

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

930 CIVIL APPLICATION NO.14064 OF 2017
IN FAST/24608/2017

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION,
OSMANABAD, THROUGH GMIDC, AURANGABAD

VERSUS

TRIMBAK BABURAO NAVTAKE (DIED) THROUGH L.RS. ASHWINI AND
OTHERS

...

Advocate for Applicant : Shri Bhalerao Sudhir G.

Advocate for L.Rs. of respondent no.1: Shri G.K. Sontakke

AGP for Respondent nos.2 & 3: Shri P.M. Kulkarni.

CORAM: V.L. ACHLIYA, J.

DATE: 16.04.2019

PER COURT :

1] This application is moved seeking condonation of delay of 1369 days in filing appeal against the impugned judgment and order passed by the Reference Court.

2] Learned counsel for the applicant / appellant submits that the delay caused in filing the appeal is not deliberate, but occurred for the reasons set out in detail in the application. It is further submitted that the applicant has good case to succeed in the appeal. The challenge raised in the appeal is restricted to award of interest u/s 28 of the Land Acquisition Act. By

- 2 -

referring the award passed by the Reference Court, the learned counsel pointed out that the Reference Court has awarded the rental compensation as well as interest from the date of possession, which is contrary to the law laid down by the Full Bench of this Court in the case of *State of Maharashtra v. Kailash Shiva Rangani [(2016) 4 ALL M.R., 513]*. The applicant / appellant has deposited the entire amount in terms of the award except the disputed amount and the same has been withdrawn by the respondent – claimants. In case delay is condoned, no serious prejudice would be caused to the respondent – claimants as the appeal will be decided on its own merits. On the contrary, if delay is not condoned, serious prejudice would be caused to the appellant.

3] On the other hand, learned counsel for the respondent – claimants opposed the application with contention that the cause assigned for condonation of delay is not sufficient to condone the delay. It is submitted that the Reference Court has rightly allowed the interest from the date of possession.

4] Considering the submissions advanced in the light of the cause assigned for condonation of delay and the

- 3 -

consequences to follow if delay is not condoned, I am of the view that the delay deserves to be condoned. If delay is condoned, no serious prejudice would be caused to the respondent – claimants as they have already received the compensation in terms of the award, except the disputed amount on account of interest and the same has been ordered to be deposited in this Court. Keeping in mind the broad principles laid down by the Apex Court in the case of *Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013)12 S.C.C. 649, I am of the view that in the facts and circumstances of the case, the delay deserves to be condoned. Accordingly, following order is passed:-

O R D E R

A] The application is allowed in terms of prayer clause (B). Delay condoned.

B] Issue notice to respondents returnable on 2.7.2019.

C] Shri G.K. Sontakke, learned counsel waives service of notice for the L.Rs. of respondent no.1, who are claimants. Shri P.M. Kulkarni, learned AGP waives service of notice for

- 4 -

respondent nos.2 & 3.

D] Call R & P.

E] In view of limited issue raised in the appeal, the parties are put to notice that the appeal may be heard and decided finally at the stage of admission.

F] List the appeal for final disposal on 2.7.2019.

(V.L. ACHLIYA, J.)