

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

**CIVIL APPLICATION NO. 4000 OF 2018
IN
FIRST APPEAL(ST) NO.4688 OF 2018**

The Executive Engineer
Minor Irrigation Division, Latur and another ... Applicants
Versus
Madhav Jagannath Ujede ... Respondent

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Mr. B. B. Gunjal, Advocate for the applicants
Mr. Ashwin Sakolkar, Advocate h/f Mr. V. G. Sakolkar, Advocate for
the respondent(s)
Mr. S. N. Morampalle, AGP for the State

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WITH
CIVIL APPLICATION NO. 3996 OF 2018 IN FIRST APPEAL (ST) NO.4767 OF 2018
WITH
CIVIL APPLICATION NO. 3986 OF 2018 IN FIRST APPEAL (ST) NO.4753 OF 2018
WITH
CIVIL APPLICATION NO. 3988 OF 2018 IN FIRST APPEAL (ST) NO.4727 OF 2018
WITH
CIVIL APPLICATION NO.3994 OF 2018 IN FIRST APPEAL (ST) NO.4732 OF 2018
WITH
CIVIL APPLICATION NO. 3990 OF 2018 IN FIRST APPEAL (ST) NO.4740 OF 2018
WITH
CIVIL APPLICATION NO.3998 OF 2018 IN FIRST APPEAL (ST) NO.4761 OF 2018
WITH
CIVIL APPLICATION NO. 3992 OF 2018 IN FIRST APPEAL (ST) NO.4749 OF 2018

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CORAM : R. G. AVACHAT, J.

DATED : 24th FEBRUARY, 2021

PER COURT :-

. These are the applications for condonation of delay in
preferring the first appeals.

2. There is some delay in preferring the first appeals.
3. The Apex Court in the case of ***Collector, Land Acquisition Anantnag and another vs. Mst. Katiji and others*** reported in ***AIR 1987 SC 1353***, has observed thus:

“3. The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. 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.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

4. With a view to give the applicants an opportunity of hearing and in the interest of justice, the civil applications are allowed.

[R. G. AVACHAT, J.]