

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

34 CIVIL APPLICATION NO.14682 OF 2019
IN FAST/35769/2019

SHRIPATI PIRAJI MHETRE (DIED) THR LRS GUNVANTRAO AND
OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Mr. Sonkawade A. D. i/b.
Mr. Shrikant J. Sonkawade
AGP for Respondent – State : Mr. P. N. Kutti
Advocate for Respondent No. 2 : Mr. Deshpande Ram B.
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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 01.08.2022

PER COURT :

. Heard.

2. The applicants are seeking condonation of 4137 days in filing first appeal against the impugned Judgment and award dated 15.04.2008 in LAR No. 481/2007 passed by the learned Civil Judge Senior Division, Ahmedpur.

3. The learned counsel for the applicant submits that though the award was passed in the year 2008 but the applicants have received the compensation amount in

September 2019 and therefore, the huge delay has been caused.

4. The learned counsel for respondent No.2 - acquiring body strongly opposed the application on the ground that no proper explanation of the delay is set out. The learned AGP also opposed the application on similar ground.

5. The learned counsel for the applicants placed his reliance on the following citations :

1. Dhiraj Singh (Dead) Through Legal Representatives and Others Versus State of Haryana and Others (2014) 14 SCC 127,
2. K. Subbarayudu and Others Versus Special Deputy Collector (Land Acquisition), (2017) 12 SCC 840,
3. Pralhad Rambhau Dhole through L.Rs. and others Vs. State of Maharashtra and another, 2019 (4) Mh.L.J. 89.

6. In the first judgment, the Honourable Apex Court in para 16 has been made following observation :

16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in [Collector \(LA\) v. Katiji \(1987\) 2 SCC 107](#) : 1989 SCC (Tax) 172, wherein it is stated in

para 3 as under: (SCC p. 108)

“3. The legislature has conferred the power to condone delay by enacting [Section 5 of the Limitation Act of 1963](#) in order to enable the courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression ‘sufficient cause’ employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical

considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

(emphasis in original)

7. The Honourable Apex Court relying on the aforesaid observations appear to have condoned the huge delay of 3671 days in the second judgment. It is observed in Para -8, 9, 10, 11 and 12, 13 as follows :

8. Heard the learned counsel for the parties at some length. Perused the impugned judgment and considered the documents and other materials placed on record.

9. The High Court dismissed the claimants' appeal mainly on the ground of delay of 3671 days in filing the appeal. On perusal of records, it is seen that the appellants have explained the reason for the delay in filing the appeal stating that they have entrusted the relevant papers to their co-villager namely, Pullaiah

who is well-conversant with the court proceedings and the said Pullaiah has also taken steps to engage an advocate at Hyderabad and the said Pullaiah informed that the appeal was filed and left for Kuwait to eke out his livelihood. Thus the appellant claimants were under the impression that the appeal has been filed. The claimants have further stated that when they inquired the said Pullaiah, he informed them that he went to the house of Sri Jaganmohan Raju, Advocate and he learnt that the said advocate is no more and expired in 2012 itself and on enquiry with the clerk of the said advocate, he learnt that no appeal has been filed and this has caused a delay of 3671 days in filing the appeal. The High Court rejected the explanation given by the appellants on the ground that there are contradictions between the affidavit filed by the said Pullaiah and the stand of the claimants and being not satisfied with the reason for the delay of 3671 days in preferring the appeal, the High Court dismissed the appeal.

10. Before the High Court, the appellants relied upon Yellasiri Sarojanamma's case, (2017) 12 SCC 848, in which the High Court condoned the delay of 3386 days in filing the land acquisition appeal suit subject to the condition that in the event, the appellant claimant thereon succeed in appeal, she is not entitled to any interest in respect of the period of delay. The appellants contended that the same approach ought to have been adopted in the case of

appellants also. Insofar as, the reliance placed upon by the claimants in LASS No.46 of 2015, the High Court seems to have brushed aside the contention of the appellants on the puerile ground that the relevant fact situation in the said case is not forthcoming in the said order. In our view, the High Court was not right in adopting a different yardstick in the case of the appellants in not condoning the delay.

11. The term "sufficient cause" is to receive liberal construction so as to advance substantial justice, when no negligence, inaction or want of bona fide is attributable to the appellants, the Court should adopt a justice-oriented approach in condoning the delay. In [State of Nagaland v. Lipok AO and Others](#) (2005) 3 SCC 752: 2005 SCC (Cri) 906, it was held as under : (SCC p. 757, para 8)

"8. ... "Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go into the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient".

12. With the acquisition of lands, the lifeline of the agriculturist is lost. There may be omission on the part of the claimants to adopt extra vigilance; but same need not be used as a ground to depict them

with negligence or want of bona fide. In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not be pedantic in their approach. In Dhiraj Singh vs State of Haryana, (2014) 14 SCC 127 : (2015) 1 SCC (Cri.) 236 : (2014) 9 Scale 441, it was held as under : (SCC p. 131, para 15)

“15. Equities can be balanced by denying the appellants’ interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic.”

13. When the court concerned has exercised its discretion either condoning or declining to condone the delay, normally the superior court will not interfere in exercise of such discretion. The true guide is whether the litigant has acted with due diligence. Since the appellant claimants are the agriculturists whose lands were acquired and when similarly situated agriculturists were given a higher rate of compensation, there is no reason to decline the same to the appellants. Merely on the ground of delay such benefit cannot be denied to the appellants. The interest of justice would be served by declining the

interest on the enhanced compensation and also on the solatium and other statutory benefits for the period of delay. "

8. In the instant matter also the compensation amount appears to be received by the applicants belatedly. The learned counsel for the acquiring body is unable to point out when the compensation amount was deposited. Under such circumstances and in view of the observations made by the Honourable Apex Court, though delay of 4137 days seems to have inordinate, can be condoned in the interest of justice.

9. Thus, the application stands allowed and the delay of 4137 days stands condoned subject to condition that the applicant shall not claim any interest for the aforesaid period of delay. No costs.

**(SANDIPKUMAR C. MORE)
JUDGE**

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shp/-