

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.1172 OF 2018

IN

FIRST APPEAL (ST.) NO.2487 OF 2018

The State of Maharashtra and Anr. .. Applicant

vs.

Bhagwan Shivram Gawande (Deceased)
thru his legal heirs
Sitabai Bhagwan Gawande and ors. .. Respondents

Mr.A.R.Patil, A.G.P. for the applicant
Mr.Anil Ahuja for the respondent

**CORAM : K. K. TATED, J
DATE : APRIL 15, 2019**

P.C.:

. Heard.

2 The learned counsel Mr.Anil Ahuja submits that he received instruction to appear on behalf of claimant. He submits that he will file Vakalatnama within 8 days from today. Same is accepted.

3 By this Civil Application, Applicant State of Maharashtra is seeking condonation of 2 years 204 days delay in filing First Appeal challenging the judgment and award dated 18.12.2014 passed by Reference Court in L.A.R.No.155 of 2006.

4 The learned A.G.P. for the State submits that in the present proceeding, Special Land Acquisition Officer issued notification under section 4 of the Land Acquisition Act dated 17.2.2003 for acquiring Respondent original Claimants land from Village Gawanpada, Taluka Peth, District Nashik for the purpose of submergence area of Main Sandva Dam. He submits that after following due process of law, Special Land Acquisition Officer passed award under section 11 of the Land Acquisition Act dated 27.12.2005 and awarded compensation of Rs.30,465/- including other benefits under section 23 (1-A) and 23(2) of the Land Acquisition Act including interest. Being aggrieved by the said award, Respondent original Claimant preferred reference under section 18 of the Land Acquisition Act. In that reference, Reference Court awarded Rs.3,68,047/- towards the acquired land and also statutory benefits under section 23 (1-A) and 23 (2) of the Land Acquisition Act.

5 The learned A.G.P. submits that in the present proceedings, they immediately applied for certified copy on 20.12.2014. Same was ready for delivery on 06.04.2015 and same was forwarded by the concerned District G.P. Nashik along with opinion to the Law and Judiciary Department, Mantralaya, Mumbai. He submits that on the basis of opinion of the learned District G.P., L & J Department decided to file present appeal before this court and forward papers to the office of G.P. High Court Bombay. The said decision was passed by the Law and Judiciary Department on 24.7.2015. He submits that thereafter, immediately, they

assigned the matter to the concerned A.G.P. for drafting appeal memo with application for delay and stay and called upon officer for providing certified copies of judgment and decree. Office of Government Pleader called upon the concerned officer to remain present for filing application to condone delay, as there was delay in filing First Appeal and for payment of court fees. He submits that concerned A.G.P. drafted First Appeal and Civil Application for stay. Thereafter, office of the G.P. received demand draft no.946348 dated 21.12.2016 towards amount of court fees on 23.12.2016.

6 The learned A.G.P. submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in filing First Appeal. He submits that because of mistake on the part of concerned officer who failed to take appropriate steps in filing appeal within time, State Government should not suffer. He submits that in the present proceeding, though Special Land Acquisition Officer awarded sum of Rs.30,465/- for the land, Reference Court awarded additional compensation to the tune of Rs.3,68,047/-. He submits that they have good chance of success in the present matter. He submits that if delay is not condoned, irreparable loss will be caused to the State of Maharashtra.

7 On the other hand, the learned counsel for the Respondent original Claimant vehemently opposed the present Civil Application. He filed Affidavit-in-Reply dated 26.3.2019.

8 The learned counsel for the Respondent Claimant submits that Applicant failed and neglected to disclose sufficient cause for

condonation of delay of more than 2 years in filing the present First Appeal. He submits that once valuable rights are created in favour of party and if sufficient cause is not shown for condonation of delay, there is no question of allowing inordinate delay in filing First Appeal. In support of this contention, the learned counsel for the Claimant relies on the judgment of the Division Bench of this court in the matter of ***State of Maharashtra vs. Vithu Kalya Govari and others***¹, ***State of Maharashtra and others vs. Onkar Manaji Kokani***², Apex Court in the matter of ***Basawaraj & Anr. vs. The Spl. Land Acquisition Officer***³, ***Post Master General and Others vs. Living Media India Limited and Another***⁴ and single Judge unreported judgment in the matter of the State of Maharashtra (through the ***Special Land Acquisition Officer No.1, Nashik & Anr. vs. Shri Rama Pandu Govit (deceased) through LRS. 1A. Shri Murlidhar Rama Gavit and ors. in Civil Application No.825 of 2019 in First Appeal (St.) No.28754 of 2018 dated 05.03.2019.***

9 The learned counsel for the Respondent submits that our Hon'ble Court in the matter of ***State of Maharashtra vs. Vithu Kalya Govari and others*** (Supra) specifically held that if valuable rights are created in favour of other side, then there is no question of condoning the delay, if sufficient cause is not shown. He relies on paragraph 9 of the said judgment. He further submits that our High Court in the matter of ***State of***

1 2008(6) Mah.L.J.239

2 2018(3) Mah.L.J.599

3 AIR 2014 SC 746

4 (2012) 3 SCC 563

Maharashtra and others vs. Onkar Manaji Kokani(Supra) held that if sufficient cause is not shown, then there is no question of condoning the delay in filing the Appeal. He submits that Apex Court in the matter of ***Basawaraj & Anr. vs. The Spl. Land Acquisition Officer*** (Supra) held that if the Applicant failed to show sufficient cause for condonation of delay, then there is no question of allowing the said Application. He relies on paragraph 9 to 11 and 15 of the said judgment. In similar way the Apex Court in the matter of ***Post Master General and Others vs. Living Media India Limited and Another*** (Supra) held about the condonation of delay. He relies on paragraph 23 of the said judgment. He also relies on single Judge unreported judgment in the matter of ***Special Land Acquisition Officer No.1, Nashik & Anr. vs. Shri Rama Pandu Govit (deceased) through LRS. 1A. Shri Murlidhar Rama Gavit and ors.*** (Supra).

10 It is to be noted that in all these judgments of Apex Court as well as our High Court specifically held that, if sufficient cause is not shown then there is no question of condoning the delay in filing the Appeals.

11 It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of

parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be

a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

12 Considering these facts and the amount involved in the present proceedings, I am of the opinion that Application made by State of Maharashtra is required to be allowed but they have to pay cost of Rs.750/- to the Respondent original Claimant. Hence, following order is passed:

a. Civil Application is allowed in terms of prayer clause (b) which reads thus:

"(b) this Hon'ble court be pleased to condone the delay of 2 years and 204 days in filing the abovementioned First Appeal against the Judgement and Award dated 18.12.2014 passed by the Learned Joint Civil Judge, Senior Division, Nashik in L.A.R.No.155 of 2006."

b. Applicant to pay sum of Rs.750/- by way of cost to the Respondent or their Advocate and or to deposit in the Registry of this court on or before 29.06.2019, failing which the Civil Application shall stand dismissed without further reference to the court.

c. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)