

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 1853 OF 2018
IN
FIRST APPEAL STAMP NO. 239 OF 2018
PRABHAKAR NAGA KHALANGRE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for applicant : Mr. N.D. Kendre
AGP for respondents No.1 and 2 : Ms. S.S. Raut

CORAM : K.K. SONAWANE, J.

DATED : 4th JULY, 2018.

Order :-

1. Heard learned counsel for applicant-original claimant and learned AGP for respondents No. 1 and 2. Despite service of notice, no one else appeared on behalf of respondent No. 3 - Acquiring Body. Perused the application and relevant documents on record.

2. It has been submitted on behalf of the applicants that in connected civil application No. 2809 of 2018 in first appeal stamp No. 41672 of 2017 arising out of the same award, filed on behalf of adjoining land owners this Court has condoned the delay. The delay caused in filing the appeal is not intentional or deliberate but it caused due to unavoidable circumstances as well financial crises for filing the present appeal. Learned counsel submits that a reasonable opportunity be given to applicant for seeking relief of enhancement of compensation in the matter. The learned counsel further added that applicant - appellant will not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894, for the period of delay sought to be condoned, in case of success of appeals on merit. Hence, learned counsel for applicants prayed for condonation of delay.

3. The learned AGP for respondents No.1, 2 submits that there is inordinate delay, which has not been explained satisfactorily, therefore, the same cannot be condoned and prayed for rejection of application.

4. Admittedly, the matter pertains to enhancement of compensation for the land under acquisition. The learned Reference Court partly allowed the reference petition filed by the applicant under section 18 of the Land Acquisition Act, 1894. The applicant intends to challenge the findings for awarding meager compensation amount and also intend to seek enhancement of compensation.

5. In view of the aforesaid submissions and for the reasons mentioned in the application that the delay so caused in filing the appeal was only due to unavoidable circumstances as well financial crises, I find it justifiable to give reasonable opportunity to the applicant-appellant in the interest of justice to ventilate grievances before the Appellate Forum. There is sufficient cause to allow the application for condonation of delay. In addition, the applicant-claimant has shown his willingness/ inclination that they will not claim statutory benefits as well as amount of interest as mentioned above. In such circumstances, by imposing aforesaid fetter of waiver of statutory benefits and interest amount etc. on the part of applicant-appellant, there would not be any impediment to condone delay. The application for condonation of delay required to be allowed.

6. In sequel, application is allowed in terms of prayer clause "B". The delay caused to present first appeal against the impugned Judgment and Award stands condoned subject to condition that applicant-appellant shall not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894 for the delayed period allowed to be condoned, in case, any enhanced compensation is awarded by this Court after adjudication of appeal on merit.

7. Pursuant to aforesaid waiver of statutory claim, the applicant-appellant shall furnish undertaking to that effect and place it on record of the appeal to enable this Court to take note of the same, while decision of the appeal on merit. Registry to take requisite steps for further process.

8. The civil application is allowed in aforesaid terms and the same stand disposed of.

9. On registration of appeal, issue notice to the respondents. Learned AGP waives service of notice for respondents No. 1 and 2.

10. Meanwhile, call for record and proceedings from the concerned learned Reference Court.
11. List the appeal for admission in due course.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.