

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 30637 OF 2022
IN / WITH
FIRST APPEAL NO. 174 OF 1992

Jeevan Hiru Katekar

...Applicant/

...Appellant

Versus

The Special Land Acquisition Officer, Panvel

...Respondent

HUSENBASHA
RAHAMAN
NADAF

Digitally signed by
HUSENBASHA
RAHAMAN NADAF
Date: 2023.12.07
10:52:49 +0530

Mr. S.M. Kamble, for Applicant.

Ms. Tanaya Goswami, AGP Advocate for Respondent/State.

CORAM : M.M. SATHAYE, J.

DATE : 4th DECEMBER, 2023

P.C. :

1. This is an application for restoration of the above First Appeal. There is delay of more than 7 years in filing this application.

2. Heard learned counsel for the Applicant and learned AGP for the State. Learned counsel for the Applicant invited this Court's attention to the averments in the application and submitted that this was an appeal admitted way back 02.04.1992. He submitted that the matter is arising out of land acquisition wherein the Applicant has lost his land under compulsory acquisition. He submitted that the Applicant has not received any compensation till date. He submitted that on 29/01/2015, this old First Appeal No. 174 of 1992 was listed for hearing along with accompanying Appeal by the State (First

Appeal No. 936 of 1992), when none appeared for Appellant / original claimant as well as the State and both the appeals were dismissed for default.

3. He further submitted that Applicant's advocate informed him after admission of the Appeal in 1992 that whenever the matter would be listed for final hearing the Applicant would be informed and as such he was waiting all these years for the necessary message from his advocate. He further submitted that in the year 2022 the Applicant himself contacted the lawyer, inquiring about status of the Appeal, when for the first time, he was informed that Appeal is already dismissed for default in January 2015.

4. Mr. Kamble learned counsel for the Applicant therefore urged that the Applicant was not at all aware till 2022 about the dismissal of the Appeal for default on 29/01/2015. He further submitted that after getting the knowledge, he has taken immediate steps and the present application is filed in November, 2022. In these facts and circumstances, it is urged that this is a fit case for condonation of the delay and restoration of the Appeal.

5. Perusal of the Order dated 29/01/2015 shows that neither the Appellant/Claimant nor Respondent/State were present when both the appeals i.e. the present First Appeal as well as accompanying Appeal of the State, were listed for final hearing.

6. Having considered the aforesaid submissions and further going through the averments in the application, considering the lack of knowledge to the Applicant, and also considering the fact that no

reply is filed till date, sufficient cause is made out. Hence, this application is allowed in terms of prayer clauses (a) and (b). Delay is condoned. The above First Appeal is restored to file.

7. The above Interim Application is disposed off.

8. Place the above First Appeal under the caption of final disposal on 19/12/2023.

9. All concerned to act on authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)