

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3923 OF 2019
IN
FIRST APPEAL (ST.) NO.14697 OF 2019
IN
LAND ACQUISITION CASE NO. 81 OF 2008

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Dhondiram @ Dondiram Mahadev Pandre
@ Pandhare

(Since deceased) by L.Rs.

1a. Smt. Chandabai Dhondiram Pandre
@Pandhare & Ors.

...Applicants/
Orig. Appellants

vs.

1. The Special Land Acquisition Officer
& 2 Ors.

...Respondents

Mr.T.S. Ingale for applicants/appellants.

Mr.Y.Y. Dabake, AGP for respondent Nos.1 and 2.

CORAM : N. J. JAMADAR, J.
DATE : 17th NOVEMBER, 2021

P.C.:

1. This is an application for condonation of delay of 5 years and 165 days in preferring the appeal against the judgment and award in Land Acquisition Reference Case No. 81 of 2008, dated 22nd August 2013, passed by the reference Court, whereby the reference preferred by the predecessor-in-title of the applicants, namely, Dhondiram @ Dondiram Mahadev Pandre @ Pandhare came to be dismissed, primarily on the ground that the claimant and his Advocate did not turn up for leading evidence when the

reference was posted for hearing.

2. The respondent No. 3, the acquiring body, has not entered appearance despite service of notice of this application.

3. Heard, the learned counsel for the applicants and the learned AGP for respondent Nos.1 and 2.

4. The learned counsel for the applicants submitted that though there is a considerable delay in preferring the appeal, yet in the peculiar facts of the case, where the reference filed by the predecessor-in-title of the applicants came to be dismissed and the reference preferred by the brother of the deceased claimant in respect of the adjacent land came to be allowed by awarding compensation at an enhanced rate, the application for condonation of delay deserves to be considered liberally. Attention of the Court was invited to the averments in paragraph Nos. 5 and 6 of the application, whereby the applicants have made an endeavour to account for the delay.

5. Mr.Dabake, the learned AGP resisted the prayer for condonation of delay.

6. It is well nigh settled that a reference cannot be dismissed otherwise than on merits. In the case at hand, by the impugned judgment and award, the reference court has dismissed the

reference primarily for the non-appearance of the learned Advocate for the deceased claimant when the reference was posted for hearing and the consequent default in adducing evidence in support of the claim.

7. It is trite that an application for condonation of delay should receive liberal consideration. The overarching principle is advancing the cause of justice by determining the matter on merits, rather than on technicalities.

8. In the case at hand, the averments in paragraph Nos. 5 and 6 of the application make out a sufficient cause. In any event, it does not appear that there was deliberate inaction or want of bonafide. It seems that on account of the adverse social condition and poor financial condition, the deceased claimant and the applicants could not pursue the matter effectively. A party cannot be made to suffer for the inadvertence on the part of the Advocate.

9. In the totality of the circumstances, especially having regard to the fact that the reference has been dismissed otherwise than on merits, it would be expedient to condone the delay.

10. The learned counsel for the applicants fairly submits that in the event, the appeal is allowed and compensation is awarded on enhanced rate, the applicants will not claim interest for the period

commencing from the date of the impugned judgment and award, till date.

11. The statement is recorded.

12. Hence, the following order :

O R D E R

(i) The application for condonation of delay stands allowed.

(ii) The delay stands condoned.

(iii) The appeal be registered and listed for admission after three weeks.

(N. J. JAMADAR, J.)