

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2905 OF 2016
IN
FIRST APPEAL (ST) NO. 16260 OF 2016**

The Executive Engineer,
Minor Irrigation Division, Nashik

.. Applicant/
Appellant

Versus

Shree Kapil Mahamuni Devstan Trust & Ors. .. Respondents

Mr. Vivek Rane i/b Mr. A.K. Kapadani for the Applicant.

Mr. Nikhil Pujari for the Respondent No. 1.

Mr. N.B. Patil for Respondent No. 3.

CORAM: ABHAY AHUJA, JJ.

DATE : 17th JUNE 2022

P.C. :-

1. By this Application, the Applicant is seeking condonation of delay of 2 years and 314 days in filing the First Appeal against Judgment and Order dated 4th May 2013, passed by Learned Joint Civil Judge Senior Division, Nashik in Land Reference No. 102 of 2004.

2. Learned Counsel Mr. Rane for the Applicant/ Appellant draws attention of this Court to paragraphs No. 9 and 11 to 20 of

the application to explain the delay. Learned Counsel would submit that notice of the Judgment and Award was received after receipt of notice dated 25th February 2014 after which legal opinion was sought. On 18th April 2016, the Panel advocate opined that no purpose would be served by filing the Appeal. However, as stated in paragraph no. 14 of the application, the Government by its letter dated 8th October 2015 had inquired as to why the Applicant had not filed Appeal before this Court. Thereafter, another opinion was sought on 7th May 2016, after which, the Advocate for the Applicant on 27th May 2016 advised filing of the Appeal. Thereafter, Appeal alongwith this Application came to be filed on 15th June 2016.

3. Learned Counsel submits that the Applicant is an acquiring body, does not have any independent source of income and had been continuously requesting Respondent No. 3 Government for necessary funds to comply with the award. Government had inquired as to why the Appeal was not filed. Learned Counsel submits in this view of the matter, there has been no deliberate delay caused by the Applicant in filing the Appeal and, therefore, the said delay deserves to be condoned.

4. On the other hand Mr. Pujari learned Counsel for Respondent No. 1 would submit that despite the legal opinion advising the Appellant not to file an Appeal as no useful purpose would be served, the Applicant/Appellant has filed this Appeal after considerable delay of almost three years. Learned Counsel for Respondent draws attention of this Court to the reply dated 14th July 2016 filed on behalf of Respondents. He submits that although the awarded amount has been accepted and had been withdrawn by his client, the Respondents are apprehensive that by condoning the delay and permitting filing of this Appeal, grave prejudice may be caused to his clients. He, therefore, submits that Application for condonation of delay be dismissed.

5. I have perused the Application for condonation of delay as well as reply filed on behalf of Respondents and also heard learned Counsel for the parties.

6. Admittedly, the land was acquired for a public purpose by the minor Irrigation Department of the State and admittedly the amount of compensation awarded to the Respondents has been received by the Respondents. It is submitted on behalf of the

Respondents that they have accepted the compensation without any objection.

7. No-doubt, there is a delay of almost three years in preferring an Appeal. In cases of appeals by acquiring bodies where there is acquisition of land of private parties, such parties are always exposed to the risk of losing the compensation received by them while at the same time having already lost the benefit of otherwise using their property for such uncertain periods, since the acquisition is for public purpose there would hardly be any chance of restitution. However, considering that the lands have been acquired for a public purpose and Appellant/Applicant claims that the Special Land Acquisition Officer has rightly determined the compensation which has been ignored by the Reference Court, and considering the chain of events, notice of the Judgment and Award dated 4th May 2013 having been received pursuant to notice dated 25th February 2014, after which one opinion dated 18th April 2016 advising that no Appeal be filed followed by a letter dated 8th October 2015 by the Government, questioning the applicant as to why an Appeal was not filed after which another opinion dated 27th May

2016 advising filing of the Appeal and finally the Appeal being filed on 15th June 2016, it would be necessary to consider public interest and the processing time consumed in taking decision while considering the delay caused for filing Appeal by Government/Public Authorities.

7. I am convinced therefore that there is sufficient cause for condoning the delay in filing of this Appeal. The delay of two years and 314 days is condoned.

8. Civil application No. 2905 of 2016 is disposed of.

9. List the First Appeal alongwith Civil Application No. 2906 of 2016 on 15th July 2022.

(ABHAY AHUJA, J.)