IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application in FA NO. 3966 OF 2016
IN
First Appeal (ST) NO. 14710 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Rajesh Vaman Halade And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 2891 OF 2016
IN
First Appeal (ST) NO. 10027 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Dashrath Malu Babade And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 2894 OF 2016
IN
First Appeal (ST) NO. 10000 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Haiderali Abdullabhai Bhagat And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3353 OF 2016
IN
First Appeal (ST) NO. 9997 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Jayant Laxman Rajendra And Anr. ...Respondent(s)

WITH
Civil Application in FA NO. 3354 OF 2016
IN
First Appeal (ST) NO. 10006 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Madhusudhan Shrikrishna Shertathe And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3355 OF 2016
IN
First Appeal (ST) NO. 10010 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Smt. Haushabai Damodar Thorat And Anr. ...Respondent(s)

WITH
Civil Application in FA NO. 3356 OF 2016
IN
First Appeal (ST) NO. 10029 OF 2016

The Commissioner, Nashik Municipal Corporation ...Petitioner(s)
Versus
Shri. Late Laxman Bhimaji Bankar(deceased) Lrs. Smt. Gangabai Laxman Bankar And Ors. ...Respondent(s)

WITH

Civil Application in FA NO. 3357 OF 2016
IN
First Appeal (ST) NO. 10201 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Vishwanth Sonaji More And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3358 OF 2016
IN
First Appeal (ST) NO. 10229 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Smt. Kusum Yashwant Rajendra
(through Power Of Attorney Respondent No.4)
And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3359 OF 2016
IN
First Appeal (ST) NO. 10225 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Mr. Late Govind Laxman Rajendra
(deceased) Thr. Lrs. Smt. Mrudula (Mira)
Govind Rajendra And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3360 OF 2016
IN
First Appeal (ST) NO. 10214 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Smt. Vaijyanti Gopal Rajendra And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3361 OF 2016
IN
First Appeal (ST) NO. 10210 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Shashikant Laxman Rajendra And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3362 OF 2016
IN
First Appeal (ST) NO. 10203 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Haiderali Abdullabhai Bhagat And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 3363 OF 2016
IN
First Appeal (ST) NO. 10232 OF 2016

Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Anil Laxman Janmali And Anr. ...Respondent(s)

WITH
Civil Application in FA NO. 3783 OF 2016
IN
First Appeal (ST) NO. 14724 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri.Punja Shankar Mali(deceased)
1a.smt. Tanhubai Punja Raut And Ors. ...Respondent(s)

WITH

Civil Application in FA NO. 3967 OF 2016
IN
First Appeal (ST) NO. 14714 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Nana Mukund Labhade (deceased)
Thr. Lrs. Shri. Bhausaheb Nana Labhade And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 4231 OF 2016
IN
First Appeal (ST) NO. 14715 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant (s)
Versus
Shri. Bhausaheb Dagu Halade And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 4232 OF 2016
IN
First Appeal (ST) NO. 14716 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Popat Hari Halade And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 4233 OF 2016
IN
First Appeal (ST) NO. 14718 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Dagu Bapu Halade And Anr . ...Respondent(s)

WITH
Civil Application in FA NO. 4234 OF 2016
IN
First Appeal (ST) NO. 14721 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Popat Hari Halade And Ors. ...Respondent(s)

WITH

Civil Application in FA NO. 4337 OF 2016
IN
First Appeal (ST) NO. 14707 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Uttam Narayan Thackrey And Anr. ...Respondent(s)

WITH
Civil Application in FA NO. 4338 OF 2016
IN
First Appeal (ST) NO. 14709 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Maruti Mahadu Mali And Anr. ...Respondent(s)

WITH
Civil Application in FA NO. 4339 OF 2016
IN
First Appeal (ST) NO. 14719 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Nivrutti Pandurang Raut And Anr. ...Respondent(s)

WITH
Civil Application in FA NO. 4340 OF 2016
IN
First Appeal (ST) NO. 14712 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Vishnu Uttam Halade And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 4577 OF 2016
IN
First Appeal (ST) NO. 14722 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Ganpat Dharma Raut And Anr. ...Respondent(s)

WITH
Civil Application in FA NO. 4581 OF 2016
IN
First Appeal (ST) NO. 14720 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Ramdas Valu Raut And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 4701 OF 2016
IN
First Appeal (ST) NO. 14713 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Vaman Murlidhar Malode And Ors. ...Respondent(s)

WITH
Civil Application in FA NO. 4923 OF 2016
IN
First Appeal (ST) NO. 14708 OF 2016

The Commissioner, Nashik Municipal Corporation ...Appellant(s)
Versus
Shri. Tukaram Murlidhar Jadhav And Ors. ...Respondent(s)

Ms Manisha Jagtap i/b J. Shekhar & Co. for the Appellant/Applicant.

