

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

CIVIL APPLICATION NO. 11039 OF 2019
IN
FIRST APPEAL ST.NO.25136 OF 2019

The Executive Engineer,
Minor Irrigation Division,
Osmanabad and ors.

.. Applicants

Versus

Kesharbai Shrinivas Adsul

.. Respondent

Mr Ruturaj C. Patil, Advocate for applicants

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 respondents by taking aid of Section 5 of the Limitation Act, 1963.
2. Heard Mr Ruturaj Patil, learned Advocate for the applicants/original respondents. The respondent/original claimant though served, remained absent.
3. There is delay of 162 days in preferring the appeal by the applicants. It seems that the delay was caused due to procedural aspects. The delay was neither intentional nor deliberate. The delay needs to be condoned.
4. 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.

5. Mr Ruturaj Patil, learned Advocate for the applicants/original respondents further submitted that as per the earlier order passed by this Court in Civil Application no. 11040 of 2019 dated 13th September 2019, the applicants could not deposit the amount and submitted that the cheque is ready and he may be permitted to deposit the cheque with the Registry.

6. In the interest of justice, permission needs to be granted to applicants to deposit the cheque with the Registry by extending two weeks' time from today.

7. 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 applicants/original respondents is hereby allowed.

(b) The appeal be registered after due scrutiny.

(c) Issue notice to respondent, returnable on 28th October 2020.

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

(e) The applicants/original respondents shall deposit the cheque/Demand Draft of the decretal amount, as per earlier order passed by this Court in Civil Application No. 11040 of 2019 dated 13th September 2019 within two weeks from today.

(f) Stand over to 28th October 2020.

(SHRIKANT D. KULKARNI, J.)

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