

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3767 OF 2009
IN
FIRST APPEAL ST. NO. 6342 OF 2009

The State of Maharashtra and Anr. ...Applicants

Versus

Eknath s/o. Mallappa Kervalram and Anr. ...Respondents

Mr A.B. Chate, A.G.P. for Applicant-State

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 16th SEPTEMBER, 2020

PER COURT :

1. It is an application for condonation of delay moved by the applicants/original respondents by taking aid of section 5 of the Limitation Act, 1963.
2. Heard the learned Assistant Government Pleader for the Applicants/State. Respondent Nos. 1 and 2/Original Claimants though duly served, remained absent. When called out, they are neither available in the Court Hall where the Video Conferencing facility is made available nor available on-line.
3. By looking to the old pendency of this application, I thought it just and proper to decide the application.

4. There is delay of 828 days in preferring the appeal by the applicants. The delay was occurred due to administrative part and AGP urged to condone the delay. The delay was neither found intentional nor deliberate. The delay needs to be condoned in order to decide the cause on its own merits and to make substantial justice.

5. On the other hand, the learned counsel for the respondents/original claimants opposed to allow this application for condonation of delay.

6. The reliance can be placed on the ratio laid down by Hon'ble Supreme Court in case of ***the Collector, Land Acquisition, Anantnag & another Vs. Mast. Katji and others, reported in AIR 1987 Supreme Court 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.

7. Having regard to the above reasons and discussion, I am convinced to allow this application as under :-

ORDER

- (i) The application for condonation of delay moved by the applicants/original respondents is hereby allowed.
 - (ii) The appeal be registered after due scrutiny.
 - (iii) Issue notice to respondent Nos. 1 and 2/original claimants, returnable on 28th October, 2020.
 - (iv) Call record and proceedings from the Reference Court.
8. Place the matter on 28th October, 2020.

[SHRIKANT D. KULKARNI, J.]

mta