

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 642 OF 2016
WITH
CIVIL APPLICATION NO. 3782 OF 2017
IN
FIRST APPEAL ST. NO. 7147 OF 2015**

The Commissioner,
Malegaon Municipal Corporation, Malegaon ...Applicant

Versus

Smt. Amina w/o. A. Hafiz
Since deceased, through her LRs
Abdul Rashid Abdul Hafiz & Ors. ...Respondents

.....

Mr.S.S.Patwardhan for the Applicant.
Mr.Pramod N. Joshi for Respondent Nos. 1A to1E, 1H, 1I and 2.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 16, 2018**

P.C.:

1. Civil Application No. 642 of 2015 is moved for condonation of delay of 146 days in filing the First Appeal.
2. The learned counsel for the applicant submits that the delay is not intentional, but due to procedural requirement, delay is caused.

3. The learned Counsel for respondent nos. 1A to 1E, 1H, 1I and 2 opposes this application.
4. For the reasons mentioned in the Civil Application, delay of 146 days is condoned.
5. Civil Application is allowed and is accordingly disposed of.
6. First Appeal be registered.

CIVIL APPLICATION NO. 3782 OF 2017

7. By this Civil Application, the applicant/Municipal Corporation seeks stay to the execution and implementation of the impugned judgment and decree dated 24th February, 2014 passed by the learned Civil Judge, Senior Division, Malegaon in Land Reference No. 1 of 2009.

8. The learned Counsel for the applicant submits that the applicant/ Municipal Corporation is ready to deposit the entire decretal amount alongwith interest accrued thereon, within a period of one week.

9. The learned Counsel for respondent nos. 1A to 1E, 1H, 1I and 2 opposes this Civil Application. He submits that respondent nos. 1A to 1E, 1H, 1I and 2 have taken out the execution proceedings and the four wheeler of the Municipal Corporation has attached. He further submits that respondent nos. 1A to 1E, 1H, 1I and 2 have not received the amount of compensation for which they are entitled to since last four years. He further submits that before the Executing Court, the applicant/ Municipal Corporation represented that they have filed Appeal before the High Court challenging the impugned judgment and decree and on that protest they went on taking the dates and did not deposit the money. He relied on the order dated 28th November, 2017 passed below Exhibit 18 in L.R.D. No. 188 of 2015.

10. Perused the order passed below Exhibit 18. The judgment and decree was passed in the year 2014. Thereafter, the Municipal Corporation has filed First Appeal in February, 2015. Since last three years, the applicant/ Municipal Corporation ought to have been deposited the entire decretal amount along with interest accrued thereon. Therefore, I am of the view that it is not a fit case to grant stay to the execution and implementation of the impugned judgment and decree passed by the learned Judge of the trial Court. Hence, Civil Application is dismissed.

(MRIDULA BHATKAR, J.)