

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

937 CIVIL APPLICATION NO.14697 OF 2019 IN
FIRST APPEAL (STAMP) NO. 37724 OF 2019 WITH
FIRST APPEAL (STAMP) NO. 37721 OF 2019

NUR SAJAN SHAIKH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Applicants : Shri A. D. Sonkawade and
Shri S. J. Sonkawade
AGP for Respondents- State : Shri P. M. Kulkarni

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CORAM : N. J. JAMADAR, J.

DATE : 11th MARCH, 2021

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PER COURT :

1. This is an application for condonation of delay in preferring the appeal against the judgment and award dated 22/11/2011 passed by the Reference Court, Latur in L.A.R. Nos. 37 and 38 of 2004.
2. The applicants claim that there is delay of about 2839 days in filing the First Appeal as the applicants were not aware of the dismissal of the Reference and they were not informed about the same by the learned Advocate, who then represented them. After the applicants made enquiry in the month of September, 2019, they became aware that the Reference was dismissed otherwise than on merits. The applicants have lost precious land, for which meagre compensation is awarded. If the delay is not condoned, the applicants would suffer irreparable loss.

3. The learned AGP waives notice for respondent No.1 and submits that he has no objection to condone the delay.

4. None appears for respondent No.2 – acquiring body though the notice was served. The applicants have filed an affidavit of service.

5. It is pertinent to note that the Reference Court has dismissed the Reference otherwise than on merits. It is trite law that the Reference Court cannot dismiss the Reference otherwise than on merits. The claim of the applicants that they were unaware about the dismissal of the Reference cannot be said to be totally unsustainable.

6. It is trite that an application for condonation of delay should receive liberal consideration. The courts lean in favour of condonation of delay so as to advance the cause of substantive justice and facilitate the adjudication of the matter on merits rather than delay and latches.

7. An useful reference in this context can be made to the pronouncements of the Supreme Court in the cases of *Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others – (1987) 2 Supreme Court Cases 107* and *N. Balakrishnan Vs. M. Krishnamurthy- (1998) 7 Supreme Court Cases 123*, wherein the approach to be adopted was delineated and the principles which

ought to govern the exercise of discretion were expounded.

8. On the aforesaid touchstone, having regard to the nature of impugned judgment and award and for the reasons assigned in the application and to advance the cause of substantive justice, the delay deserves to be condoned.

Hence following order :

- (a) The application is allowed in terms of prayer clause "B".
- (b) The delay is condoned.
- (c) Appeal be registered.

9. Application stands disposed of.

(N. J. JAMADAR, J.)

shp/-