

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

CIVIL APPLICATION NO. 11320 OF 2019
IN
FIRST APPEAL ST. NO.26369 OF 2019

The Executive Engineer,
Minor Irrigation Division,
Jalgaon and anr.

.. Applicants

Versus

Umarkha s/o Shabbirkha

.. Respondent

Mr S.D. Dhongade, Advocate for applicants
Mr M.M. Bhokarikar, Advocate for respondent-sole

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 Dhongade, learned Advocate for the applicants and Mr M.M. Bhokarikar, learned Advocate appearing for respondent.
3. Perused the record. There is delay of 497 days in preferring the appeal by the applicants/original respondents. The delay seems to have occurred to complete the procedural formalities. The delay was neither deliberate nor intentional on the part of the applicants. Having regard to the nature of dispute and 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 respondents is hereby allowed.
- (b) The appeal be registered after due scrutiny.
- (c) Issue notice to respondent, returnable on 28th October 2020. Learned Advocate Mr Bhokarikaar waives notice for respondent.
- (d) Call Record and Proceedings from the Reference Court. Stand over to 28th October 2020.

(**SHRIKANT D. KULKARNI, J.)**