

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

44. CIVIL APPLICATION NO.14212 OF 2017
IN FAST/34203/2017

MAINUDDIN SARFODDIN SHAIKH

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Mr. S.S. Chillarge, Advocate for applicant
Mr. G.O. Wattamwar, Asstt. Govt. Pleader for respondents No.1 & 2

CORAM : V.L. ACHLIYA, J.

DATE : 15th April, 2019

PER COURT :

1. Applicant-appellant has moved this application for seeking condonation of 363 days' delay in filing appeal.
2. Heard learned Counsel for the applicant and the learned Asstt. Govt. Pleader for respondents No.1 and 2. Respondent No.3 though served, failed to record his appearance.
3. In brief it is contention of the learned Counsel appearing for the applicant that the delay caused in filing appeal is not deliberate but occurred due to reasons set out in detail in the

application. It is submitted that the judgment and award passed by the Reference court was not communicated to applicant. In the month of August 2017 the applicant came to know about dismissal of reference on account of not adducing evidence in the matter. Immediately thereafter the applicant moved an application for certified copies of the judgment and award. After receiving certified copies of the judgment and award and arranging funds for filing an appeal, the applicant has filed this appeal alongwith application for condonation of delay. In this background, the learned Counsel submits that the delay occurred was not deliberate. He further submits that the Special Land Acquisition Officer awarded compensation at the rate of Rs. 31000/- per acre for acquired land. Applicant has claimed compensation at the rate of Rs. 1,00,000/- per acre. The Special Land Acquisition Officer has not followed the procedure as prescribed under law while deciding the reference. It is submitted that in case delay is not condoned, serious prejudice may cause to applicant.

4. On the other hand, learned Asstt. Govt. Pleader opposed the application with contention that no sufficient cause has been assigned to condone the delay. It is submitted that reasons assigned are after thought and concocted.

5. On due consideration of submissions advanced in the light

of unchallenged pleadings made in the application, I am of the view that the delay caused in filing the appeal deserves to be condoned. Applicant is an agriculturist. The claim seeking enhancement of compensation has been rejected by Reference Court. Keeping in view the broad principles laid down by the Apex Court while dealing with application for condonation of delay in the case of ***Esha Bhattacharjee vs Managing committee of Raghunathpur Nafar Academy and others reported in (2013) 12 Supreme Court Cases 649***, I am of the view that the delay deserves to be condoned. In case delay is not condoned there is every likelihood that serious prejudice may cause to the applicant. On the contrary, if delay is condoned, no serious prejudice would cause to the respondents as ultimately the case will be decided on merits. I am, therefore, inclined to allow the application. Accordingly the application is allowed in terms of prayer clause 'B'. Delay is condoned. Appeal be registered and place for admission on 20th June 2019.

6. Learned Asstt. Govt. Pleader waives notice for respondents No.1 and 2. Notice be issued to respondent No.3 returnable on 20th June 2019.

7. Call for record and proceedings.

8. Parties are put to notice that the appeal may be heard at the stage of admission.

9. The application be marked as disposed of in above terms.

Stand over to 20th June 2019.

(V.L. ACHLIYA)
JUDGE

Madkar