

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL (ST) NO.33635/2014
WITH
CIVIL APPLICATION NO.5419/2015
WITH
C.AS.5413/15 & 5414/15 IN FAST 33647/14
WITH
C.AS.5416/15 & 5416/15 IN FAST 33641/14
WITH
C.AS.5417/15 & 5418/15 IN FAST 33644/14
WITH
C.AS.5420/15 & 5421/15 IN FAST 33653/14
WITH
C.AS.5422/15 & 5423/15 IN FAST 33650/14
WITH
C.AS.5424/15 & 5425/15 IN FAST 33656/14
WITH
C.AS.5426/15 & 5427/15 IN FAST 33638/14
WITH
C.AS.5428/15 & 5429/15 IN FAST 33659/14**

The State of Maharashtra.

...Appellant..

Versus

Sukhdeo Vithoba Sable & others.

...Respondents...

.....

Shri B.V. Virdhe, AGP for appellant.

Shri R.L. Adhe, Advocate h/f Shri A.A. Nimbalkar,
Advocate for respondent nos.1 & 2.

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CORAM: M.S. SONAK, J.

DATE: 12.02.2018

ORDER :

1] The matter is on Board for seeking condonation of delay of 2007 days in instituting these appeals against judgment and award dated 30.6.2008. The record indicates that no steps are being taken to serve the unserved respondents. However, the learned AGP submits that appearance is already filed on behalf of respondent nos.1 & 2.

2] The delay in the present matter is inordinate and the only reasons given are that proposals had to be forwarded and decisions had to be taken in the matter of institution of the appeals. Thereafter, it is stated that after decision was taken to file the appeals, it was noticed that the difference chart for calculating Court fees, typed copies of impugned judgment and award and Court fees had not been forwarded. All this took some time and, therefore, it is submitted that the delay, which is beyond the control of the concerned officials may be condoned.

3] There is neither any sufficient cause shown in the civil applications nor the reasons stated can be said to be beyond the control of the concerned officials. In the absence of any sufficient cause and taking into

consideration the length of delay, it is not possible to grant any indulgence and condone the delay.

4] The reasons are both unverifiable and quite casual. On the basis of such reasons, delay of almost three years cannot be condoned. Merely stating that the delay was for reasons beyond the control of the applicants / appellants or that the delay was unintentional is not sufficient in such matters to condone the delay.

5] 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 subserve 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 landlosers 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.

6] In *Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors.*, reported in [(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.

7] In *Esha Bhattacharjee vs. Managing Committee of*

Raghunathpur afar Academy & ors., reported in [(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.

8] In *Postmaster General and Ors. vs. Living Media India Limited and anr.*, reported in [(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.

9] 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 summarized 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.

10] 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

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onus to show sufficient cause lies upon the applicant-State.

11] Applying the aforesaid principles to the facts of the present case, all these applications for condonation of delay are liable to be dismissed and are hereby dismissed. As a consequence, the first appeals are dismissed. There shall be no order as to costs. Pending civil applications for stay therein do not survive and the same are also dismissed.

(M.S. SONAK, J.)