

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

CIVIL APPLICATION NO. 13946 OF 2010
IN FAST/23481/2010

THE EXECUTIVE ENGINEER, LOWER DUDHANA PROJECT
VERSUS
DONDIBA EKNATHRAO PITALE AND ORS

...
Advocate for Applicant : Mr. Atul R. Kale
AGP for Respondents No. 2, 3 : Mr. A. M. Phule.
...

CORAM : K.K. SONAWANE, J.

DATED : 22nd JUNE, 2018.

Order :-

1. Heard Mr. A. R. Kale, learned counsel for applicant – Acquiring Body and Mr. A. M. Phule, learned AGP for respondents No. 2 and 3. Despite service of summons, no one else appeared on behalf of respondent No.1 (original claimant). Perused the application.
2. The applicant - Acquiring Body moved the present application for condonation of 462 days delay caused in filing the first appeal against impugned Judgment and Award dated 05-02-2009 passed by the learned Reference Court in Land Acquisition Reference No. 38 of 2003 filed under section 18 of the Land Acquisition Act, 1894. According to learned counsel for the applicant-Acquiring Body, impugned Judgment and Award passed by the Reference Court is erroneous, illegal and is not as per the provisions of Land Acquisition Act, 1894. Applicant No. 1 is Body corporate having its independent entity. After procuring the funds for court fees appeals came to be filed, however, there is delay in filing the appeals. According to learned counsel for applicant, delay so caused is not intentional or deliberate, but caused due to compliance of official process.
3. The learned AGP submits that suitable orders may be passed.

4. In view of the reasons mentioned in the application and absence on the part of respondent No.1 – original claimant, there is no any impediment to allow the application for condonation of delay. The public interest is involved into the matter. It is settled law that liberal and pragmatic approach is essential to be adopted by avoiding pedantic approach while dealing with the application for consideration of delay. Therefore, it is imperative to grant some sort of latitude to the applicant - Acquiring Body to present an appeal by condoning the delay. It would not cause any prejudice or injustice to the respondents. In contrast, it would sub-serve the purpose of substantial justice. Hence, the application for condonation of delay deserves to be allowed.

5. In sequel, application stands allowed in terms of prayer clause (B). The delay caused in filing first appeal against the impugned Judgment and Award is hereby condoned. The Registry to take requisite steps for registration of appeal. Civil application stands disposed of accordingly.

6. On registration of appeal, issue notice to the respondents, returnable on 24th July, 2018.

7. Mr. Phule, learned AGP waives service of notice for respondents No.2 and 3.

8. Meanwhile, call for record and proceedings from the concerned learned Reference Court.

9. After receipt of record and proceedings, list the appeal for admission.

[K. K. SONAWANE]
JUDGE

rrd.