

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

930 CIVIL APPLICATION NO.13311 OF 2017
IN FAST/16905/2017

MAHADEO GEMA KADAM (DIED) THR LRS RAJUBAI AND ORS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Tripathi Manish P
AGP for Respondents/State : Mr. A.R. Kale
...

CORAM : Y.G. KHOBRAGADE, J.
DATE : 11th November, 2022

PC.:-

Heard advocate Mr. Tripathi learned counsel appearing for the applicants and Mr. Kale learned AGP for non-applicant.

2. The applicants have filed present application under Section 5 of the Limitation Act and prayed for condonation of delay 3446 days caused while lodging appeal against judgment and award dated 29.08.2007 passed in L.A.R. No.508/1991 by the C.J.S.D. Osmanabad.

3. The learned counsel appearing for the applicants vehemently canvassed that the non-applicant acquired irrigated land of the applicants due to which they are facing financial crisis and reference under Section 18 of the Land Acquisition Act was made. Ultimately, on 29.08.2007 the award came to

be passed, however, certified copy of the said award was made ready on 12.04.2017. The applicants due to their financial crisis could not file present appeal due to which delay of 3446 days is caused which is substantial, *bona fide* and not intentional.

4. Learned counsel appearing for the applicants relied on the order dated 09.01.2017 passed by this Court in C.A. No. 203/2012, order dated 01.03.2022 passed in C.A. No. 10796/2021 and order dated 12.08.2022 passed by this Court in C.A. No.1696/2020, wherein, the delay of more than 7000 days was condoned. However, it has been held that the applicants would not be entitled for interest and the statutory benefits for the delayed period.

5. The learned AGP vehemently canvassed that the applicants require to explain the day to day delay, however, the applicants have not shown any *bona fide* and substantial reason. Therefore, he prayed for rejection of the application.

6. In the present application, it *prima facie* appears that on 29.08.2007 the Reference Court passed the impugned judgment and award, however, due to financial crisis the applicants could not file appeal within the statutory period which appears to be substantial and *bona fide*. Therefore, by

exercising discretionary powers conferred under Section 5 of the Limitation Act and in the interest of justice, it would be just and proper to condone the delay of 3446 days caused in filing the present appeal. Accordingly, I proceed to pass the following order:

ORDER

- I) The application for condonation of delay is hereby allowed.
- II) The delay of 3446 days in filing the appeal is hereby condoned.
The applicant shall not be entitled for the interest and statutory benefits for the delayed period.
- III) The Registry is directed to register the first appeal and place it before the Court for further action.

[Y.G. KHOBRADE, J.]