

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

CIVIL APPLICATION (F) NO. 4504/2019 IN FIRST APPEAL STAMP NO. 4/2018

(SHANTABAI FULCHAND PANDE, THR. POA HOLDER ASHOK FULCHAND PANDE **VERSUS** THE STATE
OF MAHARASHTRA & ANOTHER)

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

Court's or Judge's order

Shri S.C. Mehadia, counsel for the applicant.

Ms T.H. Udeshi, Assistant Government Pleader for the non-applicant no.1.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : FEBRUARY 24, 2023.

The present application is filed by the applicant for seeking condonation of delay.

The learned counsel for the applicant submitted that the applicant is the owner of Field Gat No.115 and 158 of village Yeota, District Akola. The said lands were acquired by the Government. The applicant has received the compensation under protest and being aggrieved thereby she has filed a reference petition before the District Court, Akola. The husband of the applicant had also filed the reference petition bearing L.A.C. No. 318 of 1997 and during the pendency of the said proceedings, her husband expired and his legal representatives were brought on record in the said proceedings. Thereafter the son of the applicant who was the power of attorney holder was regularly in contact with their counsel and was enquiring about the status of the matter. The counsel informed the applicant that her claim is allowed by the Court. However, the respondents therein have challenged the said decision before this Court. By believing the words of their counsel the applicant has not taken any step on or about 14.07.2017. It was informed to the applicant by one of his relative that the claim enhanced by the lower Court can be recovered even during the pendency of the appeal before the High Court and therefore he can prefer the execution proceedings in the matter. Immediately, thereafter the applicant approached his advocate and made enquiry about filing of the recovery proceedings and it was informed to him that for filing of the execution proceedings certified copies of the award are required. Therefore he applied for

the certified copies. On obtaining the certified copies it came to his knowledge that in fact his application is dismissed by the Court below. Thus, it is submitted by the learned counsel for the applicant that since her counsel never informed her about the dismissal of the petition she could not challenge the said award within time before this Court. The learned counsel for the applicant submitted that the applicant should not suffer for the mistake of his counsel. It is thus prayed that the delay caused in preferring the application be condoned.

The notice of the application is duly served on the non-applicants. But none appears for the non-applicant no.2.

The learned Assistant Government Pleader for the non-applicant no.1 raised an objection on the ground that the reasons mentioned in the application are not justifiable and hence the application deserves to be dismissed.

Perused the application and Heard the learned counsel for the parties. The application is supported by the copy of the award. It is apparent that the reference was dismissed on 04.03.2005. On affidavit the applicant has stated that it was the counsel who has not informed about the dismissal of the proceedings. On the contrary wrong information was supplied to the applicant that the award was passed but the other side has preferred an appeal. Judicial note can be taken of the fact that rustic villagers always depend upon their counsel to get information as they are not aware of the legal provisions and they blindly trust their counsel. It is pertinent to note that the litigants always suffer due to the wrong information supplied either by the counsel or on behalf of the counsel. Here in the present case it is apparent that as the wrong information was supplied to the applicant, she could not approach the Court for preferring the appeal. The reason mentioned in the application is just and reasonable. It is well settled that while considering the application for condonation of delay, the approach must be liberal and pragmatic and not pedantic. Considering the reasons mentioned in the application, the same deserves to be allowed subject to waiver of interest for the period of delay in case the applicant succeeds in the appeal.

For the reasons stated in the application, the delay is condoned. The application is allowed and disposed of. The appeal be registered.

FIRST APPEAL STAMP NO. 4/2018.

Heard. **ADMIT.**

Learned Assistant Government Pleader Ms T.H. Udeshi waives notice of hearing for the respondent no.1.

Call for Record & Proceedings.

The appellant to file the private paper book within a period of eight weeks from today.

List the matter for final hearing after the private paper book is filed.

(URMILA JOSHI-PHALKE, J.)

APTE