

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.5924 OF 2013 IN
FIRST APPEAL ST.NO.8208 OF 2013

The State of Maharashtra
through the Collector, Latur.

Applicant

Versus

Shivaji s/o Gangadharrao Sakolkar
and others

Respondents

Mr.A.M.Phule, A.G.P. For the applicant.

Mr.H.B.Nandagvale, advocate for Respondent No.2.

CORAM : M.S.SONAK, J.

DATE : 08th January, 2018.

ORAL ORDER :

1 This Civil Application seeks condonation of delay of over four years (1389 days) in instituting the appeal to challenge award dated 24.02.2009 in L.A.R. No.2922 of 2001, by which, the Reference Court has enhanced the compensation awarded from Rs.240/- per are to Rs.1100/- per are.

2 In paragraph no.2 of the application, it is stated that after award was made on 24.02.2009, the A.G.P. gave necessary intimation along with legal opinion recommending that the appeal be filed. Though, no dates or the period within which this exercise was completed, is stated, it does appear that this exercise was completed before 13.04.2010. Thereafter, in paragraph no.4, it is stated that the proposal for filing of the appeal was accepted and the A.G.P. was requested to draft appeal memo. Even memo of appeal was immediately drafted. This means that even drafting of

the appeal memo was ready sometime in April 2010 as per the averment made in paragraph 5 of the application for condonation of delay. Thereafter it is stated that differential chart for calculating court fees and typographical copies of the orders and court fees itself were not accompanied with the proposal forwarded to the A.G.P. for actual institution of the appeal. There is reference to some letter addressed by the A.G.P. to the authorities though, the date of this letter has been left blank. Finally, it is stated that delay is not intentional but same is on account of administrative exigencies and for the reasons beyond the control of the applicant.

3 Since, when drafting of the appeal memo was ready in April 2010, there should have been some weighty explanation as to what prevented the applicant from instituting the appeal until 2013. For a period of almost three years, appeal was not filed on the specious plea that typed copies of judgments or differential chart of calculating court fees or court fees itself were not forwarded by the concerned department to the office of A.G.P.. All these reasons can certainly be not styled as “reasons beyond control” of concerned department. The delay over four years is quite inordinate. The explanation hardly inspires any confidence to merely state that there were administrative exigencies or state that there were reasons beyond control of the department, is not sufficient explanation or sufficient cause to condone the delay of such magnitude.

4 In Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr., reported in [(2008) 17 SCC 448], the Hon'ble Supreme Court has held that pursuing stale

claims and multiplicity of proceedings in no manner subserves public interest. 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 land-losers 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 explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude but the law of limitation is same for citizens 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 cases with which we are concerned, no such facts have been either pleaded or proved.

Chemicals Ltd. and ors., reported in [2(2000) 6 SCC 133], the Hon'ble Supreme Court 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.

6 In Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors., reported in [3(2013) 12 SCC 649], the Hon'ble Supreme Court has held that 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. Further, the Hon'ble Supreme Court has held that an application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. 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.

7 In Postmaster General and Ors. vs. Living Media India.

Limited and anr., reported in [4(2012) 3 SCC 563], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon'ble Supreme Court observed that 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. 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 bonafide 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 and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact

that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Hon'ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

8 In Basawaraj and anr. vs. Special Land Acquisition Officer, reported in **[(2013) 14 SCC 81]** the Hon'ble Supreme Court went on to observe that 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.

9 The Division Bench of this Court in State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., reported in [2008(6) Mh.L.J.239] has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant-State.

10 Applying the aforesaid principles to the facts and circumstances of the present case, it is clear that no sufficient cause has been shown for condonation of delay of over four years i.e.1398 days in institution of the appeals. The Civil Application is therefore, liable to be dismissed and is hereby dismissed.

11 In view of the dismissal of the application for condonation of delay, the appeal and application for stay also stands disposed of. In the facts of the present case, there shall be no order as to costs.

M.S.SONAK
JUDGE

adb/ca592413