CORAM : M. S. SONAK, J.
DATE : 27 MARCH 2017.

P.C.:

1] Heard Ms Manisha Jagtap, learned counsel for the appellant.

2] In all these matters, the Commissioner, Nashik Municipal Corporation, which claims to be the acquiring body, seeks condonation of delay in institution of the appeals against the judgment and award made by the reference court determining the amount of compensation, in respect of acquisition for development of roads or widening of roads.

2] In all these matters, the delay in institution of the appeals range from minimum 1 year and 147 days to 2 years and 302 days. The reasons set out in all these civil applications are almost similar and therefore, it will be appropriate to refer to the reasons set out in Civil Application No. 3966 of 2016 in First Appeal (St) No. 1471 of 2016. This civil application is therefore, taken as the lead matter.

3] In paragraph 2, it is stated that the impugned judgment and order was passed on 9 April 2013. The application for certified copy was made on 17 April 2013. The same was ready and received on 30 April 2014. The reference to the date 30 April 2014 is obviously a mistake. This is probably a typographical error. This is because the impugned judgment and award, which is annexed to the appeal memo bears an endorsement that the same was ready on 30 April 2013.

4] In paragraph 3 of the civil application, it is pleaded that the applicant is a Municipal Corporation, which is challenging the

impugned award made by the reference court enhancing the compensation amount. The main reason for delay in institution of the appeals is set out in paragraphs 4,5 & 6 of the civil application, which are transcribed below for ready reference:-

> "*4. The Applicants state that due to administrative procedure in the Corporation and various procedural aspects to be compelled by the Corporation laid to the delay in filing the present First Appeal.*
> *5. The Applicants state that there was an huge quantum of Court Fees are required to file the present First Appeal as there are 28 Appeals to sanction the amount of Court Fees it took a long time from the revenue department of Corporation.*
> *6. The Applicants state that due to the reasons demonstrated hereinabove the delay of 2 year and 302 days has been caused in filing the aforesaid First Appeal. Thus, the delay occurred in filing present First Appeal is neither deliberate nor intentional, but has occurred only because of genuine reasons stated above. Therefore, the delay occurred in filing above First Appeal deserves to be condoned in the interest of Justice. The Applicants submit that Applicants have good case on merit and fair chances of success inf First Appeal. In the circumstances, if the delay is not condoned it will cause grave and irreparable loss to the Applicants, which cannot be compensated in terms of money. On the contrary if the delay is condoned it will not cause any prejudice whatsoever to the Respondents.*"

5] For convenience of reference, the following chart will indicate the quantum of delay in all the civil applications, along with the reasons which are virtually the same in each of the civil applications and therefore, there is no necessity for discussing the same separately.

Civil Application Nos.	Duration (days) of Delay in institution of the appeals
3966/2016	2 years & 302 days

2891/2016	1 year & 147 days
2894/2016	1 year & 147 days
3353/2016	1 year & 147 days
3354/2016	1 year & 147 days
3355/2016	1 year & 147 days
3356/2016	1 year & 147 days
3357/2016	1 year & 147 days
3358/2016	1 year & 147 days
3359/2016	1 year & 147 days
3360/2016	1 year & 147 days
3361/2016	1 year & 147 days
3362/2016	1 year & 147 days
3363/2016	1 year & 147 days
3783/2016	2 years & 2 days
3967/2016	2 years & 2 days
4231/2016	2 years & 302 days
4232/2016	2 years & 302 days
4233/2016	2 years & 302 days
4234/2016	2 years & 302 days
4337/2016	2 years & 2 days
4338/2016	2 years & 2 days
4339/2016	2 years & 2 days
4340/2016	2 years & 2 days
4577/2016	2 years & 302 days
4581/2016	2 years & 302 days
4701/2016	2 years & 302 days
4923/2016	2 years & 302 days

6] It is pertinent to note that even the quantum of delay, has been set out very casually in paragraphs 6 and 7 of the civil application. Casualness is writ large in the entire civil application.

The position is in no manner different insofar as the connected civil applications are concerned. In paragraph 4 of the civil application, it is stated that the delay was due to "*administrative procedure in the corporation and various procedural aspects to be compelled (sic) by the Corporation"*. On basis of such statement, which, is totally unverifiable, the applicants, cannot seek condonation of delay of almost 1 to 3 years in lodging the appeals. The reference to "*administrative procedure"* or *"various procedural aspects"* is not some sort of magic wand, on basis of which, the applicant, can seek condonation of delay. Usually, some particulars as regards the movement of files through various department are at least set out. Not that, the mere movement of files, constitutes any sufficient cause as a matter of routine for condonation of delay. However, in this case, the applicants, have not even taken the trouble of furnishing any details of the so called administrative procedures or the so called procedural aspects which, the applicants are required to comply with, before the institution of the appeals. Perhaps, it appears that the applicants have realised that such reasons are quite futile and do not constitute any sufficient cause.

