

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

78 CIVIL APPLICATION NO.1316 OF 2019
IN FAST/2359/2019 WITH CA/8381/2019 IN FAST/2359/2019

EX. ENGINEER, SINA KOLEGAON PROJECT DIV. PARANDA THR
M.K.V.D.C.,PUNE AND ORS

VERSUS

UDHAV SHRIRAMBUVA JAHAGIRDAR (DIED) THR LRS NALINIBAI AND ORS

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Advocate for Applicants : Mr. Gaikwad Anil M.

AGP for Respondents/State: Mr. A.M. Phule

Advocate for Respondents : Mr. S.G. Chapalgaonkar

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CORAM : MANGESH S. PATIL, J.

DATE : 15.11.2019

PC. :-

Heard both the sides. The acquiring body is seeking condonation of delay of 1508 days in preferring the First Appeal impugning the judgment and award passed by the Reference Court.

2. The learned advocate for the applicants by referring to the grounds mentioned in the application submits that the acquiring body being impersonal machinery took time for it to complete the formalities for preferring the appeal. The documents were to be collected. Those were to be sent to the advocate on the Panel. There was a communication gap. Court

fees had to be arranged and all these factors had resulted in causing the delay.

3. The learned advocate would further submit that even the impugned order passed by the Reference Court increasing the compensation exorbitantly has increased the responsibility of the acquiring body to pay enormous compensation and unless an opportunity is extended to it to impugn the judgment and award, there would be miscarriage of justice.

4. The learned advocate for the respondents referring to the affidavit in reply submits that there is no proper explanation being offered for condoning the delay. The application is vague. The acquiring body is assuming that the delay would be condoned. No particulars are given. In fact, the respondents had to file an execution proceeding. The acquiring body was also served with a notice in the execution proceeding on 02.04.2015 and still it had not taken any step to prefer appeal. A warrant had to be issued by the Executing Court and it is thereafter that the appeal has been preferred in all probability to avoid drastic action in the execution proceeding.

5. It is trite that usually a pragmatic view is to be taken while considering the applications for condonation of delay. The law is well settled. The guidelines laid down in the case of **Collector, Land Acquisition, Anantnag and Another V/s. Mst. Katiji and Others; (1987) 2 Supreme Court Cases 107**

and **Ramlal and others V/s. Rewa Coalfields Ltd.**; AIR 1962 SUPREME COURT 361 clearly guide the discretion to be exercised while entertaining applications for condonation of delay. Usually, unless it is demonstrable that there are *mala fides* or some ulterior motive on the part of the person applying for condonation of delay, the delay should be condoned. However, in my considered view present case presents one such exception where this Court cannot exercise a discretion in favour of the applicant-acquiring body.

6. As far as the contents of the application are concerned those are as vague as it could be. In few sentences it has been vaguely averred that the time was spent for collecting documents, engaging advocate, arranging Court fees and matching expenses. Absolutely no particulars have been given.

7. As against this, as has been mentioned in the affidavit in reply, even the Executing Court had served a notice to the applicant-acquiring body way back on 02.04.2015. There is no explanation in the application as to why in spite of service of such notice no emergent steps were taken to prefer appeal. The delay of more than 1500 days is indeed enormous. Even if one intends to take some liberal view, there is absolutely no reason or explanation coming forth in the application to ignore such a huge delay. Therefore in my considered view, even if the well settled guidelines in the case of **Collector,**

Land Acquisition, Anantnag and Ramlal and others (supra) are applied, the facts and circumstances peculiar to the matter in hand refrain this Court from taking any other view but to refuse to condone the delay.

8. I find no sufficient and cogent reason to condone the delay. The application is rejected.

9. Since the application for condonation of delay is being rejected, the respondents-claimants are allowed to withdraw the amount deposited in this Court by the acquiring body. The Civil Application in that respect is disposed of.

[MANGESH S. PATIL, J.]