

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

Civil Application No. 11134 of 2018
(In First Appeal Stamp No. 19311/2018)

District : Osmanabad

1. The State of Maharashtra,
through the Collector,
Osmanabad.
2. The Additional Collector,
Earth Quake Rehabilitation,
Osmanabad.
3. The Sub-Divisional Officer,
LAO Office, Omerga,
District Osmanabad.

.. Applicants
(Original
respondents)

versus

Ankush Manikrao Sangve,
Age : Major,
Occupation : Agriculturist,
R/o. Narangwadi,
Taluka Omerga,
District Osmanabad.

.. Respondent
(Original
claimant)

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*Mr. A.M. Phule, Assistant Government Pleader,
for the applicants.*

Mr. Shaikh Shoyab, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 18TH JUNE 2019

ORAL ORDER :

Heard both sides.

02. Present application has been filed for getting delay of 1102 days condoned in filing first appeal. The State intends to challenge the judgment and award passed by learned Civil Judge (Senior Division), Omerga, District Osmanabad, in Land Acquisition Reference No. 268 of 2013, dated 18-03-2015. It is contended that application for certified copy was made on 10-06-2015 and the certified copies were delivered on 17-06-2015. Thereafter, the Assistant Government Pleader had communication with the Joint Secretary, Law & Judiciary Department, Aurangabad and recommended that the appeal should be preferred. Thereafter there was a scrutiny by the office of the Law & Judiciary Department, Aurangabad and the proposal was then forwarded to the Government Pleader, High Court Bench at Aurangabad, on 25-06-2015. It is stated that in the meantime, one Government Resolution was passed on 03-11-2016 along with corrigendum dated 23-02-2017 and in view of the same, office of the Government Pleader had again referred the matter to the Law & Judiciary Department and sought instructions. The instructions were received on 08-06-2018 and thereafter immediately the appeal has been preferred. According to the applicants, therefore, the delay is unintentional. If the delay is not condoned, then the State would be prejudiced and ultimate burden would be on the public exchequer.

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

04. The facts, as stated in the application itself, are very clear. The certified copies of the impugned judgment and award were received on 17-06-2015. In fact, though the judgment and award was passed on 18-03-2015, certified copy itself was applied much after lapse of period. But since the State was to take action, then definitely proposals and various sanctions are required to be obtained from various departments. Yet, what can be seen is that though the office of the Government Pleader had received the proposal on 25-06-2015, it appears that much after the Government Resolution also, no action was taken to draft the appeal and in the meantime, when the Government Resolution was passed, so also corrigendum to the same, it appears that the office of the Government Pleader has moved again. No explanation is given in that respect.

05. The act of condonation of delay is the matter of discretion of the Court which is required to be exercised judiciously. If at all there would have been a just, sound and reasonable ground for keeping the proposal as it is and not drafting the appeal within the aforesaid period, then the action

of the applicants could have been justified. It cannot be said to be the procedural delay strictly since the office of the Government Pleader, as it appears, that sat over the file without any reasonable cause. Under such circumstance, no doubt, when the vital rights are involved and it would be burden for the public exchequer, the delay deserves to be condoned. However, at the same time, balance has to be stricken by protecting the right of the respondent. This is a fit case where cost is required to be imposed. Important point to be noted is that though while striking the balance, it may appear that giving costs to the respondent would have been action requisite under circumstances, however, here already the amount of compensation is awarded to the respondent and since there is no compliance in respect of order passed on stay application, the respondent is at liberty to get the award executed. Therefore, directing the applicants to deposit costs with the High Court Legal Services Sub-Committee would be just and proper.

06. Hence, the following order :-

(a) The application is allowed.

(b) The delay caused in filing first appeal is hereby condoned, subject to deposit of costs of Rs. 500/- [Rupees five hundred only], taking into consideration

the fact that the applicant is State and as token, the cost is imposed. The amount of the costs to be deposited with the High Court Legal Services Sub-Committee at Aurangabad, within 15 days from the date of this order. After deposit of the costs, Registry to verify and register the first appeal.

(Smt. Vibha Kankanwadi)
JUDGE

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