

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

31 CIVIL APPLICATION NO. 15013 OF 2015
IN FAST/29820/2015 WITH CA/15206/2015 IN FAST/29820/2015

1. The State of Maharashtra
Through The Collector,
District – Osmanabad.
2. The Executive Engineer,
Minor Irrigation Office,
Osmanabad.
3. The Executive Engineer,
Osmanabad Minor Irrigation Division,
Osmanabad. ..Applicants

VERSUS

Digamber Gunderao Kulkarni (Died)
Through his L.Rs...
Venubai Digamber Kulkarni (Died)
Through her L.Rs..

1. Murlidhar Digambar Kulkarni
Age: 65 years, Occu.: Pensioners,
R/o.Naichakur, Tq.Omerga,
Dist.Osmanabad.
2. Govind Digambar Kulkarni
Age: 57 years, Occu.: Service,
R/o.Naichakur, Tq.Omerga,
Dist.Osmanabad.
3. Shripad Digamber Kulkarni
Age: 50 years, Occu.: Advocate,
R/o.Naichakur, Tq.Omerga,
Dist.Osmanabad.

4. Raghavendra Digamber Kulkarni (Died)
Ushabai Raghavendra Kulkarni
Age: 60 years, Occu.: Household,
R/o.Naichakur, Tq.Omerga,
Dist.Osmanabad.

5. Gunderao Raghavendra Naichakurkar
(Kulkarni)
Age: 25 years, Occu.: Service,
R/o.Naichakur, Tq.Omerga,
Dist.Osmanabad.

..Respondents

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AGP for Applicants/State : Mr.K.N.Lokhande
Advocate for Respondent Nos.1 to 5 : Mr.R.P.Adgaonkar

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CORAM : M.S.SONAK, J.
DATE : 15th JANUARY, 2018

ORAL JUDGMENT:-

1) By this Civil Application, condonation of delay of 1654 days in instituting First Appeal against the Judgment and Award dated 27.12.2010 is applied for.

2) In Paragraph No.2 of the Civil Application, it is stated that after the impugned Award dated 27.12.2010, the learned AGP intimated to the office of the applicants and even gave a legal opinion recommending the

institution of the appeal. Though no date or particulars have been set out, it is presumed that this was done within some reasonable period from the date of the impugned Award dated 27.12.2010. It is to be noted that the appeal in this case has been instituted on 6.10.2013.

3) In Paragraph No.3, it is stated that proposal to institute the appeal was forwarded on 1.4.2011 to the office of the Government Pleader. It is stated that the appeal memo was immediately drafted. This means that appeal memo was drafted in the month of April, 2011. Thereafter, there is no valid explanation as to why appeal was not instituted till 6.10.2013 i.e. for a period of two and half years.

4) All that is said in paragraph No.4 of the Civil Application is that certified copy of the Judgment and Award, Difference Chart, typed copies and Court fees had not been forwarded alongwith proposal to file appeal.

Therefore, the Government Pleader by letter letter dated 11.4.2011 i.e. within a period of five days from the receipt of the proposal requested the Government to forward all such documents. It is stated that Difference Chart was received on 6.6.2014 and Court fees were received 11.9.2015. All this does not constitute sufficient cause. It is not the law that the Government can take its own time to furnish typed copies of Judgment and Award or Court fees and on that basis delay of almost four years or about 1654 days is required to be condoned.

5) No doubt as contended by the learned AGP, some latitude is required to be shown to the impersonal agencies like Government as they act through their Officers. However, on the basis of unverifiable statements, such inordinate delay cannot be condoned. Similar contentions have been rejected not only by this Court, but also by the Hon'ble Apex Court.

6) 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 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.

7) In Registrar of Companies vs. Rajshree Sugar & 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.

8) 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.

9) 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.

10) 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.

11) 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.

12) Applying the aforesaid principles to the facts of the present case, it will not be proper to indulge the

applicants and condone delay of 1654 days in instituting this appeal, particularly, when no sufficient cause has been shown.

13) For the aforesaid reasons, the Civil Application is dismissed. There shall be no order as to costs. As a consequence of dismissal of Civil Application, the appeals also stand disposed of.

14) Civil Application No.15206 of 2017 in First Appeal Stamp No.29820 of 2015 is allowed and the respondents/claimants, who are the applicants in the said Civil Application are permitted to withdraw the amount deposited by the original appellants in this Court together with interest that may have accrued thereon. Such withdrawal is permitted unconditionallly. Accordingly, the Civil Application No.15206 of 2017 is also disposed of.

[M.S.SONAK, J.]