

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4130 OF 2018
IN
FIRST APPEAL (ST) NO.18367 OF 2018**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S.P. Shinde for appellant.

Mr. Yogesh Dabake, AGP for respondent No.1.

**CORAM : K. K. TATED, J
DATE : MARCH 29, 2019**

P.C.:

. Heard learned Counsel for parties.

2. By this Civil Application, applicant/original claimant is seeking condonation of 5 years and 66 days delay in filing the First Appeal challenging the judgment and award dated 23.01.2013 passed by Civil Judge, Senior Division, Nashik in Land Acquisition Reference No.44 of 2012.

3. The learned Counsel for the applicant submits that because of financial

difficulties and medical ground, it remain on the part of the applicant to file the Appeal within time. In support of his contention, he relies on paragraph 4 of the Civil Application which reads thus :-

*“4) The applicants state that the Applicant no.2 is diabetic patient. She is also taking treatment of Blood Pressure. The Applicant was required to take continuous treatment and follow up from the diabetic Super Speciality Hospital Malegaon. She was also required to undergone various tests including blood and urine. The Applicant no.1 was not keeping well and he was continuously taking treatment from the doctor for diabetes, and High blood pressure. A true copies of the medical documents of the said treatment of the Applicants are annexed hereto and marked as **Exhibit “B” colly** . The applicants' state that therefore the financial position of the applicants became precarious and they could not approach this Hon'ble Court in time. The applicants state that they even not granted the compensation as granted by the Ld. Reference Court. The applicants after receipt of part payments of the compensation amount, got in a positions to filed the present Appeal. The Applicants state due non awareness and due to aforesaid ailments and continuous treatments*

from doctor, they even could not instruct for filing of Darkhast proceedings for execution of the said award. The applicants state that due to the aforesaid reasons and due to precarious financial position, they could not file the present Appeal in time. The Applicants state that on one hand they were required to spend on the lawyers fees, and on their medical treatment and on the other hand their land is acquired and they could not get the compensation. Therefore, in such circumstances, the financial position of the Applicants had become worst. Therefore, the applicant could not approach this Hon'ble court in time."

4. The learned Counsel for the applicant submits that they have good chance of success in the present First Appeal. He submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing First Appeal and matter to be heard on its own merits

5. The learned Counsel for the applicant in support of his contention relies on the judgment of the Apex Court in the matter of **K. Subbarayudu and Others Vs. Special**

Deputy Collector (Land Acquisition)¹.

6. The learned Counsel for the applicant submits that in this Authority, the Apex Court condoned the delay of more than 3671 days in filing First Appeal. On the basis of these submissions, 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 First Appeal and matter to be heard on its merits.

7. On the other hand, the learned AGP appearing on behalf of respondent-State vehemently opposed the present Civil Application. He submits that, applicant has not shown sufficient cause for condonation of inordinate delay of more than 5 years in filing First Appeal. Hence, there is no substance in the present Civil Application and same is required to be dismissed with cost.

8. I heard both the sides at length, it is to be noted that in the present proceedings,

¹ (2017) 12 SCC 840

the Reference Court passed judgment and award dated on 23.01.2013. Thereafter, the applicant filed application for certified copies on 19.01.2018. Same was made available on 22.01.2018. Thereafter, the applicant has filed the present Appeal as well as Civil Application in this Court. Bare reading of the Civil Application shows that, the main ground raised by the applicant for condonation of delay is that in another matter, the reference Court awarded enhanced compensation in respect of the land from the same village. The applicant also raised the ground that applicant No.2 was not keeping well. She was suffering by Blood pressure and was under treatment to that effect. It is also the case of the applicant that, applicant No.2 is also suffering from Diabetes. It is to be noted that the grounds given by the applicant in paragraph 4 of the Civil Application are not sufficient for condonation of inordinate delay of more than 5

years.

9. The authority relied by the applicants in the matter of **K. Subbarayudu and Others (Supra)** is not applicable in the facts and circumstances of the present case. In that authority, the claimant handed over the papers to his colleague from his village for filing the First Appeal. Those papers are handed over to the advocate. In the meanwhile, the colleague of the claimant left the India and went to Kuwait. At the same time, the advocate to whom the papers were handed over was died and applicant was under impression that the appeal was filed on behalf of them.

10. Not only that, the Apex Court in the matter of **Maniben Devraj Shah V. Municipal Corporation of Brihan Mumbai²** in paragraph Nos.18, 21 and 22 of the said authority held as under:-

² AIR 2012 SC 1629

“18. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

21. The applications filed for

condonation of delay and the affidavits of Shri Sirsikar are conspicuously silent on the following important points:

(a) The name of the person who was having custody of the record has not been disclosed.

(b) The date, month and year when the papers required for filing the first appeals are said to have been misplaced have not been disclosed.

(c) The date on which the papers were traced out or recovered and name of the person who found the same have not been disclosed.

(d) No explanation whatsoever has been given as to why the applications for certified copies of the judgments of the trial Court were not filed till 23.8.2010 despite the fact that Shri Sirsikar had given intimation on 12.5.2003 about the judgments of the trial Court.

(e) Even though the Corporation has engaged battery of lawyers to conduct cases on its behalf, nothing has been said as to how the transfer of Shri Ranindra Y. Sirsikar operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against.

22. Unfortunately, the learned Single Judge of the High Court altogether ignored the gapping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of judgment for more than 7 years. In our considered view, the cause shown

by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the learned Single Judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act.”

11. Considering these facts, I do not find any substance in the present Civil Application.

Hence, Civil Application stands rejected.

(K.K.TATED, J.)