

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

**904 CIVIL APPLICATION NO.10648 OF 2016
IN
FAST/18511/2016**

**THE EXECUTIVE ENGINEER, VISHNUPURI
PROJECT, DIV. NO.1, NANDED AND ORS
VERSUS
SAIDABEE MOHD. ISMAIL DIED THR LRS
CHANDPASHA AND ANR**

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Smt. R.D.Reddy, Advocate for Applicants.
Mr. S.V.Kurundkar, Advocate for R-1 & 2.

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**CORAM : V.L.ACHLIYA, J.
DATE : 16/12/2020**

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ORAL ORDER :

1. The applicant/appellant has moved this application seeking condonation of 2444 days delay in filing Appeal.
2. Heard learned counsel for applicants/appellants and counsel representing respondent Nos. 1 and 2.
3. In brief, it is the contention of learned counsel for applicants that the impugned Judgment and Award was passed on 07/07/2009. The applicant got knowledge of said Award in the month of September, 2014. Immediately, thereafter the proposal was forwarded to file Appeal against the Judgment and Award. The proposal was send on 02/09/2014. The

authority concerned granted sanction to file Appeal vide communication dated 29/09/2014, which was received in the office of applicant on 07/11/2014. Thereafter the applicant filed application on 06/10/2015 for certified copy. The certified copy was received on 16/10/2015. Thereafter the applicant approached the panel Advocate for filing Appeal. After arranging the funds for payment of court fees, etc. the Appeal was presented in the month of July, 2016. In this back-ground the learned counsel submits that delay caused in filing appeal was not deliberate and intentional but primarily caused due to time spend in securing permission to file Appeal. It is submitted that if delay is not condoned, serious prejudice may cause to the applicant. The interest has been awarded from the date of notification which is contrary to Full Bench decision of this Court. So also, the compensation has been enhanced from Rs. 59,896/- to Rs. 82,609/- without supporting evidence.

4. On the other hand, learned counsel for respondents/claimants opposed the application with contention that the cause assigned can not be treated as sufficient to condone the delay of 2444 days in filing Appeal.

5. On due consideration of cause assigned, I am of the view there is absolutely no justification to

condone the delay of 2444 days. The Reference Court has delivered the Judgment and Order on 07/07/2009. For the period of four years, no steps taken to secure certified copy of Judgment and Award. It is nowhere mentioned in the application that their panel Advocate has not communicated the decision for the period of more than four years. It is vaguely stated that the applicant came to know about the Award passed in the month of September, 2014. It is pertinent to note that though the applicant claimed to have received knowledge of passing of Award in the month of September, 2014, still the Appeal has been presented on 14/06/2016 i.e. after a period of about two years of receipt of knowledge of Award passed by the Reference Court. In that view, the applicants have failed to explain the delay in filing Appeal. The facts stated in the application spell out the negligence, lethargy and casual approach on the part of applicant/acquiring body in filing Appeal. The reasons putforth appears to be false and concocted. So also the possibility of malafides and deliberate delay on the part of officials of acquiring body for extraneous consideration also can not be ruled out. Recently in the case of ***State of Madhya Pradesh and others V/s Bherulal reported in 2020 SCC On line SC 849*** , the Hon'ble Apex Court has heavily come down over such practices of filing of Appeal with inordinate delay by the Govt./State authorities and observed as under.

" 4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only "due to unavailability of the documents and the process of arranging the documents". In paragraph 4 a reference has been made to "bureaucratic process works, it is inadvertent that delay occurs".

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do

nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible. ”.

6. Although the applicants have failed to make out case to satisfy the existence of sufficient cause to condone the delay in filing Appeal, I am of the view the delay caused in filing Appeal be condoned subject to heavy cost.

7. In the instant case, the appellants have taken a plea that the interest awarded u/s 34 of the Land Acquisition Act by the Reference Court is contrary to Full Bench decision of this Court in the case of ***State of Maharashtra V/s Kailash Shiva Rangari reported in 2016 (3) AIR Bom. R. - 742*** and if delay is not condoned serious prejudice may cause to the applicant/appellant. I am, therefore, of the view the delay be condoned subject to heavy cost so as to send strong signal across the officials of the State

Govt. and instrumentalities of State Govt. that the casual approach in filing Appeal may leads to serious consequences for them and it may affect their service career and they will be held liable for the losses caused to the Govt. on account of their negligence in filing Appeal within time. Accordingly, the application is allowed subject to cost of Rs. 25,000/- [Rupees Twenty Five Thousand] to be deposited within four weeks from the date of this order. Failure to deposit cost within stipulated period, the application seeking condonation of delay to be treated as rejected. In case the cost is deposited, the Appeal be registered and place for admission on 25/01/2021.

8. If cost is deposited then same shall be credited to the account of High Court Legal Services Authority Sub Committee, Aurangabad to be utilized for providing legal aid to the poor and needy persons. On payment of cost, the applicant/appellant are directed to hold enquiry to find out the persons responsible for causing delay and take departmental action against such person/persons and also recover the amount of cost from the officials found responsible for delay in filing Appeal.

9. The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE