

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1516 OF 2003
IN
FIRST APPEAL (ST.) NO. 32299 OF 1995

The State of Maharashtra .. Applicant/Appellant
vs.
Shri. Yashwant N. Shinde
(since deceased through his legal heirs
Laxman Y. Shinde and ors.) .. Respondent

Mr. S.S. Hulke, Asst. G.P. for the appellant/applicant.
Mr. Sagar Joshi i/b Mr. S.M. Oak for Respondent Nos.1A and 1B.

CORAM : M. S. SONAK, J.
DATE : 04 JANUARY 2017.

P.C. :-

1] This civil application seeks condonation of delay of 374 days in instituting an appeal against the award made in Land Acquisition Reference No. 69 of 1990 by the reference court at Sangli. However, from the perusal of the application, including in particular, the chronology set out in paragraph 1 thereof, it is clear that the delay is of over 730 days.

2] In the application seeking condonation of delay, the following chronology has been set out at paragraph '1':

<u>Sr. No.</u>	<u>Date</u>	<u>Events</u>
1.	30/8/1993	The Reference Court passed Judgement and Award.
2.	29/11/93	Office of the District Government Pleader applied for certified copies of Judgement and Award.

3.	15/1/94	Certified copies of Judgment and decree ready on.
3.	18/7/94	Office of District Government Pleader submitted their report to file abovementioned First Appeal in this Hon'ble High Court.
4.	10/4/95	Law & Judiciary Department passed resolution to file above mentioned First Appeal in this Hon'ble Court.
5.	15/4/94	Copy of resolution received by the office of Govt. Pleader, High Court, Bombay.
6.	29/7/95	Certified Copies of Judgement and decree received by the Office of Govt. Pleader, High Court, Bombay.
7.	12/12/95	The above mentioned First Appeal filed in this Hon'ble High Court.

3] In paragraph 3 of the application, by adverting to the aforesaid chronology, it is stated as follows:

“3. The procedure prescribed for filing of First Appeal in this Hon'ble Court by the State Government requires scrutiny of the proposal for filing First Appeal at various stages. Initially the Law Officer who appeared in the Trial Court and conducted the case gave his opinion in favour of filing First Appeal in the High Court and he submitted the papers to the State Government in Law & Judiciary Department. Thereafter the Law & Judiciary Department scrutinised the proposal and ultimately accorded sanction in filing First Appeal in this Hon'ble Court. After sanction, the papers were received in the office of the Government Pleader, High Court (A.S.), Mumbai. On receipt of the papers by the office of Government Pleader, the work of drafting was entrusted to one of the Law Officers who in turn after due scrutiny drafted the Memo of appeal. After getting the adequate number of copies typed of the Judgment passed by the Reference Court and adequate copies of the Memo of First

Appeal, the office of the Government Pleader filed the said First Appeal in this Hon'ble Court.”

4] If the chronology of the events is perused, it is quite clear that the delay in this case is inordinate and unexplained. There is no explanation as to why it took three months to apply for certified copy and thereafter six months to transmit the certified copy alongwith report to the Law & Judiciary Department. Thereafter, the Law & Judiciary Department took almost nine months to take a decision to file appeal. After such decision was communicated to the office of the Government Pleader, it took another eight months to actually institute the appeal. To say that this is the routine procedure, discloses total casualness and cavalier approach. Although, the civil application states that the delay is of 374 days, in effect, the delay is of 760 days or thereabouts. Quite mechanically, it is stated that the delay is of only 374 days. Even the application for condonation of delay, it appears, was not filed alongwith memo of appeal, but was filed only on 8 August 1997, i.e., after delay of further two years.

5] Mr. S.S. Hulke, learned Asst. Government Pleader for the applicant, submits that since the State Government is an impersonal agency, its position cannot be on par with a private individual. He submits that essentially, greater latitude is required to be shown to the State Government, particularly where issues of public finances are involved.

