

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

**42 CIVIL APPLICATION NO.13046 OF 2019
IN FAST/30926/2019 WITH CA/13047/2019 IN FAST/30926/2019 WITH
CA/13048/2019 IN FAST/30961/2019 WITH CA/13049/2019 IN
FAST/30961/2019**

**THE EX. ENGINEER, (SINCHAN DIVISION Z.P, AURANGABAD)AND ANR
VERSUS
SARICHAND BAKAJI CHAVAN**

AND

**43 CIVIL APPLICATION NO.13050 OF 2019
IN FAST/30929/2019 WITH CA/13051/2019 IN FAST/30929/2019**

**THE EX. ENGINEER, (SINCHAN DIVISION Z.P, AURANGABAD)AND ANR
VERSUS
PREMCHAND MANGALCHAND PATNI AND ANR**

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Advocate for Applicants : Mr. Pawar D.B.
Advocate for Respondent : Mr. Anirudha A. Nimbalkar

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CORAM : MANGESH S. PATIL, J.

DATE : 11.12.2019

PER COURT :

These are the applications under Section 5 of the Limitation Act, 1963 for condonation of delay in preferring the appeal by the acquiring body.

2. The learned advocate for the acquiring body by referring to the contents of the applications submits that the delay has occasioned because of compliance to be made to follow the procedure in the department. Some time was spent for obtaining certified copies, taking legal advice, arranging

fees and engaging pleader which cumulatively led to the delay of 1205 days and 1198 days respectively. There were no *mala fides*. It was because of carelessness of some of its staff members that the delay has occasioned. Two of the employees were also suspended by fixing the responsibility and the delay may be condoned. In support of his submission he also placed reliance on the decision in the case of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others; AIR 1987 Supreme Court 1353.**

3. The learned advocate then submits that the delay may be condoned else the illegality in the impugned judgment and order passed by the reference court cannot be rectified. The delay may be condoned by imposing some costs.

4. The learned advocate for the respondent claimant strongly opposes all these applications by referring to the affidavits in reply of the respective claimants. At the out set he submits that the delay is enormous and has not at all been explained. He would then submit that even there are circumstances which indicate that the delay has occasioned *mala fide*. The appeal has been filed belatedly after all the openings were shut.

5. He would submit that the claimants had filed execution proceedings since the acquiring body failed to obey the impugned judgment and award. The claimant had to approach this Court and file Writ Petition No.1544/2018. The acquiring body appeared in that Writ Petition. After hearing both the sides, by the order dated 06.03.2019, the Division Bench

directed the acquiring body to obey the award expeditiously and preferably within a period of 7 months. It is thereafter, as an afterthought, the present appeals have been filed on 26.09.2019 just to come out of the impending/possible implication for disobedience of the order of this Court in the Writ Petition. The attempt of filing the appeal after a lapse of so many months of passing of the order by the Division Bench has also not been properly explained in the application. Thus, though normally the delays are to be condoned by taking a pragmatic view, the aforementioned circumstances clearly demonstrate as to how the acquiring body is acting *mala fide* and the delay may not be condoned.

6. I have carefully gone through the entire papers. Needless to state that in considering the applications for condonation of delay, the guidelines to be followed have been well set in catena of judgments and the often quoted decision in the case of Collector, Land Acquisition, Anantnag (*supra*) lays down following guidelines/ principles:

- “(1) Litigant does not stand benefitted by lodging an appeal late;*
- (2) Refusal to condone may result in meritorious matters being thrown out at the very threshold and the cause of justice being defeated;*
- (3) In the matter of explanation of every day’s delay, pedantic approach should be avoided. Rational common sense pragmatic approach should be invariably adopted;*
- (4) Substantial justice is to be preferred against technical flaws;*
- (5) There is no presumption that delay is always deliberate;*
- (6) Injustice is to be removed.”*

7. The question that is pertinent to be replied in the matters in

hand is as to whether the fact situation herein is good enough to attract these principles and guidelines for condoning the delay.

8. It is important to note that the applications are clearly devoid of even a passing reference to the circumstance of filing of the execution proceedings, the Writ Petition, the order passed therein and the time limit fixed for obeying the direction. There is absolutely no whisper as to why the acquiring body failed to obey the directions given by the Division Bench, of depositing the amount within 7 months. Conspicuously, there is no record to show that it ever decided to impugn the order of the Division Bench. The other option of obeying it has also been overlooked. It is thus quite clear that the acquiring body is playing hide and seek. Had the attempt been *bona fide*, at least some excuse would have been made in the application itself for not obeying the order of the Division Bench. Ignoring everything, a bald and vague application has been filed making an attempt to pass on the blame to couple of staff members, may be as escape goats.

9. Whatever may be the case, the application is as vague as it could be besides being sans any explanation as to why even after service of notice in the Writ Petition the appeals were not promptly preferred. These circumstances in my considered view clearly demonstrate that the delay, apart from being not explained with sufficient reasons, has also been caused with some ulterior motive to avoid the consequences of facing the court for disobedience of the directions issued in the Writ Petition.

10. In view of such state of affairs, even if some pragmatic approach

is to be adopted, the aforementioned facts and circumstances certainly prevent this Court from adopting it, by the following principles and guidelines laid down in the case of Collector, Land Acquisition, Anantnag (supra) I find no sufficient and cogent reason to condone the delays. The applications are rejected.

(MANGESH S. PATIL, J.)

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