

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

CIVIL APPLICATION NO. 7012 OF 2016
IN FAST/14921/2016

ABHIMANYU ARJUN PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Advocate for Applicant : Ms. G. A. Jagtap h/f. Mr. C. K. Shinde.
AGP for Respondents : Mr. B. V. Virdhe.
...

CORAM : K.K. SONAWANE, J.

DATED : 09TH OCTOBER, 2017.

Order :-

Heard learned counsel for applicant (original claimant) and learned AGP for the respondent State. Perused the application and relevant documents placed on record. It appears that, there is delay of 237 days for filing appeal.

2. According to learned counsel for applicant, Article 116 of Schedule of the Limitation Act, 1963, prescribed period of limitation of 90 days for filing the first appeal. The so-called delay caused in this appeal was not intentional and deliberate, but caused due to unavoidable circumstances and the financial crisis. The applicants are poor agriculturist residing in the rural area of Beed District. Due to poor financial condition, applicant could not approach to this Court for filing present appeal. After procuring requisite funds for obtaining certified copies and expenses to file the appeal, the applicant has preferred the present appeal. There is an every hope of success in the appeal. In case, delay is not condoned, it will cause prejudice to the applicant, therefore, he prayed to condone the delay. Moreover, the learned counsel for applicant submits that the applicant 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.

3. The learned AGP raised objection and submits that there is inordinate delay, which is not explained in proper manner, therefore, application be rejected.

4. After giving anxious consideration to the submission canvassed on behalf of the both sides, it appears that, matter pertains to the determination of market value of the acquired land under the Land Acquisition Act, 1894.

5. Considering the nature of the subject matter and reasons mentioned in the application in regard to the financial crisis as well as attempt of the applicant to file appeal after consultation with his counsel, I find reasonable opportunity is essential to be granted to the applicant to ventilate his grievances in the Appellate Forum. It would not cause any prejudice and injustice to the respondent- Acquiring Body. In contrast, it would sub-serve the purpose in the interest of justice. Therefore, I do not find any impediment to condone the delay. It is settled law that, liberal and pragmatic approach is essential to be adopted by avoiding pedantic approach while dealing with the application for condonation of delay. In addition, the applicant/claimant has shown his willingness/ inclination that he will not claim statutory benefits. In such circumstances, by imposing aforesaid fetter of waiver of statutory benefits on the part of applicant-appellant, there would not be any impediment to condone the delay. The application for condonation of delay deserves to be allowed.

6. In sequel, civil application stands allowed in terms of prayer clause 'B'. The delay caused to present the first appeal against the impugned Judgment and Award stands condoned subject to condition that applicant-appellant 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 applicant-appellant shall furnish undertaking 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 in due course.

8. On registration of appeal, issue notice of final hearing of appeal at the stage of admission to the respondents, returnable on 28th November, 2017.

9. The learned AGP waives service of notice for respondent No.1 State.

10. In addition to regular mode of service, appellant shall serve notice of final hearing of appeal at the stage of admission to respondent No.2 privately by fastest mode as may be permissible in law and file affidavit of service of notice with tangible proof to that effect on record by the returnable date. Meanwhile, call for record and proceedings from the concerned Reference Court.

11. The civil application stands disposed of in aforesaid terms.

[K. K. SONAWANE]
JUDGE

rrd.