

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

**CIVIL APPLICATION NO. 11020 OF 2019
IN
FIRST APPEAL (STAMP) NO. 11967 OF 2019**

The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Osmanabad

... Applicant.

Versus

Sudhakar Vishnupant Kankal
and others

... Respondents.

....

Mr. N.V. Naiknavare, Advocate for the Applicant.
Mr. Manoj D. Shinde, Advocate for Respondent No. 1 (absent).
Mr. S.N. Kendre, A.G.P. for Respondent Nos. 2 and 3.

....

CORAM : SHRIKANT D. KULKARNI, J

DATE : 16th SEPTEMBER, 2020

PER COURT:-

1. It is an application for condonation of delay moved by the applicant / acquiring body by taking aid of Section 5 of the Limitation Act, 1963.

2. Heard Mr. Ramesh Naiknavare, learned Advocate for the applicant and learned A.G.P. for respondent Nos. 2 and 3. Mr. Manoj Shilnde, learned Advocate for Respondent Nos. 1 is neither available in the Court hall where the video conferencing facility is provided nor virtually available.

3. The learned A.G.P. for respondent Nos. 2 and 3 concedes the prayer made by the applicant / acquiring body.

4. On perusing the record, it is found that there is delay of 709 days in preferring the appeal by applicant/ acquiring body. The applicant / acquiring body was required to obtain legal opinion from the concerned department and while completing such procedural aspects, the delay was caused in preferring the appeal. The delay is neither intentional nor deliberate. Substantial questions of law are involved in the appeal and it is necessary to condone the delay and decide the appeal on merits.

5. In view of the observations of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition, Anantnag and anr. Vs. Mst. Katiji and others*, reported in *AIR 1987 SC 1353*, 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 and in order to decide the appeal on merits, it is necessary to condone the delay. Hence, I pass the following order:

ORDER

- (i) The application for condonation of delay moved by the applicant / acquiring body is allowed.
- (ii) The appeal be registered after due scrutiny.
- (iii) Issue notice to respondents / original claimants. Learned A.G.P. waives notice for respondent Nos. 2 and 3.
- (v) Call Record and Proceedings from the Reference Court.
- (vi) Stand over to 28.10.2020.

**(SHRIKANT D. KULKARNI)
JUDGE**

S.P Rane