

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAF] No.2823 of 2018
in
First Appeal St. No.46 of 2018

Vidarbha Irrigation Development Corporation & another
vs.

Sharad Mahadeoappa Zade & others

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*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

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Court's or Judge's Orders

Shri J.B. Kasat, Advocate for the Applicants/Appellants.
Shri A.B. Nakshine, Advocate for Respondent No.1.
Ms. T.H. Khan, A.G.P. for Respondent Nos.2 & 3.

CORAM : Z.A. HAQ & S.M. MODAK, JJ.
DATE : 15th JANUARY, 2020.

There is delay of 467 days in filing appeal to challenge the award passed by the reference Court. By the impugned award, reference court has enhanced the amount of compensation and has directed the appellants (Vidarbha Irrigation Development Corporation and Executive Engineer) to pay compensation of ₹ 7500/- per Orange tree for 200 trees which were aged about 9 years at the time of taking over of possession by the appellants, and ₹7,000/- per tree for 986 Orange trees which were aged about 6 years at the time of taking over of possession by the appellants, and for some other trees.

2. The explanation justifying delay is given in paragraph nos. 2 to 4 of the application as follows :

"2. That, the local counsel applied for certified copy on 23/6/2016 which was received on

10/8/2016 and by communication dated 16/8/2016 the decision was intimated to the applicant.

3. That, after the legal opinion from the legal advisor of the Corporation came to be received on 27/10/2016 and the true copy of judgment was forwarded to the present counsel with messenger on 26/7/2017 whereupon by communication dated 1/8/2017 necessary documents were sought by the present counsel as also the appellant was requested to arrange for necessary court fees in the present matter.

4. That, there are no budgetary provisions for completed project and therefore the requisite amount of court fees and expenses was sought from the Head Office. That, the amount was court fees was remitted to the present counsel by in the third week of December, 2017 in the present appeal and other connected appeals which came to be received through messenger."

3. We expressed that the explanation given in the application is not sufficient and inordinate delay of 467 days cannot be condoned on such explanation. On this, learned Advocate for the applicants/appellants submitted that by the impugned award, heavy liability of paying amount of ₹4,69,13,447/- is saddled on the appellants.

4. Learned Advocate for the respondent no. 1 - claimant pointed out the evidence on record and submitted that the evaluation of the amount of compensation payable by the appellants is rightly determined by the reference Court considering the age of the Orange trees, the fertility of the land and other relevant aspects. It is submitted that though the amount appears to be more than ₹4,00,00,000/-, but the

determination is after appreciating the evidence on record and considering the Joint Measurement Report (Exhibit-36). The appellants are not disputing the existence of number of trees as mentioned in the impugned award.

5. Be that as it may, we find that the explanation given in the application to justify the inordinate delay is not sufficient. In paragraph no. 3 of the civil application, the applicants/appellants have stated that the papers were sent to the advocate at Nagpur after nine months, and for this callousness, there is no explanation. Hence, we are not inclined to condone the delay. Civil application is dismissed. Consequently, the first appeal is rejected.

6. The amount deposited by the appellants along with interest on it, if any, be given to the respondent no. 1 – claimant after three months.

**Civil Application [CAF] No.2006/2018 &
Civil Application [CAF] No.2824/2018 :**

In view of rejection of the first appeal, the civil applications praying for grant of leave to file appeal and for grant of stay do not survive. Hence, the civil applications are disposed of accordingly.

JUDGE

JUDGE