

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3558 OF 2016
IN FAST/777/2016

WITH

CA/1003/2016 IN FAST/16083/2015
WITH CA/3299/2016 IN FAST/709/2016
WITH CA/3546/2016 IN FAST/2742/2016
WITH CA/3550/2016 IN FAST/695/2016
WITH CA/3552/2016 IN FAST/712/2016
WITH CA/3554/2016 IN FAST/1091/2016
WITH CA/3556/2016 IN FAST/1088/2016
WITH CA/3560/2016 IN FAST/1258/2016
WITH CA/3562/2016 IN FAST/1085/2016
WITH CA/3565/2016 IN FAST/1094/2016
WITH CA/3567/2016 IN FAST/1111/2016
WITH CA/3569/2016 IN FAST/767/2016
WITH CA/3573/2016 IN FAST/763/2016
WITH CA/3883/2016 IN FAST/301/2016
WITH CA/3898/2016 IN FAST/318/2016
WITH CA/3900/2016 IN FAST/307/2016
WITH CA/4992/2016 IN FAST/705/2016

THE EXECUTIVE ENGINEER, NANDUR MADHAMESHWAR CANAL DIVISION,
VAIJAPUR UNDER THE GM

VERSUS

UTTAM EKNATH NAIKWADI AND OTHERS

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Advocate for Applicants : Mr. S.S.Thombre
AGP for Respondent No.3 : Mr. S.R. Yadav
Advocate for Respondent Nos. 1 and 2 : Mr. A.D. Kasliwal

CORAM : K.K. SONAWANE, J.

ORDER RESERVED ON : 20TH SEPTEMBER, 2017

ORDER PRONOUNCED ON : 11TH OCTOBER, 2017.

ORAL ORDER :

1] These are the applications moved on behalf of the applicant/Acquiring Body to condone the delay, ranging from 1699 days to 1833 days, caused for filing the first appeals against the impugned judgment and award passed by the learned Reference Court, Aurangabad in reference petitions of the respondents/original claimants under Section 18 of the Land Acquisition Act.

2] The factual matrix of the matter is that the respondents/original claimants preferred the Reference Petitions under Section 18 of the Land Acquisition Act.1894 for enhancement of compensation amount. The learned Reference Court, after appreciating the facts and circumstances on record allowed the Reference Petitions and was pleased to enhance the market value of the lands under acquisition. Being dissatisfied with the findings of civil court the applicant acquiring body filed the appeal under Section 54 of the Land Acquisition Act. But, there is delay in lodging the appeal. Hence, appellant moved the present applications under Section 5 of the Limitation Act for condonation of delay.

3] Learned counsel for applicant submits that the enhancement of compensation by the Civil Court clearly suffers from vice of excessiveness. Therefore, applicant/acquiring body preferred the present First Appeals to agitate the validity and propriety of the findings of learned Civil Court. But, there is delay in filing the First Appeals ranging from 1699

to 1833 days. The learned counsel for applicants contends that the delay caused was not intentional and deliberate but it was caused due to compliance of office procedure. The learned counsel for the applicant/Acquiring Body fervidly submits that the applicant/acquiring body was not aware of the impugned judgment and award. Moreover, the concerned Govt. Pleader did not communicate about the decision of the civil court. The Acquiring Body learnt about the impugned judgment and award of the civil court when the respondents/claimants approached to the office for recovery. The applicant procured its copies and forwarded the verdict of civil court for legal opinion to the Legal Advisor of the applicant - Acquiring Body. The proposal to file first appeals was forwarded to the Head Office of Acquiring Body for its approval and requisite budgetary allocation for Court expenses etc. The applicant/Acquiring Body on receipt of approval and budget for legal expenses, lodged the first appeals through its panel counsel. But, there is delay to present the appeals.