7] In paragraph 5 of the civil application, there is reference to a huge quantum of court fees which are required, to institute the first appeals. It is suggested that sanction was required from the Revenue Department of the Corporation. However, it is to be noted that the Revenue Department is of the Corporation itself.

8] In this case, we are dealing with compensation to be paid to landlosers, whose lands the applicants-State has acquired for public

purposes. In such a situation, at least, the Corporation, cannot complain about the payment of court fees. The reason, which in any case, is bereft of any details, does not constitute any sufficient cause in the facts and circumstances of the present case.

9] In paragraph 6, it is stated that the delay is neither deliberate nor intentional but has taken place only because of *"genuine reason stated above"*. There is nothing genuine about the reasons stated in the civil application. In any case, the reasons stated, hardly constitute any sufficient cause.

10] In ***Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr.***[1]***,*** the Hon'ble Supreme Court has held that pursing stale claims and multiplicity of proceedings in no manner subserves public interest. 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

1 (2008) 17 SCC 448

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.

11] In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***[2], 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."*

12] In ***Postmaster General and Ors. vs. Living Media India Limited and anr.***[3], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing thus:

2(2013) 12 SCC 649
3 (2012)3 SCC 563

> *"12. 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 bonafide, 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 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.*
>
> *13. 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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. 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."*

13] In ***Basawaraj and anr. vs. Special Land Acquisition Officer***[4]***,*** 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 "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*

4 (2013) 14 SCC 81

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".

14] In ***State of Maharashtra and ors. vs. Vithu Kalya Govari and ors.***[5]***,*** the Division Bench of this Court was dealing with several applications for condonation of delay, where the delay was ranging between 2 yrs and 45 days to 2 yrs and 65 days. The reasons stated for the delay was quite similar to the one stated in the present civil applications, i.e., "*official hassle"* and approval at different levels. The Division Bench has observed that the public authority or a department is not expected to be negligent or to take no action for years and let the matters become barred by time surely because of its negligence and inaction. The Division Bench has held that the reasons like "*official hassle*" or "*approval at different levels" c*an hardly justify the condonation of delay. In law, advantage has accrued to the non-applicants claimants and the same ought not to be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/ judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation, that itself would be a sufficient prejudice to their rights. Before the delay can be condoned and claimants can be subjected to a prolonged litigation, the onus to show sufficient cause lies upon the applicant. In such circumstances, the Division bench, declined to condone the delay.

15] In *Vithu Kalya Govari (supra)*, the Division Bench has held that the discretion to condone or refuse the condonation of delay has to be exercised judiciously and ensure that no serious prejudice is caused to either of the parties to the proceedings. When an appeal becomes barred by time because of negligence or default of one of

5 2008 (6) Mh.L.J. 239

the parties, valuable rights accrues to the others which normally not being taken away in a routine manner and too liberalized exercise of discretionary power. Although, it is true that the object for prescribing limitation is not to destroy rights, but it is founded on public policy fixing a life span for legal remedy for general welfare. The condonation of delay is therefore, discretionary. The length of delay , *per se,* may not be a sufficient ground to reject an application seeking condonation of delay. However, if the explanation does not make out a case of sufficient cause, then, the right which accrues to the non-applicant cannot be taken away in a routine manner.

17] In *Vithu Kalya Govari (supra)*, the Division Bench has observed that most of the appeals filed on behalf of the State are barred by time and normally the delay is inordinate. Filing appeal in a mechanical manner beyond the period of limitation has become a rule. Unreasonable delay on the part of the concerned authority in completion of execution proceedings, disbursement of compensation, determination of compensation and then in filing legal proceedings include the appeals invites twin disadvantages that are opposed to public policy and even good governance. In this regard, the Division Bench has observed that the authorities are required to have a more practical and pragmatic approach. If there is any instances of delay on account of inaction or non-cooperation on the part of any official, it is desirable to fix the responsibility upon the erring officer/ official. In fact, a Committee was directed to be constituted to look into such matters and to frame guidelines in order to introduce the principle of public accountability and answerability for inaction/action of various authorities in matters

where appeals are instituted after inordinate delay and without, there being any proper explanation for the same.

18] In this case, as noted earlier, there is hardly any explanation for the inordinate delay. The so called explanation given by the Corporation, does not constitute any sufficient cause. Accordingly, the civil applications are liable to be dismissed and are hereby dismissed.

19] As a result of dismissal of the civil applications, the appeals do not survive and the same are also disposed of. Even, the other civil applications in the appeals also do not survive and the same are also disposed of.

(M. S. SONAK, J.)

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