

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

**CIVIL APPLICATION NO. 3565 OF 2019
IN
FIRST APPEAL (STAMP) NO. 26175 OF 2018**

Tatya Babu Kolekar ... Applicant.

Versus

The State of Maharashtra and others ... Respondents.

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Mr. Abhijit S. More, Advocate for the Applicant.
Mr. K.B. Jadhavar, A.G.P. for Respondent Nos. 1 and 2.
Mr. Rahul A. Tambe, Advocate for Respondent No.3.

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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 claimants by taking aid of Section 5 of the Limitation Act, 1963.
2. Heard Mr. Abhijit More, learned Advocate appearing for the applicant, learned A.G.P. for Respondent Nos. 1 and 2 and Mr. Rahul Tambe, learned Advocate for Respondent No.3.

3. Learned A.G.P. for Respondent Nos. 1 and 2 and learned Advocate Mr. Rahul Tambe, appearing for respondent No.3 opposed to allow this application and submitted that no sufficient cause is assigned by the applicant for condonation of delay.

4. On perusing the record, it is found that there is delay of 721 days in preferring the appeal by applicant/ original claimant. The applicant / original claimant has assigned the reasons for condonation of delay in his application in para No.2. Due to financial crises, the applicant could not file the appeal within time. The delay was not intentional or deliberate. The reasons assigned by the applicants appear to be genuine and sufficient.

6. 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.

7. Having regard to the above reasons and discussion, the application needs to be allowed as under:

ORDER

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

(ii) The applicant / original claimant shall furnish undertaking that he would not claim the statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894 for the delayed period, in case, any enhanced compensation is awarded by this Court after adjudication of the appeal on merits.

(iii) The appeal be registered after due scrutiny.

(iv) Issue notice to respondents. Learned A.G.P. waives notice for respondent Nos. 1 and 2. Mr. Rahul Tambe, learned Advocate waives notice for respondent No.3.

(v) Call Record and Proceedings from the Reference Court.

(vi) Stand over to 28.10.2020.

(SHRIKANT D. KULKARNI)
JUDGE

S.P. Rane