

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

CIVIL APPLICATION (CAF) NO. 2895 OF 2018
IN
FIRST APPEAL STAMP NO. 17858 OF 2018

M.I.D.C., through its Chief Executive Officer, M.I.D.C., Amravati
V/s
Kedarnath Gangadhar Agrawal and another.

Shri M.M. Agnihotri, counsel for the appellant.
Shri C.S. Captan, Sr. Counsel assisted by Shri A.A. Naik, counsel with Shri N.A. Gaikwad, counsel
for the respondent No.1.
Ms H.N. Jaipurkar, AGP for the respondent No.2.

WITH

CIVIL APPLICATION (CAF) NO. 2897 OF 2018
IN
FIRST APPEAL STAMP NO. 17923 OF 2018

M.I.D.C., through its Chief Executive Officer, M.I.D.C., Amravati
V/s
Kedarnath Gangadhar Agrawal and another.

Shri M.M. Agnihotri, counsel for the appellant.
Shri C.S. Captan, Sr. Counsel assisted by Shri A.A. Naik, counsel with Shri N.A. Gaikwad, counsel
for the respondent No.1.
Ms H.N. Jaipurkar, AGP for the respondent No.2.

WITH

CIVIL APPLICATION (CAF) NO. 2899 OF 2018
IN
FIRST APPEAL STAMP NO. 17870 OF 2018

M.I.D.C., through its Chief Executive Officer, M.I.D.C., Amravati
V/s
Kedarnath Gangadhar Agrawal and another.

Shri M.M. Agnihotri, counsel for the appellant.
Shri C.S. Captan, Sr. Counsel assisted by Shri A.A. Naik, counsel with Shri N.A. Gaikwad, counsel
for the respondent No.1.
Ms H.N. Jaipurkar, AGP for the respondent No.2.

WITH

CIVIL APPLICATION (CAF) NO. 3063 OF 2018
IN
FIRST APPEAL STAMP NO. 17863 OF 2018

M.I.D.C., through its Chief Executive Officer, M.I.D.C., Amravati
V/s
Sharadkumar Kedarnath Agrawal and others.

Shri M.M. Agnihotri, counsel for the appellant.
Shri C.S. Captan, Sr. Counsel assisted by Shri A.A. Naik, counsel with Shri N.A. Gaikwad, counsel
for the respondent Nos. 1 and 2.
Ms H.N. Jaipurkar, AGP for the respondent No.3.

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

Court's or Judge's orders.

CORAM: ARUN D. UPADHYE, J.

DATE OF RESERVING THE ORDER : 26.03.2019
DATE OF PRONOUNCING THE ORDER : 03.04.2019

1. Heard learned counsel for the parties.
2. All these civil applications for condonation of delay could be decided by common order, as the facts are similar in all applications, therefore these matters are heard and decided by common order.
3. Shri M.M. Agnihotri, learned counsel for the appellant

has vehemently submitted that there is delay of 625 days in filing the appeal. Delay is caused, because of erring officials of the appellant/corporation. He also submitted that one Officer namely Shri D.P. Totewar is suspended for negligence on his part and another Officer was transferred for dereliction in the duties. He further submitted that the appellant has properly explained the delay, and therefore, delay be condoned. He also submitted that in other matters, this Court has condoned the delay. The appellant has good case on merit, and therefore, on technical ground it cannot be thrown away. The appellant cannot be prevented from justice, for which it is entitled. According to him, no prejudice will be caused to the respondents, if delay is condoned.

4. Shri C.S. Kaptan, learned Senior Counsel assisted by Shri A.A. Naik, for respondent No.1 has submitted that the delay is not explained properly. The appellant has taken false plea for condonation of delay and is not entitled for condonation of delay. According to him, the appellant was having knowledge of passing impugned judgment, and there is no proper explanation given for condonation of delay. Explanation given is of false one. According to him, there is LMS / IFMS Software Operational in the office, and therefore, information was visible with the Office of appellant in Bombay as well as Amravati. It is further submitted that though the Assistant Area Manager, Shri Totewar was suspended on 31.8.2017, the new Officer should have been aware of the said award. Lastly, it is submitted that the application be rejected.

5. After hearing both the sides, I have perused the application filed by the appellant for condonation of delay as well as reply filed by respondent No.1 and rejoinder filed by the appellant as well as documents placed on record. After going through these records, it appears that the appellant has challenged the impugned judgment and award dated 24.2.2016 passed by Joint Civil Judge, Senior Division, Akola in L.A.C. No. 221/1997. There is delay of 625 days in filing the appeal. The appellant has explained the delay in para Nos. 1 to 4 of the application. The appellant has contended that notice was served upon Corporation on 4.1.2018 in First Appeal No.621/17, and thereafter, newly appointed Officer has reported about not filing the appeal against the impugned judgment by concerned official. It is also contended that bunch of judgments and decrees were found under the table of Shri Totewar, who was working as Assistant Manager. It is also contended that Regional Officer Mrs. Kunda Wasnik at Amravati is also irresponsible in discharging her duties, and therefore, she was transferred to Nanded with immediate effect on 28.10.2016. It is further contended that Shri Totewar, who was negligent, and therefore, suspended for the said reason. Lastly it is prayed that delay of 625 days be condoned. The respondent No.1 by filing reply has opposed the application and denied the contents made in the application. The appellant has also filed rejoinder and has explained the detailed facts.

