

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2095 OF 1999
AND
CIVIL APPLICATION NO. 2096 OF 1999
IN
FIRST APPEAL (ST.) NO. 6852 OF 1998

The State of Maharashtra
(through the Special Land
Acquisition Officer,
Irrigation No.1, Nashik)

.. Applicant/Appellant

vs.

Yevaji S. Tidke

.. Respondent.

Mr. A. A. Palkar, Asst. GP for the Applicant/Appellant.

CORAM : M. S. SONAK, J.

DATE : 09 JANUARY 2017.

P.C. :-

1] Heard Mr. Amit Palkar, learned Asst. Government Pleader (AGP) for the applicant-appellant.

2] By Civil Application No. 2095 of 1999, the State seeks condonation of delay of two years and 130 days, i.e., in all 860 days in instituting the appeal against the award dated 27 March 1995 made by the reference court at Nashik.

3] Notice was issued in this civil application on 10 January 2002. However, in the year 2002 itself, the same was returned back with remark thereon that the sole respondent has expired. Thereafter, it appears that no steps have been taken for bringing on record the legal representatives of the deceased respondent.

4] Even otherwise, the delay in this case is of 860 days. There is really no sufficient cause shown for such inordinate delay. Mr. Palkar, however, places reliance upon the decisions of the Hon'ble Supreme Court in *Special Tahsildar, Land Acquisition, Kerala vs. K.V.Ayisumma - 1996 (10) SCC 634* and *G.Ramegowda, Major and ors. vs. Special Land Acquisition Officer, Bangalore - 1988 (2) SCC 142* to submit that when the Government seeks condonation of delay the approach of the court should be pragmatic and not pedantic. He submits that the Government is an impersonal agency and since officers of the Government take no personal interest at different levels, some amount of delay is inevitable and upon pragmatic consideration, such delay is required to be condoned.

5] In this case, the impugned award was made on 27 March 1995. The certified copy was applied for on 30 March 1995 and the same is said to have been received on 18 July 1995. In the meanwhile, even before the certified copy could be received, the District Government Pleader forwarded the matter for opinion to the Remembrancer of Legal Affairs, Law and Judiciary Department on or about 24 April 1995 some decision was taken thereon and the same was received in the Office of the Government Pleader, High Court, Appellate Side, Mumbai on 25 September 1995. The application for condonation of delay, however, curiously states that the such opinion was received in the office of the Government Pleader, High Court "without the certified copy of the judgment and order made by the reference court". Since, the certified copy had been received on 18 July 1995, there is no reason as to why the same was not made

available to the Government Pleader of the High Court alongwith the decision to institute the appeal which was communicated to him on 25 September 1995. Be that as it may, the application for condonation of delay states that such certified copy was thereafter forwarded to the Office of the Government Pleader on 13 November 1995.

6] Therefore, within some reasonable period from 13 November 1995, there was really no serious difficulty in instituting the first appeal. The appeal, even though would have been barred by limitation, but then at least there was some explanation for the delay, which could have been considered pragmatically. The appeal was filed some time in February 1998 or thereabouts. The application for condonation of delay was not filed alongwith the appeal, but the same was filed some time on or about 4 March 1999. There is delay of about 860 days in institution of the appeal. As noted earlier, from 13 November 1995 onwards, there is really no cause shown for the delay in institution of the appeal.

7] In paragraph IV of the application seeking condonation of of delay, the following averments have been made:

“IV. The Applicant say that in the abovementioned matter, the office of the Government Pleader, High Court, A.S. Mumbai, by their telegram dtd. 24.2.1998 and 2.9.1998 called upon the concerned Officer to deposit the amount towards the Court Fees for filing the abovementioned First Appeal in this Hon'ble HighCourt. The Applicant say that the District Government Pleader, by their letter dtd. 8.10.1997 forwarded the certified copy of the Judgment & Award in the abovementioned matter. The Applicant say that the said letter dtd. 8.10.1997 alongwith the certified copy of the Judgment & Award received in the office

of the Government Pleader, High Court, Mumbai, on 13.10.1997. The Applicant crave leave to refer to and rely upon the copy of the said letter dtd. 8.10.1997 as and when produced before this Hon'ble High Court."

8] From the aforesaid averments, it appears that for a period of over two years, there was really no movement in connection with the institution of the appeal. Much after two years, there was some flurry of activities, which led to institution of the appeal. It is very apparent that there is no sufficient cause whatsoever explaining such inordinate delay. Even though, maximum latitude is invariably shown to the Government, taking into consideration the circumstance that it is an impersonal agency and has to rely upon its officers, there is really no cause shown for condonation of delay.

9] 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 subserve public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public 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

1 (2008) 17 SCC 448

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.

10] In *Union of India and ors. vs. Visveswaraya Iron and Steel Ltd.*², 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.

11] In *Special Land Acquisition Officer (SIP) and anr. Vs. Jose Prazeres DE Piedade Pinto r/o. Old Market and ors.*³, 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

2 1987 (supp) Supreme Court Cases 192

3 2006(4) Mh.L.J. 318

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.

12] In *Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd. and ors.*⁴, 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.

13] In *Basawaraj and anr. Vs. Special Land Acquisition Officer*⁵, 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

4 (2000) 6 SCC 133

5 (2013) 14 SCC 81

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 ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors.***⁶, the Hon'ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

“(i)

6 (2013) 12 SCC 649

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- (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.”*

15] In ***Postmaster General and ors vs. Living Media India Limited and anr.***⁷, 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 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*

⁷ (2012) 3 SCC 563

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.”*

16] Applying the aforesaid principles to the facts of the present case, there is no option than to dismiss this civil application. Accordingly, Civil Application No. 2095 of 1999 is dismissed.

17] As a result, First Appeal (St.) No. 6852 of 1998 also stands dismissed. Civil Application No. 2096 of 1999 does not survive and the same is also disposed of. The interim order, if any, stand vacated.

(M. S. SONAK, J.)

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