

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

CIVIL APPLICATION NO. 166 OF 2020
IN
FIRST APPEAL ST.NO. 31657 OF 2019

Nagnath Bapurao Fulari .. Applicant

Versus

The State of Maharashtra and ors. .. Respondents

Mr N.D. Kendre, Advocate for applicant
Mr S.N. Kendre, 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. Heard learned Advocate for the applicant and learned A.G.P. for respondents no.1 and 2.
3. Perused the record. There is delay of 461 days in preferring the appeal filed by the applicant/original claimant. The applicant has assigned reasons for condonation of delay in paragraphs 3 and 4 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 applicant/original claimant is hereby allowed.
- (b) The appeal be registered after due scrutiny.
- (c) The applicant/original claimant shall furnish undertaking that he would not claim the statutory benefits and interest, as provided under the Land Acquisition Act, 1894, for the delayed period in case he 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.)