

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

945. CIVIL APPLICATION NO.3616 OF 2017
IN
FAST/6652/2017

The Executive Engineer, Solapur.

... Applicant.

VERSUS

Mustafa Ayub Patel and others

... Respondents

*Mr. A.V. Soman, Advocate, holding for Mr. D.V. Soman, Advocate
for applicant*

Mr. R.V. Naiknavare, Advocate for respondent No.1.

Mr. P.M. Kulkarni, Asstt. Govt. Pleader for Respts. No. 2 & 3

CORAM : V.L. ACHLIYA, J.

DATE : 20th March, 2019

PER COURT :

1. Applicant/appellant has moved this application seeking condonation of 1170 days' delay in filing the appeal against the decision rendered by the Reference Court.

2. Heard the learned counsel for the applicant and respondent no.1 as well as learned Assistant Government Pleader for respondents No. 2 and 3.

3. In brief, it is the contention of the learned Counsel for the applicant that the delay in filing appeal was not deliberate but

resulted due to time spent in completing procedural requirements. He submits that the judgment and award was passed on 16th September 2013. Immediately thereafter the application for certified copies was filed on 9th October 2013. The copies were ready for delivery to 5th February 2014. Thereafter, the proposal was sent to higher authority for sanction to file an appeal. Initially, office of the Railway Department to take decision in the matter was located at Solapur. Lateron, the office was shifted to Pune. Due to shifting of office and scrutiny and finalization of the proposal to file an appeal, considerable time was spent. Due to this reason, the delay has been caused in filing the appeal.

4. Learned counsel for the applicant submits that the applicant/appellant has good case to succeed in appeal. The Special Land Acquisition Officer has determined the compensation at the rate of Rs. 309/- per Are. The Claimant has urged to enhance the compensation at the rate of Rs. 3500/- per Are. The Reference Court has enhanced the compensation from Rs. 309/- per Are to Rs. 5800/- per Are, that too, without any evidence adduced in the matter on the part of the claimant to seek such enhancement. The learned Counsel invited attention to the reasons recorded by the Reference Court to enhance the compensation at the rate of Rs. 5800/- per Are and pointed out

that the compensation has been awarded at exorbitant rate merely on the basis of assumption, presumption and inferences drawn by the Presiding Judge of the Reference Court having no evidence to support such enhancement.

5. On the other hand, the learned Counsel for the respondent-claimant has opposed the application with contention that no sufficient cause has been assigned to condone the delay of 1170 days.

6. Considering the submissions advanced in the light of unchallenged pleadings, I am of the opinion that the case is made out to condone the delay. There appears to be case to be considered in appeal. In case delay is not condoned, there is every likelihood that meritorious matter may be rejected on technical ground. In the case of **Collector, Land Acquisition, Anantnag vs Mst. Katiji (AIR 1987 SC 1353)**, the Apex Court has held that while dealing with the application seeking condonation of delay, the Court must adopt liberal approach and ensure that meritorious matter may not be rejected on technical ground. If delay is condoned, no prejudice would cause to the respondent-claimant. The delay in filing the appeal can otherwise be compensated in terms of money.

7. I am, therefore, inclined to allow the application

subject to costs of Rs. 10,000/- (Rs. ten thousand) to be deposited within six weeks from the date of order.

8. On deposit of costs, the appeal be registered and place before the Court for Admission on 4th June 2019.

9. In case the amount of costs is deposited, respondent No.1 will be at liberty to withdraw the same. Failure to deposit the amount of costs, the order of condonation of delay is liable to be cancelled.

10. The application stands disposed of.

11. Stand over to 4th June, 2019.

(V.L. ACHLIYA)
JUDGE

Madkar