

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

CIVIL APPLICATION NO. 11254 OF 2019
IN
FIRST APPEAL ST. NO. 26079 OF 2019

Prakash Bhura Rathod and ors.

.. Applicants

Versus

The State of Maharashtra and ors.

.. Respondents

Mr V.P. Patil, Advocate for applicants

Mr K.B. Jadhavar, A.G.P. for respondents no.1 and 2

Mr S.D. Dhongade, Advocate for respondent no.3

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 learned Advocate for the applicants, learned A.G.P. for respondents no.1 and 2 and learned Advocate Mr Dhongade for respondent no.3.

3. Perused the record. There is delay of 103 days in preferring the appeal by the applicants/original claimants. The applicants have assigned reasons for condonation of delay in paragraph 3 of the application, which appear to be genuine. In order to decide the cause on its own merits, it is necessary to condone the delay.

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. 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 claimants stands allowed.
- (b) The appeal be registered after due scrutiny.
- (c) The applicants/original claimants shall furnish undertaking that they would not claim the statutory benefits and interest, as provided under the Land Acquisition Act, 1894, for the delayed period in case they succeed in appeal. The Registry to accept the undertaking from the applicants/original claimants.
- (d) Issue notice to respondents, returnable on 28th October 2020. Learned A.G.P. waives notice for respondent no.1 and 2 and learned Advocate Mr Dhongade waives notice for respondent no. 3.
- (e) Call Record and Proceedings from the Reference Court. Stand over to 28th October 2020.

(SHRIKANT D. KULKARNI, J.)