

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

CIVIL APPLICATION NO. 10057 OF 2019
IN
FIRST APPEAL ST.NO. 23146 OF 2019

Gopal s/o Rajaram Deshmukh .. Applicant

Versus

The State of Maharashtra and ors. .. Respondents

Mr N.K. Tungar, Advocate for applicant
Mr A.B. Chate, A.G.P. for respondents no.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 applicant/ original claimant by taking aid of Section 5 of the Limitation Act, 1963.
2. Mr N.K. Tungar, learned Advocate for the applicant is neither available in Court hall, where video conferencing facility is provided for the lawyers, nor he is available on-line when the matter is called out.
3. Heard learned A.G.P. for respondents no.1 and 2. Respondent no.3 though served, is absent. Looking to the nature of application, I thought it just and proper to proceed with this application.
4. Perused the record. There is delay of 135 days in preferring the appeal by the applicant/original claimant. The applicant has assigned reason for condonation of delay in his application in paragraph 4. He could not prefer the appeal within time due to financial crisis. The reason

assigned by the applicant is found genuine. The delay was neither intentional nor deliberate. In order to decide the cause on its own merits, it is necessary to condone the delay.

5. The reliance can be placed on the ratio laid down by the Honourable Supreme Court in case of **Collector, Land Acquisition, Anantnag & anr., Vs. Mst. Katiji and others**, reported in **AIR 1987 SC 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.

6. Having regard to the above reasons and discussion, I arrive at a conclusion to condone the delay and proceed to pass the following order:

ORDER

(a) The application for condonation of delay moved by the applicant/original claimant stands allowed.

(b) The appeal be registered after due scrutiny.

(c) The applicant/original claimant shall furnish undertaking that he would not claim the statutory benefits and interest, as provided under the Land Acquisition Act, 1894, for the delayed period in case he succeeds in appeal. The Registry to accept the undertaking from the applicant/original claimant.

(d) Issue notice to respondents, returnable on 28th October 2020.

Learned A.G.P. waives notice for respondent no.1 and 2.

(e) Call Record and Proceedings from the Reference Court. Stand over to 28th October 2020.

(SHRIKANT D. KULKARNI, J.)

vvr