

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (F) NO.2430 OF 2021

IN

FIRST APPEAL (ST.) NO.10755 OF 2020

{Executive Engineer, Irrigation Department, Yavatmal and Anr. ..Vrs..
Baliram Bhima Chandekar through LR's and Ors.}

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Ms I. P. Khisti, Advocate for the Applicants/Appellants.
Shri K. S. Narwade, Advocate for the Respondent No.1.
Shri J. Y. Gurde, Advocate for the Respondent Nos.2 to 5.
Shri M. A. Kadu, AGP for the Respondent Nos.6 and 7.

CORAM : ABHAY AHUJA, J.

DATE : 22nd SEPTEMBER, 2022.

. This is an application seeking condonation of delay of 513 days in preferring an appeal against the judgment and order dated 28.02.2018, passed by the Civil Judge, Senior Division, Kelapur, in LAC No. 03 of 2012, enhancing the compensation claimed by the respondents.

2. Ms Khisti, learned counsel appearing for the applicants/appellants draws the attention of this Court to paragraphs 3 to 6 of the application in support of her contention to explain the delay caused in filing the first appeal.

3. Shri Narwade, learned counsel appearing for the respondent no.1 opposes the application for condonation of delay and draws the attention of this Court to the affidavit-in-reply dated 21.02.2022 to submit that the application is bereft of any particulars explaining the delay. The learned counsel submits that the land of the claimants was acquired way back

in the year 2008 and after acquisition, the same has already been put to use. He submits that claimants have not received any part of the enhanced compensation which is due to them, and therefore, the delay should not be condoned. Shri Gurde, learned counsel appearing for the respondent nos.2 to 5 adopts the arguments of Shri Narwade, learned counsel and opposes the application.

4. I have heard the learned counsel for the parties and also perused the application for condonation of delay of 513 days.

5. The impugned decision is dated 28.02.2018 and as stated, the learned counsel has applied for the certified copy on 19.03.2019, which was received on 28.03.2019. The Executive Engineer opined with respect to the filing of the appeal on 02.05.2019. Thereafter, the Superintending Engineer gave his opinion on 01.06.2019, after which, the matter was referred to the legal advisor, who finally gave his opinion that an appeal be filed on 14.06.2019. Thereafter, the case papers were submitted to the counsel on 26.06.2019. The counsel requested for court fee on 28.06.2019, which was provided on 28.09.2020. The appeal has come to be lodged on 23.10.2020. As such the delay from 19.03.2019 to the date of lodging of the appeal appears to be explained.

6. On a query by the Court as to the delay from the date of the judgment viz. 28.02.2018 till the application for certified copy on 19.03.2019, the learned counsel submits that, the delay could be attributable to the local counsel. The learned counsel further submits that an omission on the part of the counsel should not affect the case of a client and

therefore the delay be condoned. An action of omission on the part of the counsel cannot and should not jeopardize the case of a litigant. However, it goes without saying that merely a statement that the delay is attributable to counsel would not ordinarily be sufficient to absolve the appellant/corporation of its responsibility to file appeals in time though this Court is inclined to condone the delay in this matter, considering the explanation given from the date of application of certified copy till the date of lodging of the appeal.

7. This Court would however recommend that some policy be formulated by the appellant/corporation so that there is zero delay in preferring the appeals filed by the corporation particularly, considering that it is a State corporation and needs to set an example to other public corporations in the State.

8. The delay of 513 is hereby condoned. Let the appeal be registered within a period of two weeks. Application accordingly stands disposed.

FIRST APPEAL (ST) NO.10755 OF 2020.

9. Let the Memo of Appeal alongwith complete annexures be served upon the respondents within a period of four weeks and an affidavit of service with tangible proof be filed in this Court by the next date.

10 List the matter on **09.11.2022.**

CIVIL APPLICATION (F) NO.2431 OF 2021.

11. The learned counsel for the applicant submits that the cheque for depositing the entire amount is ready and seeks one week time to deposit the same.

12. Let the cheque of the entire amount be deposited within a period of one week. List the matter for further consideration on **09.11.2022.**

(JUDGE)

TAMBE