

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

**1036 CIVIL APPLICATION NO.14718 OF 2018
IN FAST/36113/2018
WITH CA/14699/2018 IN FAST/36261/2018
WITH CA/14702/2018 IN FAST/36249/2018
WITH CA/14704/2018 IN FAST/36255/2018
WITH CA/14706/2018 IN FAST/36264/2018
WITH CA/14708/2018 IN FAST/36236/2018
WITH CA/14710/2018 IN FAST/36252/2018
WITH CA/14712/2018 IN FAST/36258/2018
WITH CA/14714/2018 IN FAST/36246/2018
WITH CA/14716/2018 IN FAST/36240/2018**

**THE EX. ENGINEER, (NIRMAN) CENTRAL RAILWAY
PROPER PARTY IS - THE DY. CHIEF ENGINEER**

VERSUS

SOUDAGAR PANDHARI MOHITE AND ORS

...

Mr. M.N. Navandar, Advocate for the applicants

Mr. A.P. Choudhari & Mr. D.B. Shendge, Advocates for respondent No.1

Respondent Nos.2 and 3 - served

Mr. R.D. Kawade, Advocate for respondent Nos.2 and 3 (in CA/14699/2018)

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26th JULY, 2019

PER COURT :

1 Present application has been filed by the original respondent No.3 for getting delay of 1506 days condoned in filing First Appeal.

2 The original respondent No.3 intends to challenge the common Judgment and Award passed by learned Civil Judge Senior Division, Osmanabad in L.A.R. Nos.113/2007, 112/2007, 144/2009, 145/2009, 146/2009, 147/2009, 149/2009, 150/2009 and 181/2010 dated 26.06.2014, thereby partly allowing the references filed by the respective claimants. It has been contended that the said acquisition proceedings were from Osmanabad district for conversion of Miraj-Kurduwadi-Latur Narrow Gauge line into Broad Gauge line. After the Judgment and Award was pronounced the certified copy was applied by the present applicant on 19.08.2014, which was received by the Advocate, who was representing the respondent No.3 before the Trial Court on 06.09.2014 and thereafter it was sent to the office of the applicant at Latur. The Latur office of Dy. Chief Engineer (Construction) was closed down permanently. The said office had then shifted to Solapur Division of Central Railways, therefore, the applicant was not aware about the concerned files. It is stated that at the most the record might have been with the Latur office or may be in transit. The said office was again shifted to Pune Division, because of which the applicant was not aware about the said decision. Applicant came to know about the

Judgment in September, 2016 and therefore, immediately the record was forwarded to the Headquarter and then to Senior Law Officer (Construction), Central Railways, C.S.T., Mumbai for legal opinion. Thereafter, the advise was received and then again by taking final sanction from the competent authority, the First Appeal has been filed. It is stated that the said delay is unintentional, but in view of administrative difficulty it has arisen. On these grounds the delay has been prayed to be condoned.

3 The application has been objected strongly by learned Advocate for respondent No.1. It is contended that the delay is huge and inordinate. There is no sufficient reason, at least reasonable ground shown for condoning the delay. Merely because the applicant is part of Central Railway, liberal approach cannot be taken. No reasons have been assigned as to why the offices were shifted to Latur to Solapur and then from Solapur to Pune. He relied on the decision in Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 AIR SCW 6158, wherein it has been observed by the Apex Court -

“There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

Substantial justice being paramount and pivotal the technical

considerations should not be given undue and uncalled for emphasis.

The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.”

He further relied on the decision in State of Maharashtra and others vs. Shri Vithu Kalya Govari and others, 2008(4) ALL MR, 856, wherein the Division Bench of this Court has observed -

“The applicants in their application have stated that delay has occurred because of “official hassle” and approval at different levels. This is a case which can hardly justify condonation of delay. The hassles which in any case are unspecified in the application can always be set right by the applicants and the approval can be granted expeditiously. However, in the present case, there is no explanation even for a period of two years. The other point raised on behalf of the applicant is that if delay is condoned, it would cause no prejudice to the claimants is not tenable. In law advantage has accrued to the non-applicants claimants and the same ought not to be withdrawn in a mechanical manner and that too without any sufficient cause being shown to the applicants. This itself is the prejudice to the claimants. Before the delay can be condoned and claimants can be subjected to a prolonged litigation, the onus to show sufficient cause lies is upon the applicant State.”

Further reliance has been placed on the decision in **The State of Maharashtra and others vs. Onkar Manaji Kokani, 2018(2) ALL MR 44,** wherein this Court has observed -

“Vague statements like opinion was to be obtained from various authorities, documents were incomplete, typed copies were not available, etc. were made to explain said delay is not a sufficient ground for condoning the delay.”

4 There is no dispute about the views taken in the above said authorities, the only factor i.e. required to be considered is, as to whether the reason mentioned in present application can be said to be a justifiable ground to condone the delay. It is not only the administrative hassles have been contended here but it is to be noted that the certified copy was obtained on behalf of the applicant within a reasonable time. Thereafter, the Advocate, who was representing the applicant, had also forwarded to the office at Latur, however, that office came to be closed down and was shifted to Solapur. Then from Solapur the office was shifted to Pune. Shifting of office appears to have misplaced the reference as well as files and therefore, it cannot be stated that there was any intentional human intervention in committing delay. It was absolutely not necessary to the applicant to give the reasons, as to why they had closed down the office at Latur and then shifted to Solapur. It can be gathered from the fact that since the acquisition was for conversion

of Narrow Gauge line into Broad Gauge line, there was no necessity for getting the office at Latur. The shifting of office at Solapur to Pune might also be on the administrative ground, to which the respondent No.1 is not concerned. Another fact also to be noted is that in all these years the respondents-claimants have not taken any steps to get the Award implemented by putting it to execution. Though a right has been accrued to the respondent No.1, yet, there is no promptness on the part of respondents-claimants to get it executed. Under the said circumstances, liberal, pragmatic and justice-oriented approach deserves to be taken. Application deserves to be allowed. Hence, following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 The delay caused in filing First Appeal stands condoned.
- 3 Registry to verify and register the First Appeal and place it for further consideration on 16.10.2019.

(Smt. Vibha Kankanwadi, J.)