

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

936 CIVIL APPLICATION NO. 9225 OF 2016
IN FAST/5004/2016

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION,
OSMANABAD

VERSUS

SUBHASH RAMA KADAM AND ORS

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Advocate for Applicant : Mr. Vilas R. Sonwalkar

Advocate for Respondent No.1 : Mr. V. V. Ingale (Absent)

AGP for Respondent No.2 : Mr. B.V. Virdhe

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CORAM : K.K. SONAWANE, J.

DATED : 3rd NOVEMBER, 2017.

Order :-

1. Heard learned counsel for the applicant-Acquiring Body as well as learned AGP for respondent No. 2 State. Learned counsel for respondent No. 1 (original claimant) is absent

2. The applicant-Acquiring Body moved the present application for condonation of delay in filing the first appeal against impugned Judgment and Award passed by the learned 4th Joint Civil Judge, Senior Division, Osmanabad in LAR No. 191 of 2007 dated 02-05-2013. According to learned counsel for the applicant, impugned Judgment and Award passed by the Reference Court is erroneous, illegal and is not as per the provisions of Land Acquisition Act, 1894. The applicant is Body corporate having its independent entity. After procuring the funds for court fees appeal came to be filed, however, there is delay in filing the appeal. According to learned counsel for applicant, delay so caused is not intentional or deliberate, but caused due to compliance of official process.

3. The learned AGP for respondents No. 2 submits for suitable orders in the interest of justice.

4. As referred above, respondent-original claimant remained absent, therefore, no opportunity for hearing them in the present applications is received to this Court. Considering the nature of the subject-matter and reasons mentioned in the application, I do not find any impediment to allow the application for condonation of delay. It would not cause any prejudice or injustice to the respondent-original claimant and public interest is involved in the matter. 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, I do not find any impediment to grant some sort of latitude to the applicant- Acquiring Body to present an appeals by condoning the delay. It would not cause any prejudice or injustice to the respondents. In contrast, it would sub-serve the purpose of substantial justice. Hence, the application for condonation of delay deserves to be allowed. In sequel, the application stands allowed in terms of prayer clause (B). Delay caused in filing appeal against the impugned Judgment and Award is hereby condoned. The civil application is allowed in above terms and stand disposed of. Registry to take requisite steps for registration of appeal. Civil application stands disposed of accordingly.

5. On registration of appeal, issue notice to the respondents. Learned AGP waives service of notice for respondent No. 2.

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

7. List the appeal for admission in due course.

[K. K. SONAWANE]
JUDGE

MTK.