Appeals are pending in this Court. Hence, having regard to the said fact also the delay is required to be condoned. However, the same obviously would be at the pains of imposing costs on the Applicant. The Civil Application is accordingly allowed. Resultantly, the delay of 3 years and 72 days in filing the above First Appeal stands condoned. In the facts and circumstances of the case, the Applicant to pay costs of Rs.10,000/- to the Respondent Nos.1A to 1F through Mr. S. S. Gite. The same to be done within four weeks from date.

4 The payment of the said costs is a condition precedent. If the costs are not paid as directed by the instant order then the benefit of this Court would not enure to the Applicant and resultantly the Civil Application would then stand dismissed. The above Civil Application is accordingly disposed of.

[R.M. SAVANT, J]