

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

934 CIVIL APPLICATION NO.2776 OF 2019
IN FAST/4935/2019

WITH CA/2780/2019 IN FAST/5144/2019

WITH CA/2782/2019 IN FAST/5132/2019

WITH CA/2786/2019 IN FAST/5135/2019

WITH CA/2788/2019 IN FAST/5147/2019

WITH CA/2790/2019 IN FAST/5151/2019

WITH CA/2792/2019 IN FAST/5141/2019

WITH CA/2794/2019 IN FAST/5157/2019

THE M.K.V.D.C., THR EX. ENGINEER, SINA
KOLEGAON PROJECT, PARANDA, OSMANABAD AND
OTHERS
VERSUS

GOKUL KRISHNATH BHANGE AND ANR

...

Mr.A.M. Gaikwad, Advocate for the applicants.
Mr.S.A. Deshmukh holding for Mr.M.S. Patil,
Advocate for the Respondents.

...

CORAM: V.L. ACHLIYA, J.

DATE : 09.04.2019

ORAL ORDER:

1. All these applications are filed by the applicants/appellants seeking condonation of delay of 1865 days in filing the respective appeals against the impugned judgment and Award passed by the Reference Court dated 30th September, 2013.

2. Heard learned counsel appearing for the applicants and the respondents-claimants.

3. In brief, it is the contentions of the learned counsel appearing for the applicants that the delay caused in filing the appeals is not intentional but occurred due to reasons set out in detail in the respective applications. It is submitted that the Reference Court decided the matters on 30th September, 2013. The applicants/appellants-acquiring body had no knowledge about passing of the award. They have deposited the amount as per the calculations made by the office of the Land Acquisition Officer, in response to letter dated 30th May, 2015 received from the Collector, Osmanabad. The amount was deposited in the execution proceedings filed by the respondents-claimants. It is submitted that to the utter surprise of the applicants, they received the notice dated 4th January, 2019 from the Executing Court, wherein the claimants have claimed interest under Section 28 of the Land Acquisition Act for the period 17th August, 1996 to 22nd March, 2002 i.e. from the date of possession till passing of the Award. After receipt of notice from Executing Court the applicants-acquiring body forwarded the

proposals for filing appeals as interest awarded in the matters from the date of possession till passing of Award, was not in accordance with law. Immediately after receipt of approval, appeals along with the applications seeking condonation of delay have been filed.

4. By referring to Full Bench decision of this Court in the case of **State of Maharashtra V/s Kailash Shiva Rangari** reported in 2016(3) Mh.L.J. 457 (F.B.), learned counsel submits that the legal position has been crystallized by the Full Bench to the effect that interest can not be awarded under Sections 28 and 34 of the Land Acquisition Act, 1894 over the enhanced amount of compensation from the date of possession. It has been held that the interest to be awarded over the enhanced compensation is to be payable only from the date of passing of the award.

5. On the other hand learned counsel appearing for the respondents-claimants opposed the applications with the contentions that the delay caused in filing appeals is

inordinate delay and the same has not been sufficiently explained. It is submitted that the fact of passing of award was well within the knowledge of the applicants. The issuance of notice by the Executing Court, no way treated as sufficient cause to condone the delay.

6. Considering the submissions advanced in the light of unchallenged pleadings made in the applications and the challenge raised in appeals, I am of the view that the delay deserves to be condoned. There is arguable case in favour of the applicants/appellants in the light of the decision of the Full Bench of this Court in the case of State of Maharashtra V/s Kailash Shiva Rangari (supra). The challenge raised in these appeals is confined to the interest awarded from the date of possession till its realization, which prima facie contrary to law. It is settled position of law that while dealing with the applications for condonation of delay, the Court must adopt the liberal approach and ensure that the meritorious case may not be rejected for technical reasons.

7. In the case of **Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others** reported in (2013)12 S.C.C. 649, the Hon'ble Supreme Court culled out the following principles to be followed while dealing with an application for condonation of delay :-

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

21.1. (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.

21.2 (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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4.(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.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6(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.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (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.

21.9 (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.

21.10. (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.

21.11. (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.

21.12.(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which

is founded on objective reasoning and not on individual perception.

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

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

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2. (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.

22.3 (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.

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

8. Keeping in mind the principles laid down in the case of **Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others (supra)** and **State of Maharashtra V/s Kailash Shiva Rangari (supra)**, I am of the view that the delay deserves to be condoned.

9. The appellants have arguable case to be considered in appeals. In case delay is not condoned, there is every likely that it may cause prejudice to the applicants and also affect the public interest. On the contrary if the delay is condoned ultimately the appeals will be decided on merits. The amount of compensation excluding the disputed amount on account of interest under Section 28 is already deposited and withdrawn by the respondents-claimants. Therefore, no prejudice would cause to respondents-claimants if delay is condoned. I am therefore inclined to allow the applications for condonation of delay subject to deposit of cost of Rs.10,000/- each of the applications. Accordingly the following order is passed :-

ORDER

(i) The applications are allowed in terms of prayer clause "A" in respective applications, subject to deposit of cost of Rs.10,000/- in each of the applications to be deposited within four weeks from today.

(ii) On deposit of costs, the appeals be registered and placed for admission on 2nd July, 2019.

(iii) On deposit of costs, the claimants in respective applications will be at liberty to withdraw the same.

(iv) Learned counsel for the respondents-claimants waives service of notice in respective appeals.

10. The applications for condonation of delay are disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA