

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

**CIVIL APPLICATION NO.13127 OF 2018
IN FAST/29883/2018**

Bhanudas Nanabhau Manwatkar and others

... Versus ...

Executive Engineer, Nimna Dhudhana Project, Selu and others

...

Mr. S.S. Randive, Advocate for the applicants

Mr. S.P. Sonpawade, Advocate for the respondent No.1

Mr. A.M. Phule, AGP for the respondent Nos.2 and 3

...

WITH

**CIVIL APPLICATION NO.13128 OF 2018
IN FAST/29879/2018**

Suresh Bhanudas Manwatkar

... Versus ...

Executive Engineer, Nimna Dhudhana Project, Selu and others

...

Mr. S.S. Randive, Advocate for the applicant

Mr. S.P. Sonpawade, Advocate for the respondent No.1

Mr. A.M. Phule, AGP for the respondent Nos.2 and 3

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 14th JUNE, 2019

PRONOUNCED ON : 05th JULY, 2019

ORDER :

1 Both these applications have been filed by the original claimants to get delay of 3417 days condoned for filing First Appeal.

2 The original claimants intend to challenge the Judgment and Award passed by learned reference Court on 18.02.2019. It is stated that the land of the applicants was of good quality. However, the compensation has been awarded by the reference Court is inadequate. They have no other source of income and therefore, could not approach this Court within limitation. It is also stated that they were not aware about the legal provisions and therefore they prayed for condonation of delay.

3 Heard learned Advocate Mr. S.S. Randive for the applicants, learned Advocate Mr. S.P. Sonpawade for the respondent No.1 and learned AGP for the respondent Nos.2 and 3. The application has been objected by the respondents on the ground that there is huge and inordinate delay which has not been explained by the applicants.

4 The learned Advocate appearing for the applicants has submitted that due to the poor financial condition as well as illiteracy of the applicants they could not approach this Court within limitation. It is stated that though

applicant No.3D is a lawyer he has just passed out said course. The vital rights of the original claimants are involved and therefore leniency be shown. He relied on the decision in K. Subbarayudu and others vs. The Special Deputy Collector (Land Acquisition), MANU/SC/0884/2017, wherein it has been held that -

“With the acquisition of lands, the lifeline of the agriculturist is lost. There may be omission on the part of the claimants to adopt extra vigilance; but same need not be used as a ground to depict them with negligence or want of bona fide. In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not pedantic in their approach.”

In this case itself, reliance was placed on the decision in Dhiraj Singh (dead) through legal representatives and others vs. State of Haryana and others, (2014) 14 SCC 127, wherein it has been held that -

“Equities can be balanced by denying the Appellants' interest for the period for which they did not approach the Court. The substantive rights of the Appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic.”

5 Per contra, the learned Advocates appearing for respondents submitted that in both the above said cases proper reasons were given for the delay and therefore the Hon'ble Supreme Court has observed that sufficient reason has been shown. Here, in this case, the financial disability has been stated but not demonstrated and therefore such reason should not be considered.

6 The observations and ratio laid down in **Dhiraj Singh** (supra) cannot be denied, wherein principles laid down in **Collector (LA) vs. Katiji, (1987) 2 SCC 107** has been reiterated, which are as follows :

1 Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2 Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4 When substantial justice and technical considerations are

pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5 There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6 It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

7 Under these circumstances it is required to be considered whether the reasons given by the present applicants can be said to be sufficient. Again observation in **Dhiraj Singh** would be helpful, wherein it has been stated, “It is not in dispute that the appellants are agriculturists. Their averment that they could not prefer the LPA's because of their financial weak conditions, has not been disputed by respondents.” was considered. Further, in **Saniyathal vs. Tahsildar, Civil Appeal No.5335/2013 dated 05.07.2013 (S.C.)** was referred, wherein the Hon'ble Apex Court had taken cognizance of the fact that many land owners may not be able to seek intervention of the Court for grant of enhanced compensation due to illiteracy, poverty and ignorance. Therefore, poverty and lack of knowledge

can be taken as one of the grounds to condone the delay in certain circumstances and therefore taking liberal view in this matter the applications are liable to be allowed. However, they will not be entitled to get interest for the period of delay in approaching this Court. With these observations following order is passed.

ORDER

- 1 The application is allowed and disposed of.
- 2 The delay caused in filing First Appeal is hereby condoned.
- 3 Applicants are not entitled to get interest, in the event of their appeal being allowed, on the enhanced amount for the period of delay caused in filing First Appeal.
- 4 Registry to verify and register the First Appeal and place it for consideration on 01.08.2019.

(Smt. Vibha Kankanwadi, J.)