

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

917. CIVIL APPLICATION NO.4267 OF 2017
IN FAST/4798/2017

RAKHAMA THAKMAJI TRIBHUVAN (DIED)
LRS BHAGUBAI AND OTHERS
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER,
JAIKWADI PROJECT NO.1 AURANGABAD AND ANOTHER

Mr. S.K. Adkine, Advocate for applicants
Mr. B.V. Virdhe, Asstt. Govt. Pleader for Respt. No. 1

CORAM : V.L. ACHLIYA, J.

DATE : 10th April, 2019

PER COURT :

1. Applicants have moved this application for condonation of inordinate delay of 2344 days in filing appeal against the judgment and award dated 16th June 2010 passed in L.A.R. No. 565 of 2000 by the Joint Civil Judge (Senior Division), Aurangabad.

2. Heard the learned Counsel for the applicants-appellants and the learned Asstt. Govt. Pleader for respondent No.1. None

present for respondent No.2 though served.

3. In brief it is contention of the learned Counsel for the applicants, appeal could not be filed within time on account of poor financial condition of the applicants. It is submitted that applicants are ready to waive the interest from 16th June 2010 to 9th February 2017 i.e. the period for which delay caused in filing the appeal.

4. On the other hand, the learned Asstt. Govt. Pleader submits that in order to condone the delay, it is obligatory on the part of the person seeking condonation of delay to make out sufficient cause for condoning the delay. He submits that if averments made in the application are taken to its face value, it make out no case to condone delay.

5. I have thoroughly considered the submissions advanced in the light of broad principles laid down by the Apex Court in the case of ***Esha Bhattacharjee vs Managing committee of Raghunathpur Nafar Academy and others reported in (2013) 12 Supreme Court Cases 649.*** The Apex Court after taking survey of the precedents of the law on the point of condonation of delay has culled out the principles to be followed while condoning delay, which reads as under:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as

the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate

institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

6. Considering the case in the light of broad principles of law, I am of the view that no case is made out to condone the delay of 2344 days in filing the appeal. Except the bare words that due to poor financial condition the appeal could not be filed within time, there is absolutely no explanation to condone the delay. Apart from this, even no case is made out that serious prejudice would cause to applicants if delay is not condoned. Perusal of the award shows that the land admeasuring 1H.89R owned by applicants was acquired for the purpose of construction of Nandur Madhmeshwar Main Canal. The Special Land Acquisition Officer has assessed the compensation to be payable at the rate of Rs. 380/- per R based upon the market value determined on the basis of ready reckoner valuation on the date of the acquisition of the land. In the reference made, the applicants have claimed compensation at the rate of Rs. 700/- per R. The applicants have relied upon sale instances in respect of the land situated at a distance of 1 kilometer away from the land acquired. No evidence was adduced for seeking enhancement of compensation at the rate of Rs. 700/- per R.

Inspite of that the Reference Court has enhanced the compensation at the rate of Rs. 600/- per R. Thus, the difference between the compensation claimed and awarded by the Reference court is only Rs. 100/- per R. In that view, no serious prejudice would cause to applicants if delay is not condoned. In that view, I am not inclined to condone the inordinate delay of 2344 days caused in filing appeal. Application is rejected.

7. In consequence of rejection of the application, appeal filed stands dismissed.

(V.L. ACHLIYA)
JUDGE

Madkar