

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

CIVIL APPLICATION (O) NO. 17 OF 2020
AND CIVIL APPLICATION (O) NO. 18 OF 2020
AND CIVIL APPLICATION (O) NO. 19 OF 2020
IN CIVIL APPLICATION (F) NO. 1799 OF 2016
IN FIRST APPEAL ST. NO. 17143 OF 2015

(Maharashtra Industrial Development Corporation Vs. Ismailbhai Gulam Hussai (dead) & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri M.M. Agnihotri, Advocate for the applicant/
appellant.

Shri S.C. Mehadia, Advocate for LR's of respondent
No.1.

Shri A.M. Kadukar, A.G.P. for respondent No.2.

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CORAM : PUSHPA V. GANEDIWALA, J.
AUGUST 03, 2021.

Heard.

2] By way of these applications, the applicant/ appellant MIDC is seeking permission to bring the legal representatives of respondent No.1 on record by condoning delay of 1631 days in setting aside abatement. The proposed legal representatives raised objections by filing their reply-affidavit.

3] The reasons for delay is stated to be that the fact of death of respondent No.1, who expired on 27/03/2015 came to the knowledge of the appellant

when bailiff's report returned un-served because of death of respondent No.1. Thereafter, it is stated that the names of the legal representatives of respondent No.1 came to the knowledge of the appellant from the execution proceedings pending before the Civil Judge, Senior Division, Akola.

4] Shri Mehadia, learned counsel for the proposed legal representatives, strongly opposed the application for want of sufficient reasons and the callous, casual and lackadaisical attitude of the officers of the appellant corporation in proceeding with the matter since beginning.

5] I have considered the submissions on behalf of both the sides. At the outset, the appellant has mentioned the following reasons for causing delay in para 2 and 3 of the application, which are reproduced below :

"It is submitted that on 29.03.2017 this Hon'ble Court issued notices to the respondent. However, the bailif report showed that the above respondent no.1 had expired. The counsel for appellant immediately informed the appellant/corporation as well as local panel counsel for supplying details of the legal heirs of the respondent no.1. The respondent had changed the address after acquired land therefore the corporation has not found the address of the respondent.

3. On 15.03.2019 the legal of the respondent no.1 had filed application for legal heirs of the respondent no.1 in the execution before the Civil Judge Senior Division, Akola. It is submitted that as per application in the execution the respondent no.1 had expired on 27.03.2015 and following are the legal heirs of respondent no.1.

XXXX”

6. A perusal of the record would show that memo of appeal along with the application for condonation of delay is presented before this Court in August-2015. Thereafter, order for issuance of notice was passed on 29/03/2017. For three months, the notice could not be issued as the appellant failed to furnish copy of the appeal memo, and therefore, the matter came to be dismissed in default vide order dated 01/08/2017 by the Registrar (Judicial) against respondent No.1. The application for restoration of appeal came to be filed in March-2017 with an application for condonation of delay, and the matter was restored vide order dated 05/02/2018.

7. Thereafter, notice issued to respondent No.1 returned un-served as he was reported to be dead. As the appellant failed to take steps in spite of sufficient time was granted on 18/09/2018, 09/10/2018, 29/11/2018 and 08/01/2019, no steps were taken, and hence, the matter stood abated

against respondent No.1 vide order of the Registrar (Judicial) dated 29/01/2019. Again on 16/07/2019, 11/09/2019, 25/09/2019 and 04/12/2019, sufficient time was granted to the learned counsel for the appellant to take steps about the death of respondent No.1. The present applications came to be filed on 18/12/2019.

8. The aforesaid series of events in handling the matter by the appellant, a statutory corporation having its own full-fledged legal department dealing with thousands of land acquisition cases, reflects the casual, callous and lackadaisical attitude of all the concerned, who are handling the land acquisition cases against the land losers/ poor farmers.

9. The Division Bench of this Court, in which I was a member, on 25/09/2019 passed a judgment in Civil Application (F) No. 3497/2019 In First Appeal St. No. 29903/2018, wherein the Division Bench of this Court, in para 12, had relied on the judgment of the Hon'ble Supreme Court delivered in the case of **Postmaster General & Ors. Vs. Living Media India Limited & Anr., (2012) 3 SCC 563**, wherein the Hon'ble Supreme Court while declining to condone delay of 427 days in preferring Special Leave Petition has observed thus :

“XXXX In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ year due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few XXX”

Further, this Court in para 13 had also relied on the judgment delivered by the Hon’ble Supreme Court in the case of **Registrar of Companies Vs. Rajshree Sugar and Chemicals Limited & Ors. (2000) 6 SCC 133** wherein the Hon’ble Supreme Court has held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give license to the officers of the Government to shirk their responsibility to act with reasonable expedition.

10. Considering the aforesaid legal position, I would have rejected the applications out-rightly, however, it is informed by Shri Mehadia, learned

counsel for the appellant, that there are eight connected appeals which are also pending before this Court for adjudication wherein the lands of the family members of respondent No.1 were acquired out of the same notification.

11. Therefore, as the issue which is involved in this case is pending decision of this Court in other appeals, and in order to avoid inconsistency in adjudication of the market value for the similarly situated lands acquired under the same notification, I am constrained to condone delay and permit the appellant to bring the legal representatives of respondent No.1 on record by recalling order of setting aside abatement, however, subject to cost of Rs.10,000/- to be deposited by the appellant with the High Court Bar Association, Nagpur.

12. The Civil Applications stand disposed of.

JUDGE

Sumit