5] According to learned counsel Shri Thombre, the so called delay is not intentional and deliberate but due to lack of knowledge of impugned judgment and award. In addition, delay was caused for compliance of official process. Learned counsel Shri Thombre added that the Land Acquisition Officer determined the market value of the acquired land on appreciation of sale instances as well as circumstances prevailing over in the area nearby the land under acquisition. But, the learned civil court awarded the market value 4 times more than the amount determined by the Land

Acquisition Officer. He submits that in case delay is not condoned for redressal of grievances in appellate forum, it would cause loss to the public exchequer and no person is individually affected but ultimately the public interest would suffer. Therefore, he prayed to condone the delay.

6] Per contra, learned counsel Shri Kasliwal, for the respondents/original claimants scathingly assailed that there is inordinate delay in filing the first appeals against the impugned judgment and award passed by the learned Reference Court. The grounds mentioned in the applications are not reasonable and sufficient to condone the delay. The office personnel of the applicant/Acquiring Body were found negligent and careless to deal with the matter with due diligence and filed the appeals at belated stage. The slipshod attitude of the officials of applicant should not be considered being sufficient cause, as envisaged under section 5 of the Limitation Act. He has given much more emphasis on the circumstances that the impugned judgment and award was passed by the learned civil court in the month of October, 2010 and since then, the applicant/Acquiring Body did not take any steps to file appeals within stipulated period. After efflux of colossal period, the present appeals came to be filed with applications for condonation of delay under Section 5 of the Limitation Act. Learned counsel Shri Kasliwal asserted that “sufficient cause” prescribed under Section 5 of the Limitation Act, as well as the doctrine of liberal approach laid down by the Honourable Apex Court, would not advance to the contentions propounded on behalf of applicant Acquiring Body for condonation of delay.

It is the rule of law that the provisions of law of limitation should be applied with its rigour and courts have no power to extend the benefit of period of limitation on equitable grounds. It has also delineated that the discretion should be exercised judiciously and in proper manner. There should not be any injustice caused to the opposite side. According to learned counsel Shri Kasliwal, the civil court allowed the Reference Petitions filed under Section 18 of Land Acquisition Act, and after expiry of period of limitation, the legal right vested in the respondents became confirmed and absolute being a successful party to the litigation. Therefore, the claimants should not be exposed to time barred appeal filed by acquiring body, by exercising the discretion, under Section 5 of the Limitation Act. He relied upon the judicial pronouncements in the case of *Yashomandir Sahakari Patpedhi Maryadit Vs. Ashok Raj Enterprises and others*¹ *P.K. Ramchandran vs. State of Kerala and another*² *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another*³ *Balwant Singh vs. Jagdish Singh and others*⁴ *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*⁵ *Amalendu Kumar Bera and others Vs. State of West Bengal*⁶ *Brijesh Kumar and others Vs. State of Haryana and others*⁷

He prayed not to nod in favour of applicant and reject the application.

7] Admittedly, the matter pertains to Land Acquisition

1 13(7) All MR 1

2 AIR 1998 SC 2276

3 2010 ALL SCR 816

4 AIR 2010 SC 3043

5 2013 STPL/(Web)737 SC

6 2013 DGLS (Soft.) 193

7 2014 STPL(Web) 191 SC

proceedings. The learned Civil Court allowed the Reference Petitions of the respondents/original claimants filed under Section 18 of the Land Acquisition Act. It has been alleged that the learned civil court determined the market value of the acquired land more than 4 times of the market value determined by the Land Acquisition Officer in his award declared under section 11 of the Land Acquisition Act. The applicant/Acquiring Body is intending to agitate the propriety and validity of the findings recorded by the learned Civil Court. The applicant/acquiring body assailed that the market value determined by the Civil court suffers from the vice of extreme excessiveness. After procuring the requisite documents, as well as on obtaining legal opinion, the proposal for filing the appeal was forwarded to the Head Office by the applicant/Acquiring Body. It has been alleged that the learned counsel representing the applicant/Acquiring Body in the Reference Court did not communicate about the impugned judgment and award for further legal process to the acquiring body, But, later on the officials of the applicant/acquiring body learnt about the impugned award and thereafter the process for filing the appeal was set in motion.

