

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

CIVIL APPLICATION (CAF) NO.2051 OF 2016
IN
FIRST APPEAL ST. NO.24565 OF 2015

The Executive Engineer, Bembla Project Division, Yavatmal

-vs-

Jeevan Damodhar Thakare 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 S. G. Jagtap, Advocate for appellant/applicant.
Shri S. A. Choudhari, Advocate for respondent Nos.1 to 3.
Ms M. S. Naik, AGP for respondent Nos.4 and 5.

CORAM : A.S.CHANDURKAR, J.
DATE : February 28, 2017

By this application, the applicant seeks condonation of delay in filing the appeal. The reasons for delay are sought to be supported by relying upon affidavit of the Executive Engineer filed on record. The steps taken from time to time for the purposes of preparing the appeal have been stated in paragraphs 2 to 5 of the additional affidavit.

The application is opposed by the learned counsel for the claimants by filing reply. It has been stated that the delay has not been properly explained and despite availability of all relevant papers it has been contended that copy of the award was not available for filing the appeal. It is submitted that the conduct of the applicant does not appear to be diligent and therefore the delay does not deserve to be condoned. Reference is made to the order passed by the Division Bench dated 23/03/2015 in C.A.No.59/2015 and it is submitted that on the same

grounds the application deserves to be rejected.

In reply the learned counsel for the applicant/appellant has referred to the order passed in C.A. No.2468 of 2015 dated 20/01/2016 wherein the aforesaid order of the Division Bench has been considered and the delay has been condoned. Reference is also made to the decision in *State of Uttar Pradesh Thr. Executive Engineer and anr. vs. Amar Nath Yadav (2014) 2 Supreme Court Cases 422*.

On considering the additional affidavit dated 23/01/2017 I do not find that the delay as caused is deliberate. The steps taken by the applicant/appellant have been mentioned therein. Though it is a fact that certain period has lapsed between various steps taken by the appellant, the delay as caused does not appear to be deliberate. The order relied upon by the non-applicants pertains to the facts of said case. Considering the reasons as assigned, I am inclined to condone the delay subject to imposition of costs.

The delay in filing the first appeal is condoned subject to the applicant paying costs of Rs.2000/- to the claimant within period of four weeks from today.

Civil application is allowed and disposed of.

JUDGE