

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3417 OF 2004
IN
FIRST APPEAL (ST.) NO. 23749 OF 2003
WITH
CIVIL APPLICATION NO. 3418 OF 2004
AND
CIVIL APPLICATION NOS. 4772 TO 4780 OF 2007

The State of Maharashtra
(through the Special Land
Acquisition Officer Special Unit,
T.P. & V. D. Thane) .. Applicant/Appellant

vs.

Shri Damodar Laxman Kunte
(Since deceased through his legal heirs)
Smt. Rukminibai D. Kunte & ors .. Respondent

Mr. A. A. Palkar, Asst. Government Pleader for the Applicant/
Appellant.
Mr. Mahendra Agvekar h/f Mr. Mandar Limaye for the Respondent

CORAM : M. S. SONAK, J.
DATE : 24 JANUARY 2017.

P.C. :-

1] Heard Mr. Palkar, learned Asst. Government Pleader (AGP) for the Applicant-State.

2] This Civil Application 3417 of 2004 seeks condonation of delay of 3 years and 4 months, in instituting an appeal dated 04 July 2003, against land acquisition award dated 24 November 1999, made in Land Acquisition Reference No. 45 of 1987. The primary reason for this delay is attributed to delay on account of procedural requirements and the scrutiny required for instituting the appeal. By Civil Application 3418 of 2004, the applicant prays for a stay on the

operation of the impugned award. By Civil Applications No. 4772 to 4780 of 2007, the applicant seeks to bring the legal heirs of deceased respondents on the record.

3] Mr. Palkar submits that certified copies of the Judgment and Award were applied on 9 Feb 2000 and received on 29 Feb 2000. Thereafter, the State Government resolved to institute the first appeal against the award. The office of Government pleader then drafted the memo of appeal. There is a rough outline of the timeline, when a number of letters were exchanged between SLAO and L&J Department, in reference to the “proposal” of instituting an appeal, the duration of which extends to more than two years. Furthermore, in an attempt to justify such an inordinate delay, the application also takes into account, the time required in activities like drafting, typing and obtaining adequate copies of the Memo of the First Appeal. Mr. Palkar submits that since State Government is an impersonal agency which has to rely on its officers and therefore, some delay is inevitable. It is further submitted that the delay has not been intentional but due to the unavoidable circumstances, and therefore, the same constitutes sufficient cause, within the meaning of section 5 of The Limitation Act, 1963. According to Mr. Palkar, on the basis of averments as above, there is sufficient cause for the condonation of delay.

4] On the perusal of the Civil Application, it can be said that there could be some explanation upto 29 February 2000, which is when the applicant obtained the certified copy of the award and liberal approach can be adopted for that duration. However, while the

impugned award was made on 27 March 1995 and the appeal was instituted as late as 21 February 1998, it is imperative that there should be reasonable and acceptable explanation for the delay.

5] The only reason set out in the application seeking condonation of delay, in the aforesaid regards, reads thus:

“4. The procedure prescribed for filing of First Appeal in this Hon’ble High Court by the State Government required 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 and Judiciary Department scrutinized 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; the work of drafting entrusted to one of the Law Officers who in turn after due scrutiny drafted the memo of appeal. After getting 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.”

6] As mentioned in the application, the applicant prays that, the delay in instituting the appeal was on account of ‘procedural delays and scrutiny of the proposal’. There is no clarity on any reason on the presence of unavoidable circumstances. There is no explanation of any further particulars, whatsoever on this inordinate delay. It is observed that various letters were exchanged discussing the proposal of instituting first appeal for over two years, but there is no explanation of any kind on the need for such convoluted correspondence and the lack of effective communication between the departments. Also, the averments provided in the application are

found to be very generic, which does not even make a good attempt to provide a reasonable cause for the delay in instituting the appeal. The applicant should have been sincere and considerate, in stating the reason of delay. This application seems to have been drafted in a haphazard manner which implies on, harboring the notion that the Courts are required to condone delay, howsoever long, merely because the applicant is the State Government.

7] The records also indicate that, in Civil Application 2920 of 2003, the registry of this Court permitted the State to institute the appeal by paying nominal Court fee of Rs. 20/-, and was granted additional time to pay deficit Court fees, which too was further sought to be extended.

8] It is necessary that the State Government acts proactively and efficiently, considering that the lands are being acquired and the disputes relate to compensation for the landlosers. On account of such casual approach on the part of the State in instituting the appeals after considerable delay and dragging the landlosers to Courts of law years long after the termination of legal proceedings is not in the public interest.

9] 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) ...
... ..

1 (2013) 12 SCC 649

... ..
 (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.”*

10] In ***Pundlik Jalam Patil (Dead) By Lrs. Vs. Executive Engineer, Jalgaon, Medium Project and anr.***², the Hon'ble Supreme Court has held that pursuing 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

2 (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 ***Union of India and ors. vs. Visveswaraya Iron and Steel Ltd.***³, 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.

12] In ***Special Land Acquisition Officer (SIP) and anr. Vs. Jose Prazeres DE Piedade Pinto r/o. Old Market and ors.***⁴, the learned Single Judge of this Court has held that 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.

13] In ***Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd. and ors.***⁵, the Hon'ble Supreme court has held that though

3 1987 (supp) Supreme Court Cases 192

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

5 (2000) 6 SCC 133

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.

14] In **Basawaraj and anr. Vs. Special Land Acquisition Officer**⁶, 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 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,

6 (2013) 14 SCC 81

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”.

15] In this case, the cause of such inordinate delay is entirely attributed to the complexities involved in scrutiny and procedures. If this were to be true, none of the First Appeals against any Reference made against an award, would have ever been adjudicated upon by this Hon’ble Court. It is quite unfortunate that such reasons are being cited to paint the apparent inefficiency on the part of the State Government as ‘procedural delays’. The Government must rather consider introspecting on its own procedures and adapting them to bring productivity and eradicate inefficiency.

16] Upon cumulative consideration of the facts and circumstances cited hereinabove, as also the legal position, there is no case made out for condonation of delay. The concerned authority should have maintained a track on the limitation clock throughout the procedure. Accordingly, the civil application 3417 of 2004 seeking condonation of delay of around 1210 days is hereby dismissed. As a consequence,

First Appeal (St.) No. 23749 of 2003 is also dismissed. Civil application No. 3418 of 2004 and Civil application Nos. 4772 to 4780 of 2007 do not survive and accordingly, the same are also disposed of. Ad-interim orders, if any, stand vacated.

(M. S. SONAK, J.)