

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 4356 OF 2017

IN

FIRST APPEAL ST. NO. 16582 OF 2017

Executive Engineer, Nagpur Irrigation Division

..vs..

Chandrabhagabai w/o Sripat Kamble and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. U.A. Patil, Advocate for appellant/applicant.
Shri C.B. Dharmadhikari, Advocate for respondent no. 1.
Shri Alap Palshikar, A.G.P. for respondent nos. 2 and 3.

CORAM : VINAY JOSHI, J.

CLOSED FOR ORDER ON : 13/11/2019

ORDER PRONOUNCED ON : 20/12/2019

Heard.

2. This is an application of acquiring body for condoning the delay of 1458 days caused in filing the First Appeal challenging the judgment and order dated 03.05.2013 passed by the Reference Court in L.A.C. No. 53 of 2001. The applicant contended that they have received the concerned file from Sub-Division on 31.01.2015 on which the proposal for release of funds towards decretal amount was sent to the State Government on 27.02.2015. Then on 09.07.2015, the applicant received instruction from the State Government to act in the proceeding through the Vidarbha Irrigation Development Corporation. Accordingly, the file was moved through the Vidarbha Irrigation Development Corporation on which the opinion regarding preferring an appeal was confirmed on 26.08.2015. The applicant under bona fide impression that they would received the funds

waited for some time, but on 31.10.2015 they received instruction to file appeal. Thereafter, the applicant collected the copies of the paper and raised demand on 11.03.2016 for release of court fees amount payable on the appeal. After some time, the cheque of court fees amount was received on 14.06.2017, then the applicant received certified copies and therefore, there happens to be delay of 1485 days in filing the appeal.

3. The respondent-claimant vehemently resisted this application by challenging the grounds as well contended that the application is totally lacking of *bona fides*. It is stated that the applicant has not properly explained the very long quantum of delay. To be particular it is not explained as to what happened in between 03.05.2013 i.e. from the date of decision till 31.01.2015 when the file was received by the Office. Likewise, on each and every stage there happened huge delay in taking further steps. On that basis, it is argued that there is sheer negligence, and therefore, the reasons stated for condonation of delay cannot be accepted.

4. In support of their contention the applicant relied on the order passed by this Court in Civil Application No. 3084 of 2017 in First Appeal Stamp No. 22668 of 2016. In said case, this Court has condoned the delay of 557 days caused in filing the appeal. No doubt, this Court has condoned the delay of 557 days, but considering the then reasons stated in the application, delay was condoned. The facts of this case being different, the said order would not assist to the applicant in any manner.

5. It is matter of record that impugned judgment and order is passed on 03.05.2013 whilst after long gap of more than four years, this appeal is filed alongwith delay condonation application. It is needless to say that, the Law of Limitation would apply with equal force to the Government bodies. On each and every stage there happens to be inordinate delay which cannot be filled up by merely stating dates on which certain steps are taken. There happens to be gap of few months or years in between the steps which have been taken during the intervening period. Though it is settled law, that the Court should adopt the liberal approach, however, on the basis of facts of the case, the Court is expected to use judicial discretion. It is not a case that the applicant is individual or a rustic villager so as to presume that he was ignorant about the Law of Limitation. The Government is having a special cell to deal with the Court matters as well as battery of lawyers at their command.
6. Considering these special circumstances, I am not at all satisfied about the explanation furnished, for condonation of delay. On the other hand, it is apparent that, no timely or diligent action has been taken by the applicant in the matter. In short, the applicant failed to make out sufficient cause, hence, application stands rejected and in consequences, appeal stands disposed. No order as to costs.

JUDGE