

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

CIVIL APPLICATION NO.9980 OF 2019 IN FAST/28373/2018

SHANKARAPPA RAMAPPA GHALE (DIED) THROUGH LRS
VAIJANATH SHANKARAPPA GHALE
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr. G.N. Choncolkar, Advocate for the Applicant

Mr. Shashibhusan P. Deshmukh, AGP for Respondent Nos. 1 and 2

Mr. Sham B. Patil, Advocate for Respondent No.3

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 02nd MARCH, 2022

PER COURT:-

1. It is an application for condonation of delay moved by the applicant / original claimant.
2. Heard Mr. Chincholkar, learned counsel for the applicant / original claimant, Mr. Deshmukh, learned AGP for respondent nos. 1 and 2 / State and Mr. Sham Patil, learned counsel for respondent no.3 / acquiring body.
3. Mr. Sham Patil, learned counsel for respondent no.3 / acquiring body and Mr. Deshmukh, learned AGP for respondent nos. 1 and 2 / State strongly opposed to condone the delay. They submitted that there is inordinate delay in filing the appeal.

No sufficient reasons are assigned by the applicant to condone the delay. The application may be rejected.

4. Mr. Chincholkar, learned counsel for the applicant / original claimant submitted that in view of decision in case of ***Dhiraj Singh Vs. The State of Haryana*** reported in ***(2014) 14 SCC 127***, the delay needs to be condoned by taking pragmatic view.

5. I have considered the submissions of learned counsel appearing for the respective sides and the learned AGP for the State. It is a case of compulsory land acquisition. The applicant / claimant intends to prefer an appeal for enhancement of compensation. However, there seems to be delay of 3365 days in preferring the appeal. In case of compulsory land acquisition and the appeals arising thereof for enhancement of compensation at the hands of claimants, different yardstick needs to be applied for condonation of delay. In case of ***Dhiraj Singh Vs. The State of Haryana*** (supra), it is observed by the Hon'ble Supreme Court that the approach of the Court in dealing with the delay condonation application arising out of land acquisition matters must be pragmatic and not pedantic. Substantive rights of the appellant and land owners cannot be allowed to be defeated on technical

grounds by taking hyper technical view of self imposed limitation. The same view also finds place in case of *K. Subbarayudu vs. Special Deputy Collector 2017 (12) SCC 840*.

6. Having regard to the guidelines laid down by the Hon'ble Supreme Court in above referred citations and looking to the facts of the case, it is necessary to condone the delay though it appears to be of huge nature. It would not be just and proper to throw away the appeal at the threshold by taking hyper technical view. At the same time, it is necessary that the applicant / claimant shall not be entitled to get statutory benefits and the interest in respect of delayed period by way of equity and he has to furnish necessary undertaking to that effect with the Registrar (Judicial) of this Court.

ORDER

(i) The application for condonation of delay is hereby allowed in terms of prayer clause (B).

(ii) The applicant / original claimant shall furnish undertaking with the Registrar (Judicial) of this Court stating that he shall not claim the statutory benefits and interest in respect of delayed period.

(iii) After furnishing the undertaking by the applicant / original claimant, the Registry to make scrutiny of the appeal as per procedure and it be numbered and place before the Court for admission.

(iii) The civil application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane