

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

37 CIVIL APPLICATION NO. 9231 OF 2016
IN FAST/3711/2016

WAMAN BHIMAJI JAMDAR AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...

Advocate for Applicants : Mr. Nandkishor J. Pahune Patil
AGP for Respondent No. 1: Mr. S. S. Dande
Respondent No. 2 Served

CORAM : K.K. SONAWANE, J.

DATED : 20th NOVEMBER, 2017.

Order :-

1. Heard learned counsel for the appearing parties.
2. Perused the applications and relevant documents produced on record. It has been submitted on behalf of the applicants that delay caused in filing the appeal is not intentional or deliberate but it caused due to unavoidable circumstances as well financial crises for filing the present appeal. The applicants have every hope of success in the appeal. A reasonable opportunity be given to applicants for seeking relief of enhancement of compensation in the matter. The learned counsel further added that applicants - appellants will not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894, for the period of delay sought to be condoned, in case of success of appeal on merit. Hence, learned counsel for applicants prayed for condonation of delay.
3. The learned AGP for respondent No. 1 raised objection and submits that there is inordinate delay, which has not been explained satisfactorily, therefore, the same cannot be condoned and prayed for rejection of applications.

4. Admittedly, the matters pertain to enhancement of compensation for the lands under acquisition. The learned Reference Court partly allowed the Reference Petition filed by the applicants under section 18 of the Land Acquisition Act, 1894. The applicants intend to challenge the findings for awarding meagre compensation amount and also intend to seek enhancement of compensation.

5. In view of the aforesaid submissions and for the reasons mentioned in the application that the delay so caused in filing the appeal was only due to unavoidable circumstances as well financial crises, I find it justifiable to give reasonable opportunity to the applicants-appellants in the interest of justice to ventilate grievances before the Appellate Forum. It is settled law that liberal and pragmatic approach is essential to be adopted by avoiding pedantic approach while dealing with the application for consideration of delay. Therefore, it is imperative to grant some sort of latitude to the applicants to present an appeal by condoning the delay. It would not cause any prejudice or injustice to the respondents. In contrast, it would subserve the purpose of substantial justice. There is sufficient cause to allow the applications for condonation of delay. In addition, the applicants-claimants have shown their willingness / inclination that they will not claim statutory benefits as well as amount of interest as mentioned above. In such circumstances, by imposing aforesaid fetter of waiver of statutory benefits and interest amount etc. on the part of applicants-appellants, there would not be any impediment to condone the delay. The application for condonation of delay required to be allowed.

6. In sequel, application is allowed in terms of prayer clause "B". The delay caused to present the appeal against the impugned Judgment and Award stands condoned subject to condition that applicants-appellants shall not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894 for the delayed period allowed to be condoned, in case, any enhanced compensation is awarded by this Court after adjudication of appeal on

merit.

7. Pursuant to aforesaid waiver of statutory claim, the applicants-appellants shall furnish undertakings to that effect and place it on record of the appeal to enable this Court to take note of the same, while decision of the appeal on merit. Registry to take requisite steps for further process.

8. The civil application is allowed in aforesaid terms and stand disposed of.

9. On registration of appeal, issue notice for admission of the appeal on merit to the respondents. Learned AGP waives service of notice for respondent No. 1

10. Meanwhile, call for record and proceedings from the concerned learned Reference Court.

11. After service of the notice list the appeal for admission in due course.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK