

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

903 CIVIL APPLICATION NO.7418 OF 2020
IN FIRST APPEAL [STAMP] NO.14818 OF 2020

THE EXECUTIVE ENGINEER, MINOR IRRIGATION
DIVISION NO.1, AURANGABAD
VERSUS
DAULAT PARBAT PATIL & OTHERS

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Mr.S.G.Bhalerao, Advocate for the applicant-
appellant.

Mr.R.P.Adgaonkar, Advocate h/f. Mr.V.B.Patil,
Advocate for the respondent no.1.

Mr.P.M.Kulkarni, AGP for the respondent-
State.

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**CORAM : V.L.ACHLIYA,J.
DATE : 09.12.2020**

P.C.

1] The applicant-appellant has moved
this application seeking condonation of 1097
days delay in filing Appeal for the reasons
set out in detail in the application.

2] Heard learned counsel for the
applicant – appellant and learned Advocate
representing the respondent no.1 – claimant
as well as learned AGP for the respondent-
State.

3] In brief, it is the contention of the learned counsel for the applicant – appellant that delay caused in filing Appeal not deliberate and intentional but resulted due to the reason that GMIDC Aurangabad–acquiring body was not made party respondent by the original claimants in the reference proceedings. Only after the order was passed and communication was received to pay the amount, the copies of the documents were secured and steps to file Appeal was taken, in the process considerable time was spent. After seeking legal opinion and after making arrangement to engage an Advocate and payment of Court fees, the Appeal has been filed. In the process, delay of 1097 days has been caused. It is submitted that the applicant – appellant has good case to succeed in the Appeal. The compensation awarded by the Reference Court are not sustainable in law. It is submitted that the SLAO has assessed the compensation @ Rs.1050/- per Are which has been enhanced to Rs.4125/- per Are. The compensation on the part of fruit bearing trees has been assessed and awarded to the extent of Rs.1,44,20,810/- by ignoring the report of joint measurement. The Reference Court has solely relied upon the report of

private valuer. It is further submitted that the judgment and award passed by the Reference Court is contrary to the decision of the Apex Court. The compensation cannot be awarded by considering value of the land as horticulture land as well as compensation for fruit bearing trees. It is submitted that the interest has been awarded from the date of notification which is contrary to the decision of the Full Bench in the case of in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** reported in ***2016 [3] Mh.L.J. 457***. It is submitted that in case delay is not condoned, there is every likelihood that serious prejudice would cause to the applicant – appellant and a meritorious matter may be rejected for technical reasons. It is submitted that in all connected appeals filed arising out of the same acquisition, delay has been condoned by this Court.

4] On the other hand, learned counsel for the respondent no.1 – claimant opposed the application and submits that cause assigned cannot be treated as sufficient cause to condone delay. He submits that if the delay is condoned, heavy cost may be imposed.

5] On due consideration of the submissions advanced in the light of unchallenged and uncontroverted pleadings made in the application assigning cause for condonation of delay and consequence that may follow if delay is not condoned, I am of the view that delay deserves to be condoned. If delay is condoned, no serious prejudice would be caused to the respondent no.1 as ultimately case will be decided on its own merits. Hence the application is allowed subject to cost of Rs.5000/- to be deposited in the High Court Legal Services Sub Committee, Aurangabad. Appeal be registered subject to payment of cost.

6] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC