

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

**922 CIVIL APPLICATION NO.3598 OF 2019
IN LPAST/17953/2012**

**DATTU MARUTI JADHAV (DIED) LRS VIJAYKUMAR DATTU
JADHAV AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

Mr.S.B.Bhapkar, Advocate for the applicant
Mr.S.N.Kutti, AGP for the respondent
Mr.V.M.Humbe, Advocate for respondent NO.2

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 09-08-2019

P.C. :-

. Approach under present Letters Patent Appeal against order passed by Hon'ble learned single judge dated 17-01-2012 in writ petition No. 3785 of 2011 has been made 145 days beyond prescribed period of limitation.

2. Learned counsel for the applicants submits that while writ petition was decided against applicants/petitioners on 17th January, 2012, it had been realized by the applicants only in May, 2012. Thereafter for a little while had been taken to decide to approach under LPA against the order passed by learned single judge. In the process, time got consumed and LPA is delayed by 145 days and the same is neither deliberate nor intentional. Under

genuine reasons referred to above, delay has been caused. It is not the case that, the appellants had been indolent. He therefore, submits that having regard to that liberal approach to be had in the matter of condonation of delay, the application accordingly be granted.

3. On the other hand learned counsel Mr. Humbe vehemently submits not to indulge into request made under the application. He submits, it would be discernible that applicants, in fact, had the knowledge of order passed in February, 2012 itself, as certified copy was issued in February, 2012. There is no sufficient cause given in explanation for period of delay beyond February, 2012 and reasons referred to from paragraphs 2 onwards of the application do not bear that those would constitute sufficient cause. It is further being passingly submitted that even the writ petitioners were stated to be present in the court while writ petition had been decided.

4. In support of submissions, learned counsel Mr. Humbe purports to place reliance on two decisions rendered by learned single judges of this court in the case of *Assets Reconstruction Company (India) Ltd. And another Vs Smt. Geeta Wd/o. Vitthalrao Gomase and others* reported in 2018 (4) ALL MR 632 drawing attention to paragraphs 5, 6 and 7 thereunder.

The case of the *Superintending Archaeologist, Aurangabad Vs Jayraj S/o. Kamlakar Pande* reported in 2018 (5)

ALL MR 185 placing reliance on paragraphs No. 16, 17, 18 and 21 thereunder, had also been referred to.

5. In addition to aforesaid, he also cites a Supreme Court Judgment *2017 DJLS (SC) 1194 = 2018 (12) SCC 527* in the case of *Chhedi Lal Yadav Vs Hari Kishore Yadav (Dead) through Lrs. And others*, whereunder the court had considered, there had been inordinate delay of 24 years, whereas even as no limitation is prescribed, proceedings are not initiated within reasonable time. Proceedings would not be allowed to be initiated after unreasonable delay. Case was being dealt with reference to Bihar Kosi Area (Restoration of Lands to Raiyats) Act, 1951.

6. Having heard learned counsel for parties, it would emerge that even if we go by the case as pleaded on behalf of respondent that the applicants were before the court in January while writ petition had been decided and the application been made for certified copy of said order, it would not be said to be clearly brought forth that certified copy had been delivered to applicants in February, 2012 and the applicants had been aware of the same in February, 2012. May be it is the case, wherein the copy had been delivered in February, 2012, however, while approach had been made in May, 2012, the same had been delivered to the applicants. The applicants have stated that they had approached their lawyer in May, 2012 and thereafter LPA is filed. This eventuality could not be said to have been ruled out. This aspect should receive its due.

7. Decisions in 2018 (4) ALL MR 632 and 2018 (5) ALL MR 185 and paragraphs from the same referred to by the learned counsel for respondent would show observations and with respect to facts and circumstances involved in the said cases.

Third case relied on behalf of respondents had been in different context and would not be able to contend present situation.

In the circumstances, it would be difficult to consider that analogy be drawn from the said decisions to apply to the facts and circumstances of the present case. We would like to refer to two decisions of the Supreme Court and would be getting guided by those viz; in the case of *Collector, Land Acquisition, Anantnag Vs Ms. Katiji and others* reported in AIR 1987 SC 1353 and the case of *Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 Supreme Court Cases 649.

8. It would not be said that having regard to the circumstances referred to which have not been controverted by placing any material on record by respondents, we deem it appropriate to have an approach which would be conducive to have a decision on merits rather than decline condonation of delay such as present matter by adopting technical approach while delay does not appear to be inordinate.

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9. The civil application is allowed. Delay condoned. The application is disposed of accordingly.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]

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