

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

CIVIL APPLICATION NO. 194 OF 2019
IN
FIRST APPEAL ST.NO. 30271 OF 2018

Bhagyashri Nanarao Dhumal ..Applicant

Versus

The State of Maharashtra and ors. ..Respondents

Mr G.N. Chincholkar, Advocate for applicant - absent
Mr A.B. Chate, A.G.P. for respondents no. 1 and 2

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 16th September 2020

PER COURT:

1. It is an application for condonation of delay moved by the applicant/ original claimant by taking aid of Section 5 of the Limitation Act, 1963.
2. Mr G.N. Chincholkar, learned Advocate for the applicant/original claimant is neither available in the Court hall where video conferencing facility is provided for the lawyers nor he is available on-line.
3. By taking into consideration the nature of dispute and old pendency of this application, I thought it proper to proceed with this application.
4. Heard learned A.G.P. for respondents no.1 and 2. None present for respondent no.3 though served.

5. Perused the record. There is delay of 92 days in preferring the appeal by the applicant/original claimant. The applicant has assigned reason for condonation of delay in her application in paragraph 2. She could not prefer the appeal within time for want of funds. The delay was neither intentional nor deliberate. In order to decide the cause on its own merits, it is necessary to condone the delay.

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 applicant/original claimant stands allowed.

(b) The appeal be registered after due scrutiny.

(c) The applicant/original claimant shall furnish undertaking that she would not claim the statutory benefits and interest, as provided under the

Land Acquisition Act, 1894, for the delayed period in case she succeeds in appeal. The Registry to accept the undertaking from the applicant/original claimant.

(d) Issue notice to respondents, returnable on 28th October 2020. Learned A.G.P. waives notice for respondent no.1 and 2.

(e) Call Record and Proceedings from the Reference Court. Stand over to 28th October 2020.

(SHRIKANT D. KULKARNI, J.)

vvr