

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.308 OF 2019 IN
CROSS OBJECTION ST.NO.19416 OF 2019 IN
FIRST APPEAL NO.1566 OF 2003

Krishna Hiru Khutle ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Sachin Punde for the Applicant
Ms Anamika Malhotra, AGP for the respondent No.1

CORAM : K.K.TATED, J.
DATE : AUGUST 27, 2019

P.C.:

1 Heard the learned counsel for the parties. By
this application the applicant is seeking
condonation of delay of 14 years and 360 days in
filing the Cross Objection in the First Appeal.

2 The learned counsel for the applicant submits that in the present proceedings the SLAO issued notification for acquiring land from village Karanjade for New Bombay Project. He submits that this Court in other several matters granted additional compensation in respect of the acquired lands. Hence, the applicant filed the present Civil Application for condonation of delay in filing the Cross Objection claiming additional compensation in respect of the acquired land. He submits that this Court admitted the First Appeal No.1566 of 2003 and

granted stay to the Judgment and Award passed by the Joint Civil Judge (S.D.), Raigad at Alibaug on 30th April 2003.

3 The learned counsel for the applicant submits that the applicants are illiterate persons and they do not know the procedure for filing the Cross Objection. Apart from that because of the financial difficulty it remained on the part of the applicant to file Cross Objection immediately. In support of his contention, he relied upon avrments made in paragraphs 4,5 and 6 of the Civil Application. He further submits that in the interest of justice this Hon'ble Court may pleased to condone the delay in filing the Cross Objection. In support of his contention, he relies upon the Judgment of this Court dated 31st March 2008 in the case of Jana Rama Chimane and others vs. The State of Maharashtra (Civil Application No.4588 of 2006 in First Appeal No.1081 of 1991). The learned counsel for the applicant relies upon paragraphs 16 and 17 of the said Judgment which read thus:

“16. Another argument advanced by the learned advocate for the applicant is based on the power of the Appellate Court under Rule 33 of Order XLI of the said Code. Rule 33 reads thus:

R.33. Power of Court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or

make such further or other decree or order as the case may required, and this power may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order]".

His submission is that in view of the decision of this Court in the case of Nama Padu Hudar (supra) even if the respondents/claimants may not have preferred an appeal or cross-objection, considering the claim made by the claimants before the reference Court, this Court while deciding the appeal preferred by the State of Maharashtra can exercise powers under Rule 33 of Order XLI of the said Code for passing a decree/award by granting compensation in terms of the decision of the Division Bench in the case of Nama Padu Hudar (supra). The submission is that if the Court can exercise powers under Rule 33 of Order XLI by passing an appropriate award without filing a cross-objection, the Court can surely condone the delay in filing cross-objection when the first appeal is very much pending. His submission is that this is a case of compulsory acquisition of land and therefore, the claimants must be paid market value as per the decision of this Court in the case of Nama Padu Hudar (supra) which has attained finality. The submission in short is that if under Rule 33 of Order XLI the Court has a power to render complete

justice between the parties, surely the Court can condone the delay in preferring cross-objections.

17. In the present case when the first appeal will be heard finally, this Court will have to consider the issue regarding legality and validity as well as adequacy of the market value fixed by the reference Court in the light of the decision of the Division Bench in the case of Nama Padu Hudar (supra). It is not a case where the claimants have woken up from the slumber after the disposal of the first appeal. They have approached the Court with memorandum of cross-objection very much during the pendency of the substantive first appeal. Therefore, when this Court considers the merits of the first appeal, this Court cannot brush aside the effect of the decision of the Division Bench in the aforesaid case of Nama Padu Hudar. Moreover, the legal representatives of the applicant No.4 (the respondent No.4 in the appeal) were brought on record on 22nd March, 2006 and the cross-objection was filed by the said legal representatives and other applicants on 12th April, 2006. These are the peculiar facts of the case which are required to be considered while this Court adopts a justice oriented approach while deciding the prayer for condonation of delay.”

4 On the basis of these facts, the learned counsel for the applicant submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing the Cross Objection and the matter be heard on merits.

5 On the other hand, the learned AGP for State opposed the present application. She submits that there is no explanation for delay of more than 14 years and 360 days for filing the Civil Application and same deserves to be rejected.

6 I have heard both the counsel for the parties. In the present case, the SLAO issued notification under section 4 of the Land Acquisition Act for acquiring the land from village Karanjade for New Bombay Project. After following due process, SLAO declared Award dated 19th September 1986 awarding compensation in respect of the land.

7 Thereafter, the applicant preferred Reference under section 28-A (3) of the Land Acquisition Act in which the Reference Court awarded compensation of Rs.18/- per sq. meter. The State preferred First Appeal No.1566 of 2003. The submission made by the Advocate for the applicant that due to financial difficulty and lack of knowledge of procedure and education, it remained on the part of the applicant to file the Cross Objection, cannot be the ground for condonation of inordinate delay in filing the Cross Objection.

8 In the abovementioned Judgment relied by the learned counsel for the applicant in the case of Jana Rama Chimane and others (supra) application for condonation of delay in filing the Cross Objection was filed by the legal representatives of one of the

appellant. Hence, this Court held that the L.Rs were not on record at the time of admission of the First Appeal. Hence, in that matter Court has condoned the delay in filing the Cross Objection.

9 But in the case in hand, the applicant himself was present before this Court at the time of Admission of the First Appeal. In spite of that, he failed and neglected to file Cross Objection immediately.

10 Considering these facts, I do not find any reason to entertain the present Civil Application.

11 Hence, I pass the following order:

a) Civil Application is rejected.

b) In view of rejection of the Civil Application, Cross Objection St.19416 of 2019 does not survive and the registration of the same stands rejected.

c) No order as to costs.

d) Refund of Court fees, if any, as per the Rules.

(K.K.TATED,J.)