8] In the backdrop of aforesaid factual score of the matter, it would be apposite to analyze the broad contours of the legal provisions relating to Section 5 of the Limitation Act. It would facilitate to determine the issue in dispute within ambit of law. In the case of ***State of Kerala vs. E.K. Kuriyipe¹***, it has been held by the Honourable Apex Court that whether or not there is sufficient cause for condonation of delay is purely a question

1 (1981)Supp. SCC 72

of fact totally based upon the facts and circumstances of the particular case, and what constitutes “sufficient cause” for the purpose of Section 5 of the Limitation Act cannot be laid down by hard and fast rule. In the case of ***New India Insurance co. vs. Shanti Mishra***¹, the Honourable Apex court held that the discretion under section 5 of the Limitation Act should not be crystalise so as to convert a discretionary matter into a rigid rule of law but the expression “sufficient cause” should receive liberal construction. The law postulates that the Court has to go in the position of a person concerned and to find out if the delay can be said to have resulted from the cause which he had propounded and whether the said cause could be appreciated on the peculiar facts and circumstances of the case as “sufficient cause”. The Honourable Apex court, in the case of ***Esha Bhattacharjee vs. Managing Committee***¹ delineated the legal principles to determine the issue of condonation of delay. The Para Nos. 21 and 22 of the said judicial pronouncement would read thus :-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in

¹ (1971) 2 SCC 840

¹ (2013)12 SCC 649

proper perspective to the obtaining fact-situation.

21.3. *(iii)* Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. *(iv)* No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. *(v)* Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. *(vi)* It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. *(vii)* The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. *(viii)* There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. *(ix)* The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. *(x)* If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. *(xi)* It is to be borne in mind that no one gets away with fraud, misrepresentation or

interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

days. It has been asserted that the learned counsel representing the Acquiring Body for dealing with the matters under Section 18 of the Land Acquisition Act before the learned Reference Court did not communicate the decision of the reference petitions to the officials of the applicant/Acquiring Body. But, after knowledge of imugned award, the office of the applicant/Acquiring Body indulged in the compliance of procedural formalities for obtaining legal opinion, its approval, budgetary allocation etc. and eventually, preferred the present appeals at belated stage. It has been harped on the circumstances that the learned Reference Court granted enhancement of compensation of lands under acquisition more than 4 times of the market value determined by the Land Acquisition Officer in his award under Section 11 of the Land Acquisition Act. The learned counsel for the applicant cast the aspersions that the enhancement of compensation allowed by the learned Reference Court suffers from the vice of extreme excessiveness. Therefore, the issue of awarding exorbitant and immoderate amount is required to be re-apprised by the Appellate Forum for substantial justice. No doubt, when the substantial justice and technical considerations are pitted against each other, in such circumstances the cause of substantial justice requires to be given more weightage and the claim of the other side for vested right after efflux of period of limitation would not be upheld for injustice being caused because of non deliberate delay. In the above referred *Esha Bhattacharjee's case*, the legal principle at para. 21.3 described the significance of substantial justice being paramount and pivotal issue than technical considerations.

10] The circumstances on record adumbrate that the officials of the applicant/Acquiring Body dealt with the matter in a very slow and casual manner. They failed to handle the matter with due diligence and reasonable precautions, without understanding its seriousness and implications. At this juncture, it would be appropriate to refer to the observations of Their Lordships of the Apex Court in the matter of ***State of Karnataka vs. Moideen Kunthi (dead) by LRs and others,***¹ in para Nos. 19 and 22 as under :-

“19. On perusal of the explanation offered it is clear that the officials who were dealing with the matter have either deliberately or without understanding the implications dealt with the matter in a very casual and lethargic manner. It is a matter of concern that in very serious matters action is not taken as required under law and the appeals/petitions are filed after a long lapse of time. It is a common grievance that it is so done to protect unscrupulous litigants at the cost of public interest or public exchequer. This stand is more noticeable where vast tracts of land or large sums of revenue are involved.

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22. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) must receive a liberal construction so as to advance substantial justice as was noted by this Court in G. Ramegowda vs. Special Land Acquisition Officer. Paras. 16-17 of the judgment reads as

1 (2009)13 SCC 192

follows : (SCC pp. 148-79)”

“16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. In

the opinion of the High Court, the conduct of the law officers of the Government placed the government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. Lindley, M.R., in *National Bank of Wales Ltd. In re*, observed, though in a different context:

“.... Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.’ ”

11] In the light of aforesaid exposition of law in the instant case, it can not be presumed that the delay caused was deliberate and intentional on account of culpable negligence, but it appears to be caused due to lethargic and casual approach on the part of officials of the applicant/Acquiring Body. Now a days, it is a general experience that impersonal mechanism and inherited bureaucratic methodology imbued with, note-making, file-pushing, and passing the buck always cause delay for collective and institutional decisions on the part of Government Departments. Undisputedly, the State is representing collective cause of the community. The law mandates to give preference to the merits of the matter for substantial justice instead of rebuffing the relief on technicalities of delay in lodging the appeal. The law does not permit the respondents to stand to the benefit by resorting to technical ground of delay. In case the delay is not condoned on appreciation of technical grounds of delay, no

person is individually affected but ultimately the public interest would be at stake. The learned counsel for Acquiring Body since beginning clamoring, that the extreme excessive and exorbitant amount of compensation allowed to be enhanced, which would accrued more than 4 times of the market value, awarded by the Land Acquisition Officer. In such peculiar circumstances, certain amount of latitude is essential to be extended in favour of applicant/Acquiring Body, being a Government Agency for redressal of grievances relating to collective cause of the community.

12] It is axiomatic that concerned officials of the Acquiring Body did not handle the matter with due diligence and reasonable precautions. They dealt with the matter in a very casual manner. Their Lordships of the Honourable Apex Court in the matter of Moiddin Kunthi (referred supra) elucidated that :

“it is common grievance that it is so done to protect the unscrupulous litigant at the cost of public interest or public exchequer. This stand on the part of officials of the Acquiring Body is more noticeable where vast tracts of land or large sums of revenue are involved.”

The conduct, behaviour and attitude of the parties relating to its inaction or negligence are also the decisive factors and no one should be allowed to derive benefit of mischief by resorting to the technicalities of law of limitation (Emphasis is supplied on Esha Bhattacharjee's case referred supra).

13] In the case of *Collector Land Acquisition, Vs. Mst. Katiji*¹, the Honourable Apex Court considered the question of limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing matters on merit. In para. 3 of the aforesaid judgment Their Lordships have observed thus :-

“The legislature has conferred the power to condone delay by enacting Section 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”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. 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.

3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. 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.

1 (1987)2 SCC 107

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the “State” which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the “State” is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

On the touch-stone of aforesaid legal guidelines by adopting justice oriented approach, there is no impediment to condone the delay for

presenting the appeals by the Government/Acquiring Body on appreciation of facts and circumstances on record being “sufficient cause”. These are the applications filed by the Government Agency and, therefore, reasonable latitude is required to be extended in favour of the applicant for substantial justice into the matter, to safeguard the interest of community.

14] In the above premises, I am not inclined to nod in favour of respondents/original claimants to appreciate the technical grounds of delay to shut the doors of courts of law for appellant/State to approach to the appellate forum to represent public cause for redressal. The judicial pronouncements relied upon by the learned counsel for the respondents, with utmost respect, do not advance to the arguments propounded on their behalf. The textual facts as well as mode and tenor of legal guidelines delineated in all these citations are totally distinguishable and not akin to the facts and circumstances of the matter in hand. It would be reiterated that the issue of “sufficient cause” for condonation of delay is a question of fact and totally rests upon the facts and circumstances of each case.

15] In sequel, the applications for condonation of delay stand allowed in terms of prayer clause (B). So called delay caused in presenting the appeals is hereby condoned. Registry to take requisite steps for further process.

grt/-

**[K.K. SONAWANE]
JUDGE.**