

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

**920 REVIEW APPLICATION (CIVIL) NO.81 OF 2019
IN FA/3109/2018 WITH RA/80/2019 IN FA/3108/2018 WITH
RA/82/2019 IN FA/3107/2018**

**MADHUKAR MAHADEO SALGUDE AND ORS
VERSUS
EX. ENGINEER, BEED IRRIGATION DIV, BEED UNDER G.M.I.D.C.,
AURANGABAD AND ANR**

...
Advocate for Applicants : Shri H.V. Tungar, Shri D.R. Jaybhar
Advocate for Respondent No.1 : Shri B.R. Surwase
AGP for Respondent – State : Shri S.K. Tambe
...

**CORAM : P.R. BORA, J.
Dated: July 09, 2019**

PER COURT :-

1. When the present matter is taken up for hearing, the learned Counsel Shri Jaybhar and the learned counsel Shri Tungar submitted their joint *Vakalatnamas* on behalf of the applicants in the present matter. The same are taken on record. The applicants have filed the present applications for review of the Judgment and order dated 16.10.2018 passed by this Court in First Appeal Nos.3107 of 2018, 3108 of 2018 & 3109 of 2018. Along with the review of the Judgment and order passed in the aforesaid first appeals, the applicants have also sought the review of the order passed by this Court on 10.10.2018 in Civil Application Nos.10112 of 2018, 10111 of 2018 and 10109 of 2018.

2. It is the contention of the learned Counsel appearing for the applicants that, in the civil applications filed by respondent no.1 along with the State seeking condonation of delay, which had occasioned in filing the first appeals by them, though the delay occasioned in filing the first appeals was of the period about 10 years, it was represented that, the delay caused in filing the appeals is of 106 days. The learned counsel pointed out that, the Office of respondent No.2 was quite aware of the date of the judgment and award passed by the Reference Court and as such, it could not have been stated in the application that the delay caused in filing the appeals was only of 106 days. The learned counsel further submitted that, since the delay caused in filing the appeals was demonstrated to be of 106 days, this Court observing that, the delay is of not a longer period has condoned the said delay. The learned counsel submitted that, had it been brought to the notice that the delay caused is of 10 years, possibly, the Court may not have taken the same view. The learned counsel submitted that, since the order in the applications for condonation of delay has been obtained by misrepresentation, the order needs to be set aside.

3. Shri Surwase the learned counsel appearing for respondent no.1 submitted that, there was no intention of making

any misrepresentation or concealing any fact from the Court. The learned counsel submitted that, the averment that the delay caused was of 106 days was an inadvertent mistake, however, in the body of the application, it has been specifically stated by respondent no.1 that, the delay occurred in filing the appeals is of the period of about 8 years. The learned counsel submitted that, no *malafide* therefore can be attributed on part of respondent no.1. The learned counsel submitted that, once this Court has taken a view and condoned the delay, no interference is required and the orders do not need to be reviewed.

4. From the facts, it is undisputed that, the first appeals were filed challenging the awards passed by the Reference Court in the year 2008, more particularly in the month of January – 2008. The appeals were preferred admittedly in the month of July-2018. Along with the appeals, the civil applications were filed for condonation of delay, which had occasioned in filing the appeals. It is, thus, evident that, the delay caused in filing the appeals was of the period more than 10 years. It is also not in dispute that, in the applications and more particularly in para-7 of the applications as well as in the prayer clause, the period of delay was stated to be of 106 days. It is also not in dispute that, in Farad Sheet of this Court, the Office had also

endorsed the remarks that, the delay was of 106 days. In the circumstances, believing that, the delay is of a shorter period, it was condoned by this Court. The respondents i.e. the present applicants though were represented by the learned counsel, even the learned counsel could not bring it to the notice of the Court that, the delay is not of 106 days, but it is of the period of more than 10 years. It is the contention of the learned Counsel Shri Jaybhar, who was appearing for the respondents in the said matter that, he was also carried away by the period of delay as mentioned in the prayer clause and hence did not much oppose to the condonation of delay.

5. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned order as well as the other material placed on record. On perusal of the applications, which were filed by the respondents seeking condonation of delay, it is revealed that, the delay caused was stated to be of 106 days in the prayer clause of the applications. It is also revealed that, in the farad sheet, the Office had also stated the period of delay to be of 106 days. It is also the matter of record that, the respondents – claimants have caused appearance in the said matter and were represented by learned counsel Shri Jaybhar. As has been submitted by learned Counsel

Shri Jaybhar, he was also under the impression that, the delay caused is of 106 days and as such, he did not much oppose to the condonation of delay. As has been submitted by Shri Surwase the learned counsel appearing for respondent no.1, in the body of the application, it was disclosed that, the delay caused was of the period of more than 8 years; however, in para-7 of the application as well as in the prayer clause, it was inadvertently mentioned as 106 days. As has been submitted by learned counsel Shri Surwase, there was no *malafide* intention or intention to cause any misrepresentation, but it was an unintentional mistake. Whatsoever may be the justification now given by the learned counsel appearing for respondent no.1 as well as the learned counsel appearing for the applicants - claimants, the bare fact remains that, in fact the delay which had occurred in filing the appeals by the Acquiring Body was of the period of more than 10 years. In the above circumstances, the common order passed by this Court in the aforesaid applications thereby condoning the delay, assuming the same to be of the shorter period of 106 days, cannot be sustained and needs to be reviewed. Hence, the following order is passed.

ORDER

(i) The common order passed in Civil Application Nos.10108 of 2018, 10112 of 2018 and 10110 of 2018 is set aside

and said Civil Applications are restored to their original files.

(ii) Consequently, the common Judgment and order passed in First Appeal Nos.3107 of 2018, 3108 of 2018 and 3109 of 2018 also stands set aside and the said appeals also stand restored to their original status i.e. First Appeals on stamp numbers.

(iii) Civil Application Nos.10108 of 2018, 10112 of 2018 and 10110 of 2018 be listed for further consideration after four weeks.

(iv) The Review Applications (Civil) stand allowed in the aforesaid terms.

(PR. BORA, J.)