

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

**CIVIL APPLICATION NO. 11322 OF 2019
IN
FIRST APPEAL (STAMP) NO. 26463 OF 2019**

The Executive Engineer,
Minor Irrigation, Jalgaon
and another

... Applicants.

Versus

Himmat Daulat Tadavi (Died)
Through L.Rs.
Rashid Himmat Tadvi

... Respondent.

....

Mr. S.D. Dhongade, Advocate for the Applicants.
Mr. Gaurav Kumar More, Advocate for Respondent/Sole (absent)

....

CORAM : SHRIKANT D. KULKARNI, J

DATE : 16th SEPTEMBER, 2020

PER COURT:-

1. It is an application for condonation of delay moved by the applicants / acquiring body by taking aid of Section 5 of the Limitation Act, 1963.

2. Heard Mr. Suresh Dhongade, learned Advocate for the applicant No.1, learned A.G.P. for applicant No.2. Mr. Gaurav Kumar More, learned Advocate for Respondent is neither available in the Court hall where the video conferencing facility is provided nor virtually available.

3. On perusing the record, it is found that there is delay of 616 days in preferring the appeal by applicants / acquiring body. The applicants / acquiring body was required to obtain legal opinion from concerned department and while completing such procedural aspects, the delay was caused in preferring the appeal. The delay is neither intentional nor deliberate. Important questions of law are involved in the appeal and it is necessary to condone the delay and decide the appeal on merits.

4. 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.

5. Having regard to the above reasons and discussion and in order to decide the appeal on merits, it is necessary to condone the delay. Hence, I pass the following order:

ORDER

- (i) The application for condonation of delay moved by the applicants / acquiring body is allowed.
- (ii) The appeal be registered after due scrutiny.
- (iii) Issue notice to respondents.
- (v) Call Record and Proceedings from the Reference Court.
- (vi) Stand over to 28.10.2020.

(SHRIKANT D. KULKARNI)
JUDGE

S.P. Rane