

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

910 CIVIL APPLICATION NO.6787 OF 2017
IN FAST/39148/2016

SURYABHAN PANDURANG SAWANT
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

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Advocate for Applicants : Mr. S.V. Gundre
AGP for Respondent/State : Mr. A.M. Phule

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CORAM : SUNIL K.KOTWAL, J.

DATE : 19th MARCH, 2019

O R D E R :

This application is filed by the Original Claimants in LAR No. 433 of 1998 to condone the delay of 15 years and 355 days in filing the appeal against the judgment and award dated 3.1.2001 passed by the Civil Judge Senior Division, Nilanga.

2. Heard Shri S.B. Gundre, learned counsel for applicant and Mr. A.M. Phule, learned AGP for Respondent/State.

3. Applicant wants to get the inordinate delay of

15 years and 355 days condoned, on the ground of non availability of necessary funds to pay the Court fee and the Pleader fee.

4. Learned counsel for applicant submits that due to non availability of money with the applicant, he could not file appeal against the impugned award. He placed reliance on **"Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy And Others"** [(2013) 12 SCC 649], wherein the Apex Court ruled as follows :

"There should be liberal, pragmatic, justice oriented, non pedantic approach while dealing with application for condonation of delay"

5. Learned AGP for State opposes this application on the ground that non availability of the funds, cannot be a sufficient cause for condoning the delay of more than 15 years. He placed reliance on **"Basawaraj and another v. Special Land Acquisition Officer (Civil Appeal No. 6974 of 2013) WITH**

Basawaraj and Others v. Special Land Acquisition Officer (Civil Appeal No. 6975 of 2013)" [(2013) 14 Supreme Court Cases 81], wherein the Apex Court observed as under :

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. "

6. No doubt, while considering the application for condonation of delay, the Appellate Court has to take liberal approach. However, that does not mean that the applicant need not prove sufficient cause for the delay in filing the appeal. If there is negligence or inaction or lack of bonafides on the part of applicant, the delay cannot be condoned.

7. In the case at hand, the only one ground is assigned by the applicant for condonation of delay i.e. the non availability of funds to pay the Court fees. In the eye of law, non availability of funds or money to pay the Court fee cannot be a ground to condone the delay. In such cases, the applicant should have approached the Office of Legal Service Authority, to get free legal aid. Thus, obviously, non availability of the funds cannot be a sufficient cause for not filing the appeal for the period of 15 years and 355 days. Suffice it to say that the applicant miserably failed to prove sufficient cause

for condonation of delay. Therefore, this application is devoid of merits and deserves to be rejected. In the above discussed distinguishing circumstances of the case in hand, the ratio of **"Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy And Others"** [supra] is of no help to the applicant to get the relief of condonation of delay. Accordingly, application for condonation of delay is dismissed.

8. It follows that First Appeal (St) No. 39148 of 2016 is disposed of.

[**SUNIL K.KOTWAL, J.**]

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