6] On the above grounds, the State cannot seek condonation of delay, virtually as a matter of right. Since, public finances are

involved, the State and its authorities must act with greater diligence, rather than furnish routine and lame excuses that the file has to move from office to office or table to table. It is not possible to accept the contention that the delay in such matters has to be condoned because the routine government procedures take time. The legislature, after being alive, to the position of all the litigants, including Government has prescribed the period of limitation. Therefore, unless sufficient cause is shown, the State cannot seek condonation of delay virtually as a matter of right by routinely stating that the government procedures take time.

7] In this case, even if, great latitude is shown to the Government, taking into consideration that it is impersonal agency, there is hardly any explanation for delay of over 730 days. The applicant does not even acknowledge that the delay is of 730 days, much less, furnishes any sufficient cause for such delay. The chronology at paragraph 1 merely indicates the movement of file. However, there is no explanation whatsoever as to why so much time was required at every level and further, even after all hurdles were cleared, still, appeal was filed after eight months.

8] In *Pundlik Jalam Patil (Dead) By Lrs. Vs. Executive Engineer, Jalgaon, Medium Project and anr.*¹, the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public

1 (2008) 17 SCC 448

policy. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State on its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In a case with which we are concerned, no such facts have been either pleaded or proved.

9] In *Union of India and ors. vs. Visveswaraya Iron and Steel Ltd.*¹, the Hon'ble Supreme Court declined to entertain the special leave petition filed almost one year after the receipt of copy of the judgment. The explanation that delay was on account of the file having moved through various departments was not accepted.

1 1987 (supp) Supreme Court Cases 192

10] In ***Special Land Acquisition Officer (SIP) and anr. Vs. Jose Prazeres DE Piedade Pinto r/o. Old Market and ors.***¹, the learned Single Judge of this Court has held that delay cannot be condoned in a matter relating to land acquisition case, merely on the ground that the matter involved public monies. On such basis, the Government cannot seek condonation of delay as a matter of right. It is necessary for the Government to furnish necessary and satisfactory explanation for such delay. In case the delay has occurred on account of either willful acts on the part of the concerned officer/s or for any other reason, the same has to be stated and some material produced on record in support thereof. Mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal.

11] In ***Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd. and ors.***², the Hon'ble Supreme court has held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their responsibility to act with reasonable expedition.

12] In ***Basawaraj and anr. Vs. Special Land Acquisition Officer***³, the Hon'ble Supreme Court at paragraphs 9 and 15 has observed thus:

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word

1 2006(4) Mh.L.J. 318

2 (2000) 6 SCC 133

3 (2013) 14 SCC 81

“sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee, Mata Din v. A. Narayanan, Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai.)

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15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the*

statutory provisions and it tantamounts to showing utter disregard to the legislature”.

13] In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors.***¹, the Hon'ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

“(i) ...
...
...

(xiv) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

(xv) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

(xvi)

(xvii) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

14] In ***Postmaster General and ors vs. Living Media India Limited and anr.***², the Hon'ble Supreme Court declined to condone the delay of 427 days in filing special leave petition by observing thus:

“28. *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology*

1 (2013) 12 SCC 649

2 (2012) 3 SCC 563

of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

15] In this case, the impugned award was made on 30 August 1993. On the grounds of pendency of this appeal, no compensation has been paid to the landlosers. It must be noted that when the State resorts to compulsory acquisition, in many cases, the livelihood of the landlosers also stands acquired. Therefore, it is imperative that the compensation is paid to the landlosers at the earliest. On account of such casual approach on the part of the State in instituting the appeals after considerable delay and thereafter, not even taking proper steps to effect service upon the respondents, the landlosers have been deprived of compensation since 1993.

16] Applying the aforesaid principles to the facts of the present case, there is no case made out to condone the delay of over 730 days in instituting the appeal. Civil Application No. 1516 of 2003 is therefore, dismissed. As a consequence, First Appeal (St.) No. 32299 of 1995 is also dismissed. Civil Applications, if any, do not survive and the same are also disposed of.

(M. S. SONAK, J.)

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