

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

Civil Application (CAF) No.2302 of 2019
IN
First Appeal Stamp No.20944 of 2017

Santosh S/o. Mahadu Mundhe **Vs.** State of Maharashtra & Ors.

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

Court's or Judge's Orders

Shri S.P. Pawar, Advocate for the Appellant.
Ms. T.H. Udeshi, A.G.P. for Respondent Nos.1 and 3.
Shri M.A. Kadu, Advocate for Respondent No.2.

CORAM : S.M. MODAK, J.
DATE : 5th JANUARY, 2021.

Heard learned Advocate Shri S.P. Pawar for the appellant/original claimant, learned A.G.P. Ms. T.H. Udeshi for respondent Nos.1 and 3 and learned Advocate Shri M.A. Kadu for respondent No.2.

Though the appellant has filed an appeal on 21st September, 2017 against the judgment of the Reference Court dated 5th April, 2014, he has not filed delay condonation application. The Office took objection. In spite of opportunities, the appellant has not removed them. Accordingly, the learned Registrar (Judicial) refused to register the appeal as per his order dated 6th March, 2018.

Then the appellant had chosen to file an application for restoration of the appeal bearing Miscellaneous Civil Application No.400/2019 along with Civil Application No.469/2019 for condonation of delay for 346 days. It was filed on 14th February, 2019. This Court was pleased to condone the delay and was pleased to

restore the appeal as per the order dated 4th March, 2019. The appellant was directed to remove all office objections.

Later on, the appellant filed present Civil Application No.2302/2019 for condonation of delay of 1175 days caused in preferring an appeal. I have taken it for final hearing by consent of learned Advocate Shri M.A. Kadu for respondent No.2 and learned A.G.P Ms. T.H. Udeshi for respondent Nos.1 and 3. If the appellant could have filed this application at the beginning itself (when the Office has taken objection), all these could have been avoided. However, it is but natural that the appellant is bound by the legal advice. It is also true that the appellant needs to be given an opportunity to agitate his grievance that the enhancement granted by the Reference Court is inadequate, but it should be conditional.

The Hon'ble Supreme Court in case of Imrat Lal & Others Vs. Land Acquisition Collector & Others reported in 2014(9) SCALE 446 was pleased to condone the delay of 1110 days and was pleased to held appellant not entitled for interest for that period. There is no issue that from the date of judgment of the Reference Court till filing of the first appeal i.e. 21st September, 2017. The appellant is certainly not entitled for interest. Now, the issue is about entitlement to interest for a further period. It is submitted that the appellant will loose major amount, if entire period is considered. Whereas, learned Advocate Shri M.A. Kadu and learned A.G.P Ms. T.H. Udeshi submitted that it is the negligent attitude of the appellant which is responsible for all these mess.

I think that the appellant need not be denied the interest for all these periods i.e. from 21st September, 2017 up to the date of filing of present application i.e. on 3rd April, 2019. But the appellant is need to be put to certain costs terms in terms of direct money but to disentitle him for half of the period. Hence, the following order is passed:-

- i. The civil application is **allowed**.
- ii. The delay of 1175 days in preferring an appeal is condoned.
- iii. The appellant is not entitled for interest from 5th April, 2014 up to 21st September, 2017, if he succeeds in appeal.
- iv. The appellant is further not entitled for interest for half of the period starting from 21st September, 2017 up to 3rd April, 2019, if he succeeds in appeal.
- v. The civil application is disposed of.

First Appeal Stamp No.7994/2019

Heard.

Admit.

Call for record and proceedings.

Issue notice to the respondents.

Learned Advocate Shri M.A. Kadu waives notice for respondent No.2.

Learned A.G.P Ms. T.H. Udeshi waives notice for respondent Nos.1 and 3.

JUDGE