

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

CIVIL APPLICATION NO. 9987 OF 2016
IN FAST/17840/2016

VISHWANATH HANMANTRAO BIRADAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Mahesh P. Kale
AGP for Respondent - State: Mr. S.R. Yadav
...

CORAM : K.K. SONAWANE, J.

DATED : 4th DECEMBER, 2017.

Order :-

1. Heard learned counsel for the parties.
2. Perused the application and relevant documents produced on record. It has been submitted on behalf of the applicant-original claimant 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. Learned counsel submits that out of the same award the respondent State has filed first appeal stamp No. 24472 of 2011 against the applicant and the same is pending for adjudication. The learned counsel submits that State has filed the appeal against market value determined by reference Court under section 18 of the Land Acquisition Act. A reasonable opportunity be given to applicant for seeking relief of enhancement of compensation in the matter. The learned counsel further added that applicant - appellant 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 applicant prayed for condonation of

delay.

3. The learned AGP for respondent - State submits that there is inordinate delay, which has not been explained satisfactorily, therefore, the same cannot be condoned and prayed for rejection of application.

4. Perused the application and relevant documents on record. 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 applicant under section 18 of the Land Acquisition Act, 1894. The respondent-State of Maharashtra preferred appeal against the findings of the learned Reference Court for determining the correct market value on the ground that the market value determined is exorbitant and excessive one. The applicant also 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, I find it justifiable to give reasonable opportunity to the applicant-appellant in the interest of justice to ventilate grievances before the Appellate Forum. There is sufficient cause to allow the application for condonation of delay. In addition, the applicant-claimant has shown his willingness / inclination that he 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 applicant-appellant, there would not be any impediment to condone the delay. The application for condonation of delay is 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 applicant-appellant/original claimant 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 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 stands disposed of accordingly.

9. On registration of appeal, issue notice to the respondent. Learned AGP waives service of notice for respondent -State

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

11. List the appeal for admission in due course.

[K. K. SONAWANE]
JUDGE

mtk.