

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

922 CIVIL APPLICATION NO.9635 OF 2018
IN FAST/16319/2018

UMESH MURLIDHAR DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA THR COLLECTOR JALGAON AND
ORS

WITH
CIVIL APPLICATION NO. 9636 OF 2018
IN
FIRST APPEAL STAMP NO. 16601 OF 2018

DNYANESHWAR HIMMAT GHATE
VERSUS
THE STATE OF MAHARASHTRA THR COLLECTOR
JALGAON AND OTHERS

...
Advocate for Applicant : Mr. Y. R. Neb h/f Mr. Kale Ajeet B.
AGP for Respondents: Mrs. D. S. Jape
Advocate for respondent No.3 : Mr. B. K. Patil

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CORAM : S. G. DIGE, J.
DATE : 20.09.2022

PER COURT :-

Heard learned counsel for the applicant and
learned AGP and learned counsel for respondent No.2.

2. Learned counsel for the applicant submits that
land of the applicant is acquired by respondent No.2. The
compensation awarded to the applicant was very meager hence

applicant filed reference petition before the Reference Court at Jalgaon. The reference Court has also awarded meager compensation of Rs. 250/- per Are for jirayat land whereas there was claim of the applicant to grant Rs. 1,000/- per Are. Applicant is being poor agriculturist, after the decision of the Reference Court, applicant could not contact to Advocate and he was not aware about the procedure about filing appeal for enhancement of amount. Hence there is delay of 635 days for filing the appeal. Hence requested to allow the application.

3. Learned counsel further submits that Hon'ble Apex Court in the case of ***Ningappa Thotappa Angadi (Dead) through L.Rs. Vs. The Special Land Acquisition Officer and others*** in Civil Appeal No. 9415 of 2019 decision dated 13th December, 2019 has held that while condoning the delay "equities can be balanced by denying the Appellants' interest for the period for which they did not approach the Court. The substantive right of the Appellants should not be allowed to be defeated on technical ground by taking hypetechnical view of self-imposed limitations." Hence requested to allow the application.

4. Learned counsel for respondent No.2 submits that

there is no proper explanation given about the delay condonation. Being a poor agriculturist is no ground to condone the delay. The affidavit was sworn in by the applicant in the month of June 2018 but thereafter after 24 days the application was filed. So there is no proper explanation about condonation of delay hence requested to dismiss the application.

5. I have heard all learned counsel. Admittedly the land of applicant is acquired by respondent No.2. Applicant is seeking enhancement of amount granted by learned Reference Court. Applicant is claiming that he is poor agriculturist and he was not aware about the procedure of filing appeal for enhancement. As per view taken by the Hon'ble Apex Court in the case of **Nigappa Thotappa Angadi** (supra) that substantive right should not be defeated by taking hyper technical approach and if interest for delayed period is denied to the applicant, it would meet ends of justice. Hence I pass the following order.

ORDER

- (I) Application is allowed.
- (ii) Delay of 316 days is condoned.
- (iii) Applicant shall not claim interest and statutory benefit for delayed period and shall file undertaking in that

regard.

- (iv) Appeal be registered.
- (v) Application is disposed of accordingly.

**(S.G. DIGE,)
JUDGE**

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