

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

Civil Application No. 06425 of 2017
(In First Appeal Stamp No. 9625 / 2017)

District : Osmanabad

The Executive Engineer,
Lift Irrigation Division,
Dist. Osmanabad,
Through :
Hanumant s/o. Vishvanath More,
Age : 55 years,
Occ. : Service as
Sub-Divisional Officer,
Lift Irrigation Sub-Division
at Osmanabad,
Dist. Osmanabad
& 02 others.

.. Applicants
(Original
respondents)

versus

Rajaram Pandurang Malkar,
Age : 70 years,
Occupation : Agriculture,
R/o. Alani,
Taluka & Dist. Osmanabad.

.. Respondent
(Original
claimant)

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Mr. Shyam C. Arora, Advocate, for the applicants.

Mr. D.D. Sarawade Patil, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27TH JUNE 2019

ORAL ORDER :

01. Present application has been filed for getting delay of 881 days condoned in filing first

appeal.

02. Present applicant no.01 was original respondent no.03, who intends to challenge the judgment and award passed in L.A.R. No.551 of 2013, by learned Civil Judge (Senior Division), Osmanabad. In order to explain the delay, it has been contended that the certified copies were applied on 03-07-2015 and were received on 13-07-2015. It is contended that the applicant was not aware about the judgment and award passed. Thereafter, legal opinion was sought. Further, sanction has been obtained in order to get the budgetary provision and after budgetary provision was made, cheque was issued in the name of Advocate on 10-02-2017. It is also stated that the applicant intends to challenge the award on the ground that there is exorbitant enhancement by the reference Court. It is contended that the delay is unintentional.

03. The application has been strongly opposed by the respondent on the ground that the delay has not been properly and sufficiently explained.

04. At the outset, it can be said that in the application, there is absolutely no mention about the reason as to why the certified copy was not obtained within a reasonable time after pronouncement of the judgment and award on 25-07-2014. However, it

appears that the applicant intended to say that the applicant was not aware about the said judgment and award. In fact, applicants no.02 and 03 are the State and Special Land Acquisition Officer, respectively. The applicant no.01 cannot make a statement in respect of knowledge of applicants no.02 and 03. Therefore, that part will have to be restricted to the knowledge of applicant no.01 only. After the certified copies were obtained, it appears that the time has been taken in communication, for proposal, approval and budgetary sanction; again guidance, arrangement for the court-fees. Under such circumstance, it appears that after obtaining the certified copies, though the dates about those steps have not been mentioned, yet, it can be said that there was a reasonable action by applicant no.01. Under such circumstance, taking into consideration the fact that the applicant no.01 is a public body, the delay is required to be condoned. At the same time, it is to be seen that the respondent is aged 70 years and he is an agriculturist. His 08 R land appears to have been acquired and further though a specific order was passed by this Court on stay application on 05-05-2017, that the entire decretal amount should be deposited within ten weeks, that amount has not been deposited, yet, the respondent deserves to be compensated in terms of money.

05. Hence, the following order :-

(a) The application is hereby allowed.

(b) The delay caused in filing first appeal is hereby condoned, subject to deposit of costs of Rs. 5,000/- [Rupees five thousand], within a period of one month from the date of this order. After the amount is deposited, it be disbursed to the respondent.

(c) After deposit of costs, as aforesaid, Registry to verify and register the first appeal and place it for further consideration on 01st August 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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