

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

**CIVIL APPLICATION NO. 2701 OF 2021
IN FIRST APPEAL (ST) NO. 24955 OF 2020**

The Executive Engineer, Medium Project
Latur and Ors.

...Applicants

Versus

Dnyanoba S/o Bapurao Sontakke

...Respondent

.....

Mr. Hemraj P. Kshirsagar, Advocate for Applicant No. 1

Mr. S.N.Morampalle, A.G.P. for Applicant No. 2-State

Mr. V.G.Kodale, Advocate for Respondent

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WITH

**CIVIL APPLICATION NO. 2703 OF 2021
IN FIRST APPEAL (ST) NO. 25121 OF 2020**

The Executive Engineer, Medium Project
Latur and Ors.

...Applicants

Versus

Smt. Sushma w/o Shivdas Khichade

...Respondent

.....

Mr. Hemraj P. Kshirsagar, Advocate for Applicant No. 1

Mr. S.N.Morampalle, A.G.P. for Applicant No. 2-State

Mr. V.G.Kodale, Advocate for Respondent

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WITH

**CIVIL APPLICATION NO. 2705 OF 2021
IN FIRST APPEAL (ST) NO. 25115 OF 2020**

The Executive Engineer, Medium Project
Latur and Ors.

...Applicants

Versus

Sau. Parwatibai W/o Chanappa Mudgade ...Respondent

.....

Mr. Hemraj P. Kshirsagar, Advocate for Applicant No. 1

Mr. S.N.Morampalle, A.G.P. for Applicant No. 2-State

Mr. V.G.Kodale, Advocate for Respondent

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CORAM : R. G. AVACHAT, J.

DATE : 22-02-2021.

PER COURT :

01. Heard.

02. There is delay in preferring the first appeals. The delay is sought to be condoned on the ground of the time having been spent in seeking approval of administration to prefer the appeals.

03. The learned Counsel for the respondent seriously objects to condone the delay.

04. 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."

05. For the reasons given in the application and in view of the observations of the case of Apex Court, the delay is condoned. The application is allowed in terms of prayer clause "B". The appeal be registered.

06. Issue notice to the respondents in First Appeal (ST) No. 24955/2020, 25121/2020 and 25115/2020 returnable on 8.3.2021.

[R.G.AVACHAT]

JUDGE

Dahibhate/-