

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3570 OF 2001

IN

FIRST APPEAL (ST.) NO. 15934 OF 1998

WITH

CIVIL APPLICATION NO. 3571 OF 2001

AND

CIVIL APPLICATION NO. 4208 OF 2011

IN

FIRST APPEAL (ST.) NO. 15934 OF 1998

The State of Maharashtra

...Applicant/Appellant

Vs.

Harichandra Nagnath Dalave

... Respondent

Mr. Ameet Palkar, Asst. Government Pleader for the
Applicant/Appellant – State.

None for Respondent.

CORAM : M.S. SONAK, J.

DATE: 7 March 2017.

P.C.:

1. Heard Mr. Ameet Palkar, learned Asst. Government Pleader (AGP) for the applicant-state.

2. By Civil Application No. 3570 of 2001, the State applies for condonation of delay of 991 days in preferring this appeal against the land acquisition award dated 25 April 1995 made in Land Acquisition Reference No. 471 of 1989.

3. Although, the appeal accompanied by the civil application seeking condonation of delay was instituted on or about 10 November 1998, for several reasons, which shall be borne from the Roznama, the Civil application seeking condonation of delay could not be taken up for consideration. The primary reason for this delay is the lack of diligence in taking steps to serve the respondent.

4. Mr. Palkar, the learned AGP for the State, submits that there is sufficient cause made out for condonation of delay. Mr. Palkar submits that there was some delay in drafting of the memo appeal due to the change of law officer who was initially assigned the work of drafting of the appeal. He submits that thereafter the case papers were misplaced on account of shifting of the Government Pleader's Office. He submits that the concerned officer was also suspended as a part of disciplinary action for causing such a delay. He submits some time was spent for drafting, typing and obtaining adequate copies of the Memo of the First Appeal. He submits that since the State Government is an impersonal agency, which has to rely on its officers and therefore, some delay is inevitable. He submits that the delay is not for any *mala fide* reasons and therefore, the same constitutes sufficient cause.

5. If the civil application seeking condonation of delay is perused, then, a list of dates and events is furnished in a routine manner indicating the movement of files. Thereafter, in paragraph '4', the following averments have been made, as the justification for instituting the appeal beyond the prescribed period of limitation:

"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. Thereafter, the 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. The averments in the application seeking condonation of delay are quite casual and unverifiable. On basis of such routine averments, the State cannot in every case plead that the delay should be condoned, because it is an impersonal agency, which is required to act through its officers. The statements like procedural delay and scrutiny of proposal at various levels are too vague to merit any acceptance, particularly when we are dealing with cases of landlosers, who have been deprived of compensation for several years.

7. 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. 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.

8. In ***State of Maharashtra & Ors. V/s. Vithu Govari & Ors.***², a Division bench of this Court, has insisted on the necessity to explain the sufficient cause of delay in a condonation application. “The

1 (2008) 17 SCC 448

2 2008 (6) Mh. L.J. 239

submission that delay has occurred because of “official hassle” and approval at different levels. This is a case which can hardly justify condonation of delay. The hassles which in any case are unspecified in the application can always be set right by the applicants and the approval can be granted expeditiously. However, as already noticed, in the present case, there is no explanation even for a period of two years. The other point raised on behalf of the applicant is that if delay is condoned, it would cause no prejudice to the claimants. This argument is equally without any merit. 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 to the applicants. This itself is the prejudice to the claimants. Before the delay can be condoned and claimants can be subjected to a prolonged litigation, the onus to show sufficient cause lies is upon the applicant State.

9. While the State Government in this civil application, has expressed its helplessness in the delay in filing an appeal attributing to a clerk exercising poor discretion, the division bench in the judgment referred above has disregarded such mechanical approach, appealing the concerned officers to own up responsibility and to lead by example, particularly in land acquisition matters.

10. In ***Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd. and ors.***³, 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

3 (2000) 6 SCC 133

the Government to shirk their responsibility to act with reasonable expedition.

11. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***⁴, 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.***⁵, the Hon'ble Supreme Court declined to condone

4 (2013) 12 SCC 649

5 (2012) 3 SCC 563

the delay of 427 days in filing the special leave petition by observing thus:

“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**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.)

.....

.....

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

6 (2013) 14 SCC 81

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 the present case, the impugned award was made on 24 April 1995. As noted earlier, there is delay of about 991 days on instituting the appeal. The reasons stated are routine/official hassles and the time required to seek approval at different levels. This is not a sufficient cause. 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’. 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. In this case, the appeal was instituted in the year 1998, but since no proper steps were taken to effect service upon the respondent, even the application seeking condonation of delay could not be disposed of till date. In the mean while, the

landlosers were deprived of compensation awarded in their favour by the Reference Court.

15. Upon cumulative consideration of the aforesaid facts and circumstances, there is no case made out for condonation of delay of 991 days in instituting the appeal. Accordingly, the Civil Application No. 3570 of 2001 seeking condonation of delay is dismissed. As a consequence, First Appeal (St.) No. 15934 of 1998 is also dismissed. Civil application Nos. 4208 of 2011 and 3571 of 2001 does not survive and the same is also dismissed.

(M.S. SONAK, J.)

Chandka-de