

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

**CIVIL APPLICATION NO. 245 OF 2017
IN
FIRST APPEAL STAMP NO. 37209 OF 2016**

Subhash Maruti Ghodake

...APPLICANT

versus

The State of Maharashtra and another

...RESPONDENTS

.....
Mr. P.S. Chavan, Advocate for applicant
Mr. S.R. Yadav, AGP for respondent No. 1
Mr. Kailas U. More, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.

DATED : 6th SEPTEMBER, 2017.

Order :-

1. Heard learned counsel for appearing parties.
2. Perused the application. The applicant-original claimant moved present application for condonation of 1109 days delay caused in preferring the appeal against the impugned Judgment and Award passed by the learned Reference Court. According to learned counsel for the applicant, applicant-appellant is poor agriculturist. He has no knowledge of legal procedure for filing the appeal. He is residing in remote village of Osmanabad District. After the impugned Judgment and Award, the applicant received enhanced compensation in the month of November, 2016. Thereafter, he procured the certified copies of the impugned Judgment and Award and preferred present appeal, but there is delay, which is not intentional or deliberate, but it caused due to unavoidable circumstances as well as financial crises. 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 counsel for respondent No. 2 Acquiring Body submits that delay so caused in preferring the appeal is inordinate and same has not been explained satisfactorily, therefore, the delay cannot be condoned.

4. The learned AGP raised objection and submits that application for condonation of delay be rejected.

5. I have given anxious consideration to the submissions advanced on behalf of both sides. The matter pertains to land acquisition proceedings. The learned Reference Court partly allowed the application of the respondent filed under Section 18 of the Land Acquisition Act, but the applicant is not satisfied with market value determined by the Reference Court. The applicant is intending to file appeal, but there is delay in filing the appeal. Obviously, the applicant is rustic agriculturist and prosecuting the matter since the year 2013 after filing the Reference Petition under section 18 of the Land Acquisition Act.

6. In view of the aforesaid submissions and for the reasons mentioned in the application that the applicant is rustic and illiterate persons having no knowledge about the legal procedure as well as he had a financial crisis, I am of the opinion that reasonable opportunity is required to be given to the applicant-appellant in the interest of justice to ventilate the grievances before the Appellate Forum. There is no impediment to condone the delay. There is sufficient cause to allow the application for condonation of delay. In addition, the applicant/claimant has shown willingness/inclination that he will not claim statutory benefits as mentioned above. 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.

7. In sequel, application stands allowed. The delay caused to present the appeal against the impugned 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.

8. 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.

9. The civil application is allowed in aforesaid terms and stands disposed of.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK