

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.13649 OF 2017 IN
FIRST APPEAL ST.NO.34321 OF 2017

The Executive Engineer,
Latur Minor Irrigation, Latur
and another

Applicants

Versus

Rajesaheb s/o Madhavrao Kadam
and others

Respondents

Mrs.Bharati B. Gunjal, advocate for applicants.
Mrs.Vidya V. Raut, advocate for Respondents.

CORAM : M.S.SONAK, J.

DATE : 24th January, 2018.

ORAL ORDER :

1 After the order dated 10.01.2018 was made, learned Counsel for Respondents states that she has tried to contact, but the respondents are not responding. This, *prima facie*, suggests that no objection for condonation of delay, which was sought to be given on 10.01.2018, was either without obtaining instructions from the respondents or without even knowledge of the respondents.

2 Today, a motion is made by learned Counsel for the respondents to seek discharge from the matter. In order to seek discharge, the learned Counsel has to follow appropriate procedure of giving notice to the respondents. Accordingly, the request cannot be accepted at this stage itself.

3 The matter will, now therefore, be heard on the issue of

condonation of delay.

4 There is delay of 1395 days in instituting the appeal against judgment and award dated 17.08.2013.

5 Learned Counsel for the applicants submits that there is sufficient cause indicated in the application and, therefore, delay may be condoned. She submits that in this case, the Reference Court has enhanced the compensation almost three times than what has been awarded by the Land Acquisition Officer. She submits that the appellant will, within one month, deposit the amount in this Court as a pre-condition for grant of stay.

6 In paragraph 2 of the application, it is stated that the impugned judgment was made on 17.08.2013, certified copy was applied on 07.10.2013 and was obtained on 08.11.2013. Thereafter, it is vaguely stated that legal opinion was sought to seek guidance whether appeal should be filed and for that time was consumed. There is nothing stated as to the date on which opinion was applied for and the date on which opinion was received. Thereafter it is also vaguely stated that time was also required for arranging funds for court fees. This is hardly a sufficient cause. It is also stated that the Corporation, after scrutiny, has decided to file appeal. Since the Corporation has its own legal department, the appeal should have been filed well within the period of limitation.

7 In paragraph 3, it is stated that the delay has occurred because of “administrative exigencies”. In the same paragraph, it is stated that independent legal department has been established

by the Corporation to scrutinise the cases for filing appeals and office of the Corporation is flooded with the proposals arising out of Land Acquisition References. It is also stated that the Corporation is engaged in other public duties. Again, all these are routine and unverifiable reasons which hardly constitute sufficient cause. It is stated that the delay is not intentional and since the applicant is a public functionary, if delay is not condoned, interest of exchequer of the State will be affected and interest of public at large will be defeated.

8 Unfortunately, the applicant conveniently forgets interest of the public exchequer as well as interest of the public when it fails to file appeals within reasonable time, that is to say, within the prescribed period for filing such appeals. Thereafter, as a matter of routine, such casual averments are made and it is expected that delay, which is of 1395 days, is to be routinely condoned. The application does not state details of the officers on whose count such delay was caused and on whose count, this delay has taken place.

9 Learned Counsel for the applicant places reliance upon the decision of this Court dated 08.12.2017 in **C.A. No.2778 of 2017 in F.A.St.No.28969 of 2016**. In the order, it is not discernible as to what was the period of delay. However, learned Counsel for the applicant points out that this was a case involving delay of five years. She also relies upon yet another order dated 12.12.2017 in **C.A. No.11236 of 2016 in F.A.St.No.22307 of 2016**. She also relies upon decision of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition Vs. Mst.Katiji &**

others, AIR (1987) 2 SCC 107. These two decisions dated 08.12.2017 and 12.12.2017 obviously turn on their own face. Besides, the decisions have to be evaluated as against several other decisions of the Hon'ble Supreme Court on the issue of condonation of delay of such matters. The Division Bench of this Court has also ruled that the delay in such matters cannot be condoned on the basis of reasons like official hassles or that the files have to move from place to place or decisions have to be taken at different levels.

10 The decision in the case of **Mst.Katiji** (*supra*), no doubt states that everyday's delay is not required to be explained. However, this cannot be interpreted to mean that without any proper explanation for delay, as a matter of routine, delay has to be condoned, even though there is no sufficient cause made out.

11 In **Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr.** [(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 the case with which we are concerned, no such facts have been either pleaded or proved.

12 In **Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors.**, [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 license to the officers of the Government to shirk their responsibility to act with reasonable expedition.

13 In **Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors.**, [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.

14 In **Postmaster General and Ors. vs. Living Media India Limited and anr.**, [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 *bona fide* 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.

15 In **Basawaraj and anr. vs. Special Land Acquisition Officer, [(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.

16 The Division Bench of this Court in **State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., [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.

17 Applying aforesaid principles to the facts of this case, the application seeking condonation of delay is hereby dismissed. There shall be no order as to costs.

18 As a result of dismissal of application for condonation of delay, the appeal itself and other Civil Applications do not survive and same are hereby dismissed.

M.S.SONAK
JUDGE