

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**904 CIVIL APPLICATION NO.2417 OF 2019
IN X-OBJST/4273/2019**

ZOPADU DAGDU SARODE (DIED) THR. LRS DNYANDEO (DIED)
THR. LRS LATA AND ORS
VERSUS
THE COLLECTOR, JALGAON AND ORS
...

**1014 CIVIL APPLICATION NO.351 OF 2019
IN FA/4217/2016 WITH CA/2414/2019 IN X-
OBJST/4260/2019 WITH CA/3428/2019 IN FA/4217/2016**

HARI KASHINATH SARODE (DIED) THR. LRS VITHAL AND OTHERS
VERSUS
THE AREA MANAGER, M.I.D.C. JALGAON AND ORS
...

**1015 CIVIL APPLICATION NO.2415 OF 2019
IN X-OBJST/4255/2019**

SITARAM BHIKA KHADKE (DIED) THR.LRS.BHASKAR SITARAM
KHADKE
VERSUS
THE COLLECTOR, JALGAON AND ORS
...

**1016 CIVIL APPLICATION NO.1497 OF 2019
IN FA/4218/2016**

HIRAMAN NATTHU MAHAJAN (DIED) THR. LRS ASHOK AND ORS
VERSUS
THE AREA MANAGER, M.I.D.C. JALGAON AND ORS
...

**WITH CA/13885/2016 IN FA/3783/2016
WITH CA/1498/2019 IN FA/2322/2014
WITH CA/1500/2019 IN FA/4216/2016
WITH CA/1501/2019 IN FA/4155/2016
WITH CA/1502/2019 IN FA/4129/2016
WITH CA/1504/2019 IN FA/4156/2016
WITH CA/1508/2019 IN FA/4109/2016
WITH CA/1509/2019 IN FA/4116/2016
WITH CA/1510/2019 IN FA/4119/2016**

WITH CA/1512/2019 IN FA/4126/2016
WITH CA/1514/2019 IN FA/4069/2016
WITH CA/1516/2019 IN FA/4068/2016
WITH CA/1517/2019 IN FA/4070/2016
WITH CA/1518/2019 IN FA/4117/2016
WITH CA/1519/2019 IN FA/4056/2016
WITH CA/1520/2019 IN FA/3783/2016
WITH CA/1521/2019 IN FA/4019/2016
WITH CA/1522/2019 IN FA/4032/2016
WITH CA/2486/2019 IN X-OBJST/4439/2019
WITH CA/2488/2019 IN X-OBJST/4437/2019
WITH CA/2489/2019 IN X-OBJST/4432/2019
WITH CA/2490/2019 IN X-OBJST/4444/2019
WITH CA/2492/2019 IN X-OBJST/4346/2019
WITH CA/2493/2019 IN X-OBJST/4344/2019
WITH CA/2494/2019 IN X-OBJST/4340/2019
WITH CA/2495/2019 IN X-OBJST/4328/2019
WITH CA/2496/2019 IN X-OBJST/4325/2019
WITH CA/2498/2019 IN X-OBJST/4337/2019
WITH CA/2502/2019 IN X-OBJST/4335/2019
WITH CA/2504/2019 IN X-OBJST/4330/2019

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Advocate for Applicants : Shri Ajeet B. Kale
 AGP for Respondents – State : Shri A.M.Phule, Shri P.M.Kulkarni,
 Shri S.J.Salgare

Advocate for Respondent – Acquiring Body : Shri S.S.Dande

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CORAM : P.R.BORA, J.

DATE: 6th March, 2019

PER COURT:-

1. Heard Shri A.B.Kale, learned Counsel appearing for the applicants, Shri S.S.Dande, learned Counsel appearing for the Acquiring Body and learned Assistant Government Pleaders for respondent State.

2. The learned Counsel for the applicants submitted that

after the appeals filed by the Acquiring Body were listed for final disposal, within one month therefrom, the applicants have filed the Cross-Objections and as such no delay can be said to have occurred in filing the Cross-Objections by the applicants. The learned Counsel in the alternative submitted that the delay, if any caused in filing the Cross-Objections, is for genuine and bonafide reasons and deserves to be condoned.

3. Shri S.S.Dande, learned Counsel appearing for the Acquiring Body has opposed for condoning the delay stating that the huge delay occurred in filing the Cross-Objections by the applicants, has not been properly explained by them and hence, does not deserve to be condoned.

4. Under Sub-rule (1) of Rule 22 of Order 41 of the Code of Civil Procedure (for short the Code), a power has been conferred upon the Appellate Court to extend the time to file cross-objection. The Appellate court can grant such further time as it may see fit to allow.

5. The issue as about condonation of delay in filing

the cross-objection was for consideration before this Court in the case of State of Maharashtra Vs. Kalu Ladku Mhatre - 2011 (4) Mh.L.J. 741. I deem it appropriate to reproduce herein below the discussion made by this court in regard to the said issue in paras 5 to 7 of the said judgment, which read thus, -

"5. I have given careful consideration to the submissions. The first issue is regarding the condonation of delay in filing the Cross Objection. A Reference will have to be made to Sub Rule (1) of Rule 22 of Order XLI of the said Code which reads thus:

"Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow."

6. Thus, under Sub Rule (1) of Rule 22 of Order XLI of the said Code, a power has been conferred upon the Appellate Court to extend the time to file Cross Objection. The Appellate Court can grant such further time as it may see fit to allow. The Sub-Rule (1) of Rule 22 does not lay down that sufficient cause is required to be shown by the respondent. As the said Code vests the power to extend the time to file Cross-Objection in the Appellate

Court, it is not at all necessary for the respondent in Appeal to invoke [Section 5](#) of the Limitation Act, 1963. [Section 5](#) of the Limitation Act reads thus:

"Extension of prescribed period of certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

7. The last part of Sub Rule (1) of Rule 22 of Order XLI deals with the grant of extension of time for filing of Cross Objection and [Section 5](#) of the Limitation Act deals with the extension of time to prefer an Appeal. [Section 5](#) of the Limitation Act incorporates a condition precedent of the appellant satisfying the Appellate Court that he had sufficient cause for not preferring the Appeal within the prescribed period of limitation. Sub Rule (1) of Rule 22 of Order XLI does not incorporate the stringent requirement of establishing a sufficient cause. Thus, a wide power to extend the time to file Cross- Objection has been vested in the Appellate Court. Though there is no requirement of establishing sufficient cause within the meaning of [Section 5](#) of the Limitation Act, in the application for seeking extension of time to file Cross-Objection, brief reasons for delay will have to be set out. A wider discretion has been conferred on the Appellate Court under the Sub Rule (1) of Rule 22 than what is conferred by [Section 5](#) of the Limitation Act. The power to extend time under Sub Rule (1) of Rule 22 of Order XLI of the Code has to be liberally exercised in case where a Cross-Objection is sought to be filed before the Appeal is heard for final hearing."

6. In the aforesaid matter, First Appeal which was filed in the year 2002 was listed on Board for final hearing, for the first time, in June 2011. Thereafter cross-objection was filed. The reason, as was assigned in justification of the delay caused in preferring the application was that, the respondent had instructed his Advocate to file the cross-objection, however, he was informed that the court fees is required to be paid and for various reasons the court fees could not be arranged by the said respondent.

7. In the matters which are before this Court for consideration, similar reasons are assigned by the respective respondents-claimants in justification of the delay caused in filing the cross-objections by them. As observed by this Court in the cited judgment, sub-rule (1) of Rule 22 of Order 41 of the Code does not incorporate the stringent requirement of establishing a sufficient cause. This Court has further observed in the cited judgment that a wide power to extend time to file cross-objection has been vested in the Appellate court. It has also observed that the power to extend the time under sub-rule (1) of Rule 22 of Order 41 of the Code has to be liberally exercised in a case

where cross-objection is sought to be filed before the appeal is listed for final hearing. Having regard to the view taken by this Court in the case cited supra, though I am inclined to condone the delay, while exercising such discretion in favour of the respondents-claimants, it appears to me that since the respondents-claimants did not file the cross-objection within the period as stipulated in sub-rule (1) of Rule 22 of Order 41 of the Code, it would not be unjust and improper if they are disentitled of the interest for the period of delay in the event their cross-objections are allowed and consequently the amount of compensation is enhanced on the said enhanced amount of compensation.

8. In the result, following order is passed, -

ORDER

- i. The delay occasioned in filing the cross-objections by the respective respondents-claimants in the respective appeals, is condoned.
- ii. The cross-objections be registered in accordance with law.

iii. It is clarified that in the event of their success in the cross-objections, resulting in enhancement in the amount of compensation, the respondents-claimants shall not be entitled for the interest of the period of delay on the enhanced amount of compensation.

iv. Registry to list the respective appeals along with the cross-objections therein for final disposal in their chronology.

v. All other Civil Applications shall stand over to 03.04.2019.

(P.R.BORA)
JUDGE

SPT