

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAF) NO.992 OF 2017
IN
FIRST APPEAL ST. NO.4445 OF 2017

MIDC, Amravati Thr. Its Chief Executive Officer

-vs-

Sindhutai w/o Haratlal Prajapati and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. M. Agnihotri, Advocate for appellant/applicant
Shri S. O. Ahmed, Advocate for respondent No.1.
Ms H. N. Prabhu, AGP for respondent Nos.2 and 3.

CORAM : A.S.CHANDURKAR, J.
DATE : March 07, 2017

By this application it is prayed that the delay in filing the first appeal be condoned.

The Reference Court decided the reference proceedings by judgment dated 23/11/2012. In the application it has been stated that in the month of February 2013 during the process of verification, the applicant got knowledge that the Reference Court had decided the proceedings. Application for certified copy was made on 28/02/2013 which was received on 08/03/2013. The steps taken thereafter have been stated in paragraphs 6 and 7 of the application in which it is also stated that the appeal was ready for filing on 25/06/2013. It is the case of the applicant that though said

appeal was prepared, the same could be filed due to negligence on the part of the clerk of the applicant's counsel. It is then stated that said clerk came to discontinued on account of his negligence. According to the applicant when the hearing of other related appeals were taken up, it was noticed that present appeal though prepared in the year 2013 had not been filed. It is therefore prayed that on these counts the delay be condoned.

The application is opposed by non-applicant No.1 by filing reply. It has been stated that reasons assigned are not sufficient and even the appeal which was proposed to be filed on 25/06/2013 was beyond the period of limitation. Reliance is sought to be placed on the order dated 20/11/2012 in C.A. No.2098/2012 to urge that in similar circumstances this Court has refused to condone the delay. It is therefore prayed that the application deserves to be rejected.

On perusal of the application for condonation of delay, it can be seen that the applicant has referred to various steps taken by it for challenging the judgment dated 23/11/2012. The application for certified copy was made within ninety days of passing of the aforesaid judgment of the Reference Court after which leave was sought and the appeal was prepared for being filed. Along with *pursis* filed on record,

copy of the stay application duly sworn on 25/06/2013 is placed on record. Considering these facts, I do not find that the applicant has deliberately caused the delay. It has been stated that action was also taken against the concerned clerk who had failed to file the appeal.

In the order relied upon by the learned counsel for non-applicant No.1, this court found that the explanation furnished in that case was not satisfactory. The Court also examined the merits of the matter and found that the Reference Court had granted reasonable compensation and therefore no public interest would have suffered by refusing to condone the delay.

Considering the reasons mentioned in the application which appeared to be acceptable, the delay in filing the first appeal stands condoned subject to the applicant paying costs of Rs.2,000/- to the claimant within a period of four weeks from today.

Delay stands condoned in aforesaid terms. Civil application is disposed of accordingly.

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Heard. **Admit.**

Call for record and proceedings.

Shri S. O. Ahmad, learned counsel waives notice for respondent No.1. Ms H. N. Prabhu, learned Assistant

Government Pleader waives notice for respondent Nos.2 and 3.

Appellant to file paper-book within period of six months from today.

JUDGE