

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 10506 OF 2019
IN
FIRST APPEAL ST.NO. 4491 OF 2019

Executive Engineer,
Minor Irrigation Department,
Jalgaon

..Applicant

Versus

Sk. Gafur Sk. Samad (dead)
through L.Rs.
Sk. Jahur Sk. Gafur and ors.

..Respondents

Mrs Chaitali Chaudhari-Kutti, Advocate for applicant - absent
Mr M.M. Bhokarikar, Advocate for respondents no.1 to 6
Mr S.N. Kendre, A.G.P. for respondent no.7

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 16th September 2020

PER COURT:

1. It is an application for condonation of delay moved by the applicant/original Resp. No.2 by taking aid of Section 5 of the Limitation Act, 1963.
2. Advocate Mrs Chaitali Chaudhari-Kutti for the applicant is neither available in Court hall where video conferencing facility is provided for the lawyers, nor she is available on-line.
3. Heard Mr Bhokarikar, learned Advocate appearing for respondents no.1 to 6/original claimants and learned A.G.P. for respondent no.7.
4. On perusing the record, it is found that there is delay of 432 days in preferring the appeal by the applicant. It appears that the appeal could not be

filed within time due to procedural formalities. The delay was neither intentional nor deliberate. In order to decide the cause on its own merits, it is necessary to condone the delay.

5. The reliance can be placed on the ratio laid down by the Honourable Supreme Court in case of **Collector, Land Acquisition, Anantnag & anr., Vs. Mst. Katiji and others**, reported in **AIR 1987 SC 1353**, wherein it is observed that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Making a justice oriented approach from this perspective, there is sufficient cause to condone the delay in the institution of the appeal.

6. Having regard to the above reasons and discussion, I arrive at a conclusion to condone the delay and proceed to pass the following order:

ORDER

(a) The application for condonation of delay moved by the applicant/original claimant stands allowed.

(b) The appeal be registered after due scrutiny.

(c) Issue notice to respondents, returnable on 28th October 2020. Mr Bhokarikar, learned Advocate waives notice for respondents no.1 to 6/original claimants and learned A.G.P. waives notice for respondent no.7.

(d) Call Record and Proceedings from the Reference Court. Stand over to 28th October 2020.

- (e) Appeal be placed along with stay application for further orders.

(SHRIKANT D. KULKARNI, J.)

vvr