

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6700 OF 2017
IN
FIRST APPEAL STAMP NO. 8161 OF 2017

Gulab Sakharam chauthe
Dead through Lrs
Namdeo Gulab Chauthe and Ors. ...Applicants

Versus

The State of Maharashtra and Ors. ...Respondents

Mr D.M. Kakade, Advocate for Applicants (Absent)
Mrs G.L. Deshpande, A.G.P. for Respondent Nos. 1 and 2

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 claimants by taking aid of section 5 of the Limitation Act, 1963.
2. Mr D.M. Kakade, the learned counsel for the applicants is neither available in the Court Hall where video conferencing facility is made available nor virtually available, when the matter is called out.
3. Heard the learned Assistant Government Pleader for respondent Nos. 1 and 2. Perused the record.
4. There is delay of 740 days in preferring the appeal by the

applicants. The applicants have assigned the reasons in their application in para No. 3 to that effect. They could not prefer the appeal within time due to financial crisis. The delay was neither deliberate nor intentional. The delay needs to be condoned in order to decide the cause on merits.

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

6. The reliance can be placed on the ratio laid down by the 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. It is necessary to obtain undertakings from the applicants that they would not take statutory benefits for the delayed period in case they succeed in appeal for enhancement.

8. Having regard to the above reasons and discussion, I proceed to pass the following order :

ORDER

(i) The application for condonation of delay moved by the applicants is hereby allowed.

(ii) The appeal be registered after due scrutiny.

(iii) The applicants/original claimants shall furnish their undertakings with the Registry that they would not claim statutory benefits provided in the Land Acquisition Act, 1894 for the delayed period in case they succeed in the appeal.

(iv) Issue notice to the respondent Nos. 1 to 3, returnable on 28th October, 2020.

(v) The learned Assistant Government Pleader waives notice for respondent Nos. 1 and 2.

(vi) Call Record and Proceedings from the Reference Court.

9. Place the matter on 28th October, 2020.

[SHRIKANT D. KULKARNI, J.]

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