

**CIVIL APPLICATION NO. 314 OF 2017
IN
FIRST APPEAL STAMP NO. 37293 OF 2016**

versus

The State of Maharashtra and others ...RESPONDENTS

Mr. S.N. Patil, Advocate holding for
Mr. G.K. Sontakke, Advocate for applicants
Mr. S.R. Yadav, AGP for respondents No. 1 and 2
Mr. Amol Lipne, Advocate holding for
Mr. A.R. Nikam, Advocate for respondent No. 3

CORAM : K.K. SONAWANE, J.

DATED : 14th SEPTEMBER, 2017.

Order :-

1. Heard learned counsel for appearing parties.
2. Perused the application. The applicant moved present application for condonation of 994 days delay in filing the first appeal against impugned judgment and Award passed by the Reference Court in LAR No. 836 of 1997 (old No. 122 of 1995). According to learned counsel for the applicants, the matter pertains to Land Acquisition Proceedings. The applicants-appellants are poor rustic villagers. They have no any other source of income, except agricultural land. After the Award of the Special Land Acquisition Officer, the applicants filed Reference under section 18 of the Land Acquisition Act, 1894 for enhancement of compensation amount. The learned Reference Court dismissed the Reference Application. Hence, the applicants are intending to file first appeal against the Judgment and Award of the learned Reference Court, but due to financial crises he could not approached to this Court within stipulated period. They have every hope of success in the appeal. According to learned counsel for applicants, delay so caused is not intentional or deliberate, but it was caused due to financial crises. In addition, the learned counsel for applicants submits that

applicants/claimants have shown their willingness/inclination that they 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 for respondents No. 1 and 2 raised objection and submits that application be rejected.

4. The learned counsel for respondent - Acquiring Body submits that learned Reference Court considering all aspect of the matter has rightly dismissed the Reference Petition of applicant-appellant. He further submits that there is inordinate delay, which has not been explained satisfactorily, therefore, the same cannot be condoned and prayed for rejection of application.

5. I have given anxious consideration to the arguments advanced on behalf of both sides. Perused the application. Admittedly, the matter pertains to Land Acquisition Proceedings. The respondent-Acquiring Body has acquired the agricultural land of the appellants for public purpose i.e. construction of percolation tank of Landakwadi under the village Rani Sawargaon Taluka Gangakhed District Parbhani. After Award of the SLAO, applicants preferred reference under section 18 of the LA Act for enhanced compensation. Learned Reference Court dismissed the Reference application. The applicants-claimants are not satisfied with the Judgment and Award of the Reference Court, therefore, they approached to ventilate their grievances before the Appellate Forum.

6. Considering the reasons mentioned in the application as well as delay so caused is not intentional or deliberate, but caused due to financial crises, I do not find any impediment to condone the delay. I also 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. In addition, the

applicant/ claimant has shown his 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.

7. 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 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 merits.

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 stand disposed of.

10. On registration of appeal, issue notice to respondents. Learned AGP waives service of notice for respondent Nos. 1 and 2 and Mr. Lipne, learned counsel waives service of notice for respondents No. 3. After procedural formalities, list the appeal for final hearing at the admissions stage.

[K. K. SONAWANE]
JUDGE