

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

**CIVIL APPLICATION NO.1229 OF 2017
IN
FIRST APPEAL (ST.) NO.28061 OF 2016**

Executive Engineer
Madhyam Project Department, Nashik .. Applicant

vs.

Trambak Amruta Achari and Ors. .. Respondents

Ms.Chaitrali Deshmukh for the applicant

**CORAM : K. K. TATED, J
DATE : APRIL 30, 2019**

P.C.:

. Heard.

2 Though Respondents are duly served, no one appeared on behalf of them when the matter was called out.

3 By this Civil Application, Applicant acquiring body is seeking condonation of 2 years 264 days delay in filing First Appeal challenging the judgment and award dated 19.3.2013

passed by Reference Court in L.A.R.No.120 of 2007.

4 The learned counsel for the Applicant submits that Applicant being a governing body they have to take approval from several departments. Therefore, there is a delay in filing First Appeal before this court. He submits that delay is explained in paragraph 5 of the Civil Application, which reads thus:

"5. The Applicant states and submit that, there is delay in preferring the aforesaid First Appeal in this Hon'ble Court. The Applicant states that, Applicant is government body and it required various sanction/approval from the higher authorities for permission to file First Appeal in this Hon'ble High Court. The Applicant say that following are some of the relevant days to condone above mentioned Civil Application for condonation of delay.

<i>Date</i>	<i>Events</i>
<i>19/03/2013</i>	<i>Judgment and Award passed by Joint Civil Judge, Senior Division, Nashik</i>
<i>22/03/2013</i>	<i>State Government pleader applied for Certified copy of Judgment and Award.</i>
<i>21/08/2013</i>	<i>State Government pleader has received Certified copy.</i>
<i>06/12/2013</i>	<i>Advocate appearing for Corporation applied for Certified copy of Judgment and Award.</i>
<i>30/06/2014</i>	<i>Corporation/Applicant received copy of Judgment and Award.</i>
<i>07/09/2013</i>	<i>Received opinion from the Government pleader regarding filing Appeal in High Court.</i>
<i>27/09/2013</i>	<i>Division office submitted proposal to Corporation for appointment of Advocate for filing Appeals in High Court.</i>
<i>04/01/2014</i>	<i>As per proposal, one advocate came to be</i>

	<i>appointed. Appointed Advocate expressed his inability to file Appeal in High Court. Department resubmitted proposal for appointment of advocate for filing Appeal in High Court.</i>
<i>08/11/2015</i>	<i>As per new proposal, present Advocate came to be appointed.</i>
<i>17/12/2015</i>	<i>Relevant documents submitted to present Advocate</i>
<i>24/12/2015</i>	<i>Letter from present Advocate to Corporation regarding stamp duty & seeking reasons for delay</i>
<i>03/03/2016</i>	<i>Corporation received funds for Stamp duty for filing First Appeal.</i>
<i>25/04/2016</i>	<i>Letter given by Corporation to present Advocate stating reasons for delay in filing present First Appeals.</i>

5 The learned counsel for the Applicant submits that they have good chance of success in the present matter. He submits that in the interest of Justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award passed by Reference Court. He submits that if delay is not condoned, irreparable loss will be caused to them.

6 It is to be noted that in the present proceedings, Reference Court passed judgment and award dated 19.3.2013. Therefore, Government Pleader applied for certified copies by judgment and award dated 22.3.2013 and same were received by them on 21.8.2013. Though certified copies were received on 21.8.2013, present First Appeal was filed before this court on 11.7.2006. Explanation given by the Applicant that they have to take approval from several department, cannot be considered as a

ground for condonation of delay. Bare reading of paragraph 5 of the Civil Application shows that Applicant failed to disclose sufficient cause for condonation of inordinate delay of more than 2 years.

7 It is to be noted that our High Court in the matter of **State of Maharashtra and others vs. Vithu Kalya Govari and others**¹ held that at the time of condoning the delay, court must see that valuable rights of the parties should not affect. In similar way, our High Court in the matter of **State of Maharashtra State of Maharashtra and others vs. Onkar Manaji Kokani**² held that if sufficient cause is not shown, there is no question of condoning the delay. The Apex court in the matter of **Basawaraj & Anr. v. The Spl. Land Acquisition Officer**³ held that unless and until sufficient cause is shown, court should not condone the delay. Same view is taken by the Apex Court in the matter of **Postmaster General and Others vs. Living Media India Limited and Another**⁴. It is to be noted that in the case in hand, appellant failed to prove sufficient cause for condonation of delay.

8 Considering the submissions made by the learned counsel for the Applicant, the averments made in Civil Application and the law declared by the Apex Court, I do not find any reason to entertain the present Civil Application. Hence, following order is passed:

1 2008 (6) Mah L.J. 239

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

3 AIR 2014 SC 746

4 (2012) 3 SCC 563

- a. Civil Application stands rejected.
- b. No order as to costs.
- c. In view thereof, nothing survives in the First Appeal and Civil Application No.1230 of 2017 for stay. Hence registration of First Appeal stands rejected and Civil Application No.1230 of 2017 stands dismissed as infructuous.
- d. Refund of court fee according to law.

(K.K.TATED, J.)