

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

Civil Application (F) No.1499/2016 in FASt No.24048/2015

The State of Maharashtra, through Collector, Nagpur and others.

Vs.

Smt. Mira w/o Shrawan Nehare

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mrs. H.Prabhu, AGP for applicants.
Shri C.R.Najbile, Advocate for non applicant.

CORAM : A.S.CHANDURKAR, J.

DATE : March 01, 2019

By this application, it is prayed that the delay in filing appeal be condoned. In the said application, it has been stated that after receiving the certified copy of the judgment on 03.12.2013 opinion was sought from the competent authority as to whether the judgment of the Reference Court could be challenged. In the additional affidavit filed by the applicants, various communications have been annexed indicating that on 04.12.2014 sanction was granted to file the appeals. It has been stated that about 18 appeals were required to be filed and hence on that count time was consumed and the delay was caused.

Reply has been filed on behalf of the claimant/non applicant opposing the prayer as made. It has been stated that the explanation as furnished is not sufficient and the delay is not liable to be condoned. Learned counsel for the claimant has relied upon the decision in *Executive Engineer and Another Vs. Amar Nath Yadav* reported at **(2014) 2 Supreme Court Cases 422** in that regard.

Heard learned counsel for the parties and perused the application, additional affidavit as well as reply filed to the said application. The documents on record indicate that though certified copy was received by the applicant, opinion was sought vide communication dated 25.09.2014 as to whether the appeals ought to be filed in the 18 reference proceedings. Sanction has been granted on 04.12.2014 after which all the appeals came to be filed. It is seen that though there is delay in filing the appeals, the same does not appear to be deliberate nor are there any malafides in causing the delay. The law as laid down in Amar Nath Yadav(supra) cannot be disputed. In the light of the fact that in all 18 appeals were required to be filed, I am inclined to condone the delay, subject to imposing costs on the applicant.

Accordingly, the delay in filing the appeal stands condoned subject to costs of Rs.3,000/- to be paid to the claimant within a period of four weeks from today as condition for the delay being condoned.

Civil Application is allowed and disposed of.

FA St.No.24048/2015

Heard.

Admit.

Call for record and proceedings.

Shri C.R.Najbale, learned counsel waives notice for respondent/claimant.

CAF No.173/2019

The prayer is to permit the claimant to withdraw the amount of compensation.

Heard learned counsel for the parties and

perused the impugned judgment.

Considering the evidence on record, the claimant is permitted to withdraw 50% of the amount of compensation subject to filing of an undertaking in this Court stating therein that in case appeal is allowed, the amount withdrawn shall be redeposited along with interest at such rate the Court may direct. Further 25% of amount is permitted to be withdrawn subject to furnishing solvent surety/security to the satisfaction of the Registrar (Judicial) of the this Court. The balance amount shall be invested in fixed deposit.

Civil Application is disposed of.

JUDGE

Andurkar.