6. After considering these documents on record, I am of

the considered view that delay caused in filing the appeal could be condoned in the interest of justice. The appellant is a Corporation and because of erring officials, the corporation cannot be suffered a loss. Apart from the merit of the case, the appellant will have to be given an opportunity for contesting the matter. At the most, respondent No.1 could be compensated by awarding cost. No prejudice will be caused to the respondents if delay is condoned. The appellant has sufficient cause for condoning the delay. It is not disputed that Shri Totewar, Assistant Manager, who was working as Area Manager was suspended and Mrs Kunda Wasnik, Regional Officer who was transferred for dereliction of their duties. The appellant has taken necessary steps against its Officials, and therefore, the delay could be condoned in the interest of justice.

7. The submissions putforth on behalf of the respondent No.1 that the delay is not properly explained, has to be rejected. On the contrary, the submissions putforth on behalf of the appellant that the delay is properly explained and will have to be condoned and has to be accepted. The other matters are similar one and delay caused in filing the appeals has to be condoned.

8. The learned counsel for the appellant has relied upon various rulings in support of his submissions :-

“i) The Collector, Land Acquisition, Anantnag and another V/s Mst. Katiji and others, reported in AIR 1987 (SC) 1353.

ii) *G. Ramegowda, Major and others V/s Special Land Acquisition Officer, Bangalore, reported in (1988) 2 SCC 142.*

iii) *State of Nagaland V/s Lipok AO and others, reported in (2005) 3 SCC 752.*

iv) *State of Karnataka V/s Y. Moideen Kunhi (dead) by Lrs. and others, reported in (2009) 13 SCC 192.*

v) *Executive Officer, Antiyur Town Panchayat V/s G.Arumugam (dead) by legal representatives, reported in (2015) 3 SCC 569”.*

9. Learned counsel for the respondents has also relied his rulings in support of his submissions :-

“i) *Pundlik Jalam Patil (dead) by LR’s V/s Executive Engineer, Jalgaon Medium Project and another, reported in (2008) 17 SCC 448.*

ii) *Basawaraj and another V.s Special Land Acquisition Officer, reported in (2013) 14 SCC 81.*

iii) *Binod Bihari Singh V/s Union of India,reported in (1993) 1 SCC 572.*

iv) *Amalendu Kumar Bera and others V/s State of West Bengal, (2013) 4 SCC 52.*

v) *Postmaster General and others V/s Living Media India Limited and another, reported in (2012) 3 SCC 563.*

vi) State of Maharashtra and others V/s Vithu Kalya Govari and others, reported in 2008 (6) Mh.L.J. 239.

vii) Estate Officer, Haryana Urban Development Authority and another V/s Gopi Chand Atreja, reported in Civil Appeal Nos. 5051-5052 of 2009 delivered on 12.3.2019”.

10. I have gone through the above rulings relied by the learned counsel for the appellant as well as respondents, and after considering the facts and circumstances of the case, I am of the considered view that the delay caused in filing the appeal in the case at hand should be condoned. As the appellant has shown sufficient cause and explained satisfactorily the application filed by the appellant for condonation of delay will have to be allowed subject to costs.

Hence, I pass following order:-

ORDER

i] Civil Application (CAF) No. 2895/2018 in First Appeal Stamp No. 17858/2018 is allowed. The delay of 625 days is condoned subject to the costs of Rs. 1,000/- to be paid to the respondent No.1 within two weeks from the date of this order.

ii] Civil Application (CAF) No. 2897/2018 in First Appeal Stamp No. 17923/2018 is allowed. The delay of 626 days is condoned subject to the costs of Rs. 1,000/- to be paid to the

respondent No.1 within two weeks from the date of this order.

iii] Civil Application (CAF) No. 2899/2018 in First Appeal Stamp No. 17870/2018 is allowed. The delay of 625 days is condoned subject to the costs of Rs. 1,000/- to be paid to the respondent No.1 within two weeks from the date of this order.

iv] Civil Application (CAF) No. 3063/2018 in First Appeal Stamp No. 17863/2018 is allowed. The delay of 625 days is condoned subject to the costs of Rs. 1,000/- to be paid to the respondent No.1 within two weeks from the date of this order.

JUDGE