

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

CIVIL APPLICATION NO. 14111 OF 2018
IN
FIRST APPEAL ST. NO. 27057 OF 2018

Sitabai Laxman Thavare
(died) through her L.Rs.
Lahu Laxman Thavare and ors.

.. Applicants

Versus

The State of Maharashtra
and ors.

.. Respondents

Mr Abhijit S. More, Advocate for applicants
Mr P.M. Kulkarni, A.G.P. for respondents no.1 and 2
Mr R.R. Tambe, 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 Mr Abhijit More, learned Advocate for the applicants/original claimants, learned A.G.P. for respondents no.1 and 2 and Mr Tambe, learned Advocate for respondent no.3/Acquiring Body.
3. Mr More, learned Advocate for the applicants submitted that the applicants could not prefer their appeal within time due to financial constraint. The delay was neither deliberate nor intentional. The delay needs to be condoned.

4. On the other hand, learned A.G.P. for respondents no.1 and 2 and Mr Tambe, learned Advocate for respondent no.3 opposed to allow the application for condonation the delay. Both of them submitted that no sufficient cause is assigned by the applicants for condonation of delay.

5. On perusing the record, it is found that there is delay of 444 days in preferring the appeal. The applicants have assigned sufficient reason in their application in paragraph no.2. They could not prefer the appeal within time due to financial crunch. The delay was neither intentional nor deliberate. The delay needs to be condoned to decide the cause on merits.

6. 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.

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 claimants stands allowed.

- (b) The appeal be registered after due scrutiny.
- (c) The applicants/originals claimant shall furnish undertaking that they will 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 Advcoate Mr Tambe 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.)

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