

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.390 OF 2009
IN
FIRST APPEAL (ST) NO.45678 OF 2001**

The State of Maharashtra (Through
Special Land Acquisition Officer) ..Applicant/Appellant
V/s.
Sou.Bayajabai Datta Mhatre ..Respondent

Mr.Yogesh Y. Dabke, AGP for the Applicant/Appellant-State.

CORAM : M. S. SONAK, J.

DATE : 20 FEBRUARY 2017.

P.C.

1. The State, in the year 2001, instituted First Appeal bearing Stamp No.45678 of 2001 questioning the judgment and award dated 14-08-2001. This was instituted 74 days beyond the prescribed period of limitation and therefore, accompanied by application for condonation of delay.

2. The appeal as well as the application for condonation of delay could not be processed further because the applicants did not clear the office objection relating to the payment of deficit Court Fees. The Additional Registrar, ultimately made a conditional order directing the applicants to deficit Court Fees within a period of eight weeks failing which the Civil Application and the First Appeal were stands dismissed. No such deposit was made and accordingly the Civil Application and the First Appeal stood dismissed. After almost

five years, the applicant applied for restoration. By order dated 07-06-2006 the Civil Application and the Appeal were restored and the said order dated 07-06-2006 reads as follows :

“Heard the learned AGP for the applicant considering the averments made in the application service of notice to the Respondent is dispensed with case is made out for restoration of the Appeal. Accordingly the Application is allowed in terms of prayer clause (a) subject to condition that the Applicant will remove all office objections in the First Appeal within a period of 8 weeks from today. If the objection are not removed the order of dismissal will stand. It is made clear that no further extension will be granted to the Applicant.”

3. Again, within a period of eight weeks from 07-06-2006 expired on or about 7 August 2006 but the deficit Court Fee was not paid and the office objections were not cleared. As a result, the original order of dismissal of Civil Application and the Appeal revived.

4. For a period of over two years, the applicants took no steps in the matter. On 12-11-2008 this Civil Application has been taken out seeking recall of order dated 07-06-2006 and once again for restoration of Civil Application and Appeal.

5. The application made on 12-11-2008 was hopelessly by law of limitation. In the Civil Application there is not even a prayer

seeking condonation of delay. Perhaps realizing this on 17-04-2010 the Special Land Acquisition Officer has filed an additional affidavit. In the entire additional affidavit, the delay sought to be explained is the delay of 74 days in originally instituting the First Appeal. There is not even the slightest explanation as regards the delay in filing the Civil Application in order to seek recall of order dated 07-06-2006., The Civil Application was instituted after two years and two months i.e. after delay of over 26 months from the date of the order dated 07-06-2006 was made. There is not even an application for seeking condonation of delay, much less, any explanation of such delay. In the aforesaid circumstances no further indulgence can be granted in the matter.

6. Accordingly, the Civil Application No.390 of 2009 for restoration is dismissed. As a consequences, the earlier Civil Application and First Appeal is also stands dismissed. Interim order, if any, stands vacated.

(M. S. SONAK, J.)