

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

942 CIVIL APPLICATION NO.13141 OF 2017
IN
FAST/16649/2017

THE STATE OF MAHARASHTRA AND ORS.
VERSUS
GANGARAM LIMBAJI PIMPARE (DIED) THR LRS
SITARAM AND ANR.

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Mr. G.O.Wattamwar, A.G.P. for Applicant - State.

Mr. R.V.Naiknaware, Advocate for respondents.

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CORAM : V.L.ACHLIYA, J.

DATE : 12/04/2019

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ORAL ORDER :

1. The applicants have filed this application seeking 1018 days delay caused in filing appeal against the Judgment and Award dated 23/04/2014 passed by the learned Civil Judge [Sr.Division], Osmanabad in L.A.R. No. 617/2013.
2. Heard learned A.G.P. for applicants and counsel representing the respondent/claimants.
3. In brief, it is the contention of learned A.G.P. for applicants that the delay caused in filing appeal was not intentional and deliberate but occurred due to

considerable time spent in securing approval from Law and Judiciary department as well as the time consumed in presenting the appeal. It is submitted that the appellants have good case to succeed in appeal. There is absolutely no legally sustainable evidence to enhance the compensation from Rs. 605/- per R. to Rs. 6,600/- per R. awarded by the reference Court. It is submitted that for the purpose of enhancement, the Special Land Acquisition Officer has relied upon the compensation awarded in L.A.R. No. 19/2008 decided on 21/06/2013 which in-fact is subject matter of challenge before this Court. By inviting attention to the Judgment and order passed by the reference Court, it is pointed out that there is absolutely no reasons recorded to enhance the compensation from Rs. 605/- per R. to Rs. 6,600/- per R. It is submitted that in case delay is not condoned, there is likelihood that a meritorious matter may be rejected for technical reasons. On the other hand, if delay is condoned, no serious prejudice would be caused to the other side as the appeal will be decided on its own merit. It is further submitted that the interest awarded from the date of possession is also not sustainable in law in light of full bench decision of this Court in the case of ***The State of Maharashtra V/s Kailas Shiva Rangari reported in 2016 All M.R. 513 (F.B.)***

4. Learned counsel for the respondent/claimants

submits that there is absolutely no cause assigned to condone the delay. It is submitted that the reasons assigned are false and concocted. There is complete negligence on the part of the applicants to take steps to file appeal in the matter. It is submitted that delay of more than 1018 days has been caused in filing the appeal. It is submitted that the claimants are deprived of the compensation of the land acquired in the year 2005, of which possession was taken in the year 2003.

5. On due consideration of the submissions advanced in the light of cause assigned for condonation of delay and the challenges raised in the appeal, I am of the view that the delay caused in filing appeal deserves to be condoned in the light of broad principles laid down in the case of ***Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others reported in (2013)12 S.C.C. 649***, wherein the Apex Court after taking survey of precedents of law laid down on the issue has culled out the following principles to be followed while dealing with the application seeking 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.*

6. The applicants/appellants are acquiring body. Although no due diligence was shown on the part of the applicants to immediately file the appeal but in the larger public interest it is necessary that the delay caused in filing appeal deserves to be condoned by adopting liberal and pragmatic approach. I have perused the Judgment and order passed by the

reference Court. There appears to be force in the submission of the learned A.G.P. for applicants that there is no proper reasonings recorded to enhance the compensation @ Rs. 6,600/- per R. It is rather strange to note the manner in which the learned Presiding Judge has acted in deciding the reference. In stead of deciding the reference on the basis of the evidence adduced in the case the reference has been decided on the basis of some other reference decided by reference Court in another matter. The award passed in L.A.R. 19/2008 relied to enhance compensation is subject matter of challenge before this Court. Similarly, the appeal filed by the appellants deserves consideration on merits in the light of 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.)***

7. In view of above, I am inclined to condone the delay subject to cost of Rs. 10,000/- to be payable by the applicants to the respondents. The cost be deposited within 4 weeks from the date of order. On deposit of cost, the application be registered and place for admission on 02/07/2019.

8. Mr. R.V.Naiknaware, learned counsel waives service of notice for the respondents – claimants.

9. Call record and proceedings.

10. The parties are put to notice that the application can be heard finally at the stage of admission.

11. S.O. 02/07/2019.

[V.L.ACHLIYA]
JUDGE

KNP.