

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6665 OF 2017
IN
FIRST APPEAL STAMP NO. 37400 OF 2016

Gajanan s/o Ukhardu Shinde and Anr. ...Applicants

Versus

The State of Maharashtra and Ors. ...Respondents

Mr D.R. Jaybhar, Advocate for Applicant
Mr A.B. Chate, A.G.P. for Respondent Nos. 1 and 2
Mr S.G. Bhalerao, Advocate for Respondent No. 3 (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/original claimants by taking aid of section 5 of the Limitation Act, 1963.
2. Mr Bhalerao, the learned counsel for the respondent No. 3 is neither available in the Court Hall where the Video Conferencing facilities are available nor available on-line, when the matter is called out.

3. Heard Mr Jaybhar, the learned counsel for the applicants and the learned Assistant Government Pleader for Respondent-State. Perused the record.

4. The learned Assistant Government Pleader for respondent Nos. 1 and 2 opposed to allow this application for condonation of delay.

5. There is delay of 826 days in preferring the appeal by the applicants. The applicants have assigned the reasons in their application in para No. 4 to that effect. They could not prefer the appeal within time due to financial crisis. The delay was not deliberate and intentional. The delay needs to be condoned in order to decide the cause on merits.

6. The reliance can be placed on the ratio laid down by the Hon'ble Supreme Court in case of ***the Collector, Land Acquisition, Anantnag & another Vs. Mast. Katji and others, reported in AIR 1987 Supreme Court 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. It is necessary to take undertakings from the applicants that they would not take statutory benefits for the delayed period in case, they succeed in appeal for enhancement.

8. Having regard to the above reasons and discussion, I proceed to pass the following order :-

ORDER

(i) The application for condonation of delay moved by the applicants is hereby allowed.

(ii) The appeal be registered after due scrutiny.

(iii) The applicants/original claimants shall furnish their undertaking with the Registry that they would not claim the statutory benefits provided in the Land Acquisition Act, 1894 for the delayed period in case they succeed in the appeal.

(iv) Issue notice to respondent Nos. 1 to 3, returnable on 28th October, 2020. The learned Assistant Government Pleader waives notice for respondent Nos. 1 and 2.

(v) Call record and proceedings from the Reference Court.

9. Place the matter on 28th October, 2020.

[SHRIKANT D. KULKARNI, J.]