

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION (L) NO.51 OF 2014
IN
LETTERS PATENT APPEAL NO.20 OF 2002**

WITH

**CIVIL APPLICATION (L) NO.52 OF 2014
WITH
LETTERS PATENT APPEAL NO.21 OF 2002**

Eknath Sadashiv Kandpile

.... Applicant

versus

The State of Maharashtra

... Respondent

.....

- Mr.S.S. Raut, Advocate for the Applicant.
- Mr.Y.Y. Dabake, AGP for the Respondent No.1.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 12th OCTOBER, 2017.**

P.C. :

1. The above Civil Applications have been filed for restoration of the above Letters Patent Appeals, which were dismissed for non-prosecution on account of the conditional order dated 15/03/2011 by a Division Bench of this Court. By

the said order the Appellant was directed to remove the office objections within two weeks, failing which the above Letters Patent Appeals were to stand dismissed for non-prosecution without further reference to the Court. In view of the default committed, the above Letters Patent Appeals were dismissed for non-prosecution. The condonation of delay sought is of two years and 261 days. The reasons for the delay have been mentioned in the above Civil Applications. Since the Applicant is the same, the averments in the Civil Applications justifying the delay, are para-materia.

2. It is the case of the Applicant that, he had entrusted the filing of the above Letters Patent Appeals through the earlier advocate, whom he has now changed. It is his case that in the expectation that his advocate would inform him about the developments in the Appeals, he was complacent. It is the case of the Applicant that he is an agriculturist and is not aware of the niceties of law. It is his case that some time towards the end of the year 2013, he had come to this Court to enquire the status

of the above Letters Patent Appeals from the concerned department, when he was informed that the above Letters Patent Appeals have been dismissed on 15/10/2011, due to non-removal of office objections. It is the case of the Applicant that he was not aware of the said order and he was informed about the same by his advocate. It is his case that his advocate did not take steps to remove the office objections as a consequence of which, prejudice has been caused to the Applicant on account of dismissal of the Letters Patent Appeals. It is the case of the Applicant that he has now changed his advocate and has appointed the present advocate, who has filed the above Civil Applications for the restoration. On behalf of the State, learned AGP Mr.Y.Y.Dabake opposed the Application. It was the submission of the learned AGP that the reasons mentioned in the Civil Applications would not justify the condonation of said huge delay of two years and 261 days. It is the submission of the learned AGP that the Appellant ought to have been vigilant and ought to have been pursued the above Letters Patent Appeals.

3. Having heard the learned counsel for the parties, we have considered the rival contentions. The issue is whether the delay is required to be condoned in favour of the Applicant. The Applicant is a landholder, from whom lands have been acquired for a public purpose, in respect of the award passed, the Applicant had filed First Appeals, which came to be allowed by a learned Single Judge of this Court. The Appellant aggrieved by the rejection of his Civil Applications for leading additional evidence, as also the non-grant of the enhancement of compensation to the extent sought has filed the above Letters Patent Appeals. As indicated above, the above Letters Patent Appeals have come up before the Division Bench of this Court on 15/03/2011. The Division Bench had granted two weeks time to the Appellant to remove the office objections, failing which the Appeals were to stand dismissed for non-prosecution.

4. The reason mentioned by the Applicant, considering the fact that he is an agriculturist, can be said to be the plausible

reason for the delay, which has been occasioned in filing of the Civil Applications. It is well settled that a party should not be made to suffer for the acts of his advocate. In the instant case, the objections were required to be removed by the advocate and therefore the Applicant cannot be foisted with the penalty by way of dismissal of the above Letters Patent Appeals filed by him seeking an enhancement of the compensation. In view thereof, the case for exercise of discretion in favour of the Applicant is made out.

5. Having regard to the reasons, which have been adverted herein, the above Civil Applications are required to be allowed and are accordingly allowed in terms of prayer clause (b) and (c).

6. The Civil Applications are disposed of. Office objections to be removed within four weeks from date. List the Letters Patent Appeals for admission on 17/11/2017.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)