

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAF) NO.2785/2018 IN FA ST.NO.25408/2014
VIDC, thr. its Executive Engineer, Medium Project, Nagpur

..VS..

Shri Ajabrao s/o Sitaram Deshmukh (DEAD), thr. LRs Ganpatrao s/o
Ajabrao Deshmukh and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri N.M. Gaidhane, Counsel for the Applicant.
Shri C.R. Najbille, Counsel for non-applicant Nos.1a to
1d.
Shri M.A. Kadu, AGP for non-applicant Nos.2 & 3.

CORAM : V.M. DESHPANDE, J.
DATED : OCTOBER 25, 2018.

1. This is an application for condonation of delay in preferring an appeal to challenge judgment and decree dated 13.2.2013 passed by learned Joint Civil Judge Senior Division, Nagpur in Land Acquisition Case No.143/2001. However, at the time of presentation of the appeal, there was delay of 431 days. Therefore, the appeal was accompanied with the application under Section 5 of the Limitation Act, 1963 for condonation of delay. The said application is sworn by Shri Amitkumar Madhukar Meshram, Executive Engineer, VIDC, Minor Irrigation, Wardha.

2. I have heard learned counsel Shri N.M.

Gaidhane for the applicant-VIDC.

3. Notices on this application were already issued and in pursuance to the said Notices learned counsel Shri C.R. Najbille appeared for non-applicant Nos.1a to 1d. He also filed reply to the application on record.

4. During the course of argument, learned counsel Shri C.R. Najbille for non-applicant Nos.1a to 1d vehemently opposed the present application for condonation of delay. He submitted that in an application i.e. Civil Application No.1436/2015 this Court refused to condone delay vide order dated 25.4.2017. He placed the order of this Court along with reply to the application. He also relied on an authoritative pronouncement of the Honourable Apex Court in the case of Executive Engineer and another vs. Amar Nath Yadav, reported at (2014)2 SCC 422 and speaking orders in Civil Application No.1118/2012 in First Appeal No.5741/2012 and submitted that the present application be rejected.

5. The applicant-VIDC is a statutory body. No doubt true that there cannot be a different yardstick in respect of period of limitation insofar as filing of the proceedings in the Court by new litigant or by a Statutory/Government/Semi-Government body. Each case has to be decided on its own merits.

6. Section 5 of the Limitation Act, 1963 deals

with extension of prescribed period in certain cases. The said Section mandates that any appeal or any application can be admitted after prescribed period if the applicant satisfies the Court that he has sufficient cause for not preferring appeal or making application within such period. Therefore, what is important is the satisfaction of the Court. At the same time, the satisfaction of the Court should not be arbitrary. The satisfaction should have foundation in the application for condonation of delay.

7. The applicant in the present application from paragraph No.2 onwards has given date wise chronology of events that occurred ultimately resulting into delay of 431 days.

8. Insofar as the order annexed along with the reply to the application and pressed into service by learned counsel Shri C.R. Najbille is concerned, the said cannot be made applicable in the present case since in the said case the appeal against respondent Nos.1 to 9 was already dismissed by the Registrar of this Court. Further, in the said order it is observed that the applicant therein could not explain delay. Merely citing order is not sufficient. It was the duty of learned counsel Shri C.R. Najbille to point out facts of that particular case, if he wishes to press into serve the order.

9. Insofar as the ruling of the Honourable Apex Court cited *supra* is concerned, in that case the

Honourable Apex Court found that no sufficient ground was pointed out by the party who prayed for condonation of delay. Insofar as the order which is pressed into service by learned counsel Shri C.R. Najbille in Civil Application No.1118/2012 in First Appeal No.5741/2012, this Court is really surprised as to how learned counsel could press into service since the said order was passed by consent of the parties in the said case.

10. After hearing learned counsel for the parties, I am of the confirmed view that in this case the applicant has shown sufficient cause as to why within the prescribed time they were unable to approach to this Court.

11. Further, by way of cursory look, this Court has looked into the impugned judgment. It shows that at least *prima facie* there is an abnormal hike in the compensation granted by learned Judge of the Court below. Since this Court is satisfied about the cause for not moving the Court within the prescribed time, the present application is allowed. The delay is hereby condoned. Office to register the first appeal. The civil applications stands disposed of accordingly.

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Heard. **ADMIT.** The record and proceedings be called for. Learned counsel Shri C.R. Najbille waives

service for respondent Nos.1a to 1d and learned Assistant Government Pleader Shri M.A. Kadu waives service for respondent Nos.2 and 3.

JUDGE

!! BRW !!