

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

916 CIVIL APPLICATION NO.468 OF 2016
IN FAST/36371/2015 WITH CA/466/2016 IN FAST/36444/2015
WITH CA/470/2016 IN FAST/36988/2015

THE EXECUTIVE ENGINEER, CENTRAL RAILWAY, SOLAPUR NIRMAN
VERSUS
VIJAY KUMAR BABASAHEB VEER AND OTHERS

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Advocate for Applicant : Shri A.V. Soman h/f Shri Soman
D.V.

Advocate for respondents – claimants : S/Shri R.V.
Naiknaware and R.A. Deshmukh

AGP for respondent – State: Shri P.M. Kulkarni

CORAM: V.L. ACHLIYA, J.

DATE: 16.04.2019

PER COURT :

1] Learned counsel for the applicant undertakes to
comply with the order to substitute the names of L.Rs. of
deceased respondent no.1. Necessary steps be taken
during the course of the day.

2] The applicant has moved these applications seeking
condonation of delay of 752 days in filing appeals for
the reasons set out in detail in the applications.

3] Heard learned counsel for the applicant, learned
counsel representing the respondent – claimants as well

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as learned AGP for the State.

4] In brief, it is the contention of learned counsel for the applicant that the delay caused in filing the appeals had occurred mainly due to considerable time being spent in securing copies of the judgments and awards and other documents and submitting proposal for seeking approval for filing appeals since the office of acquiring body dealing with the matter was shifted from Solapur to Pune, the delay has resulted in filing the appeals. It is submitted that the applicant has good case to succeed in appeals. The Special Land Acquisition Officer has awarded the compensation at the rate of Rs.309/- per Aare, which has been enhanced to Rs.5800/- per Aare by the Reference Court. It is submitted that the enhancement made by the Reference Court is many-fold and wholly unjustified in the facts and circumstances of the case as well as evidence adduced in the case. It is further submitted that in case delay is not condoned, there is every likelihood that serious prejudice may be caused to the applicant.

5] On the other hand, learned counsel representing the respondents – claimants opposed the applications with

contention that the cause assigned for condonation of delay is not sufficient to condone the delay of 752 days. It is further submitted that the Reference Court has enhanced the compensation on the basis of evidence adduced by the respondents – claimants and there is absolutely no scope for filing appeals on the part of acquiring body.

6] On due consideration of the submissions advanced in the light of unchallenged pleadings made in the applications and overall facts of the case, I am of the view that the delay deserves to be condoned. It is the contention of learned counsel for the applicant that the applicant has good case to succeed in the appeals. The compensation awarded by the Special Land Acquisition Officer at the rate of Rs.309/- per Aare is claimed to be enhanced to Rs.5800/- per Aare. In the case of *Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others* reported in **(2013)12 S.C.C. 649**, the Hon'ble Supreme Court, after taking survey of all the previous precedents of law on the issue of condonation of delay, culled out the broad principles to be followed while dealing with an application for condonation of

delay in the matter of individuals as well as public body. It has been held while dealing with an application seeking condonation of delay, the Courts of law should adopt a liberal, pragmatic, justice oriented and non-pedantic approach while interpreting the term "sufficient cause" in its proper perspective and substantial justice be given overriding effect over technical consideration. The principles laid down in *Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others* read as follows:-

"21. From the aforesaid authorities the principles that can broadly be culled out are :21.1. (i) 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 legalize injustice but are obliged to remove injustice.

21.2 (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of *prejudice* is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.8 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.9 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful,

the courts should be vigilant not to expose the others unnecessarily to face such a litigation.

21.10 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.11 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.12 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a *lis* on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate

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institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

7] Thus, keeping in mind over-all facts of the case, the cause assigned to condone the delay and the challenges raised in the appeals and the consequences to follow if delay is not condoned in the light of broad principles to be adopted in dealing with an application seeking condonation of delay, 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 be caused to the applicant. On the contrary, if delay is condoned, the appeals will be decided on their own merits. So far as loss caused to the applicant on account of delay, the same can be compensated in terms of money. Apart from this, the applicant / appellant has deposited the compensation amount in terms of the awards. I am, therefore, inclined to allow the applications.

8] Accordingly, the civil applications seeking

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condonation of delay are allowed in terms of prayer clause (B) in respective applications subject to costs of Rs.5,000/- each to be payable by the applicant to the respondents. The costs be deposited within four weeks. On deposit of costs, the appeals be registered and placed for admission on 25.6.2019.

9] Learned counsel appearing for the respondents – claimants waive service of notice in the appeals. Learned AGP waives service of notice for the State.

(V.L. ACHLIYA, J.)