

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

**910 CIVIL APPLICATION NO.6053 OF 2018
IN FAST/42138/2017**

**THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION-2, SAMGEMNER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Applicants : Mr. Vinesh C. Solshe
Advocate for Respondent No.1 State : Mr. A. B. Chate,
Advocate for respondents 2 to 5: Mr. D. A. Bide

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 16th September, 2020

ORDER:

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. None present for the applicant when called out. Mr. Vinesh Solshe, the learned advocate for the applicant is neither available in the Court hall where the video conferencing facility is provided nor virtually available. Heard the learned A.G.P. for the State and Mr. D. A. Bide, learned Advocate for the applicants/Claimants.

3. Mr. D. A. Bide, the learned Advocate for respondent Nos. 2 to 5/original claimants strongly opposed for condonation of delay. He submitted that the applicant has not assigned sufficient reasons for condonation of delay. The application is devoid of any merits and liable to be dismissed.

4. The learned A.G.P. for applicant No.1 concedes the prayer made

by the applicant.

5. On perusing the record, it is found that there is delay of 171 days in preferring the appeal by the applicant/ acquiring body. The applicant was required to obtain legal opinion from the G.M.I.D.C. Aurangabad and while completing such procedural aspects, the delay was caused in preferring the appeal. The delay is neither intentional nor deliberate. Substantial questions of law are involved in the appeal and it is necessary to condone the delay and decide the appeal on merits.

6. In view of the observations of the Hon'ble Supreme Court in the case of **the Collector, Land Acquisition, Anantnag & another Vs. Mst. Katiji and others**, reported in **AIR 1987 Supreme Court 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.

7. Having regard to the reasons and discussion, in order to decide the appeal on merits, it is necessary to condone the delay. The delay stands condoned. The application for condonation of delay moved by the applicant is allowed.

8. The appeal be registered after due scrutiny.

9. Issue notice to the respondents/original claimants in the appeal,

returnable on 28th October, 2020. Mr. A. B. Chate, learned AGP waives notice for respondent Nos. 1 and Mr. Bide, the learned Advocate waives notice for respondent Nos. 2 to 5.

10. Call record and proceedings from the reference Court.

(SHRIKANT D. KULKARNI, J.)

JPC