

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

CIVIL APPLICATION (CAO) NO.113 OF 2023

Harihar Nilkanth Kalmegh

Vs.

Vidarbha Irrigation Development Corporation, through Executive Engineer,
Nagpur and another

IN

CROSS OBJECTION STAMP NO.1777 OF 2023

Harihar Nilkanth Kalmegh

Vs.

Vidarbha Irrigation Development Corporation, through Executive Engineer,
Nagpur and another

IN

FIRST APPEAL NO.904 OF 2018

Vidarbha Irrigation Development Corporation, through Executive Engineer,
Nagpur

Vs

Harihar Nilkanth Kalmegh and another

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

Court's or Judge's orders

Mr. C. R. Najbile, Advocate for the cross-objector/applicant.
Mrs. Ujjwala Arun Patil, Advocate for the respondent No.1.
Ms. T. Udeshi, AGP for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/02/2023

1. This application is filed by the original claimant for delay condonation which is caused in preferring the cross-objection.

2. As per the contention of the cross-objector, the appellant – acquiring body had preferred the instant appeal against the Judgment and Award passed by the Joint Civil Judge Senior Division, Nagpur in Land

Acquisition Case No.281 of 2012 decided on 12.01.2015.

3. The cross-objector is rustic villager who is not conversant with the legal affairs. He could not contact the counsel earlier as he was busy in agricultural operation and then he contacted the counsel in the last week of December, 2022 for filing the cross appeal, therefore, delay of 933 days is caused. The reason mentioned in the application is just one. Delay is not intentional one and in view of that delay be condoned.

4. The said application is strongly opposed by the learned Advocate Mrs. Patil, for the respondent No.1, on the ground that the reasons mentioned in the application are not sufficient and justifiable one. Present appeal is admitted on 18.06.2018. Thereafter, the cross-objector has not taken any steps to file in cross-objection. Thus, the reason mentioned in the delay application is not just and reasonable one and delay condonation application deserves to be rejected.

5. In support of the contention learned Advocate Mr. Najbale, for the cross-objector, placed reliance on **State of Maharashtra Vs. Kalu Ladku Mhatre**, reported in **2011(6) of ALL MR 242**, wherein it is held by this Court that sufficient cause need not be shown and Appellate Court has wide power to extend time to file cross-objection. He further relied upon **Imrat Lal and**

others vs. Land Acquisition Collector and others reported in **(2014) 14 SCC 133**, wherein Hon'ble Apex Court has considered the aspect and held that judicial note can be taken of the fact that the villagers in our country are by and large illiterate and are not conversant with the intricacies of the law. They are usually guided by their co-villagers, who are familiar with the proceedings in the court or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half-baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the court should adopt a liberal approach and either grant time to the party to file a better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.

6. By placing reliance on this observation learned Advocate Mr. Nabjile submitted that considering the cross-objector is illiterate person not aware about the legal provisions. The cross-objector is ready to waive the interest for delayed period, if he succeeds in getting the relief, in view of the cross-objection.

7. On the other hand, learned Advocate Mrs. Patil invited my attention towards the observation in para No.7 of the Judgment of **State of Maharashtra Vs. Kalu Ladku Mhatre**, wherein this Court has held that though there is no requirement of establishing sufficient cause within the meaning of Section 5 of the Limitation Act, in the application for seeking extension of time to file the cross-objection, brief reasons for delay will have to be set out.

8. Heard rival submissions of the parties. Perused the application.

9. Admittedly, the appeal is admitted by this Court on 18.06.2018. Thereafter, present cross-objector has appeared in the appeal and engaged his counsel. The reason mentioned in the application is that he was not aware about the legal provisions. In fact, he has already engaged the counsel. However, no cross-objection is filed after appearance immediately by the cross-objector. It is settled law that while considering the delay application Court has to take the liberal and pragmatic approach and not the pedantic approach. The Hon'ble Apex Court has also held that the litigants especially in the matter of land acquisition wherein they are entitled for compensation cannot be deprived of on a technical grounds of delay to approach the Court when the other

litigants have already received the similar relief. The observation of the Hon'ble Apex Court that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. Sometimes they are not guided properly and that can be a reason for the delay. This Court has also considered the aspect of delay in filing the cross-objection and held that Sub Rule 1 of Rule 22 of Order 41 deals with the grant of extension of time for filing of cross-objection and Section 5 of the Limitation Act deals with extension of time to prefer an appeal. Section 5 of the Limitation Act incorporates a condition precedent of the appellant satisfying the Appellate Court that he had sufficient reason for not preferring the appeal within the prescribed period of limitation. Sub Rule 1 of Rule 22 of Order 41 does not incorporate the stringent requirement of establishing a sufficient cause. Thus, a wide power to extend the time to file cross-objection has been vested in the Appellate Court. Thus, the power to extend time under Sub Rule 1 of Rule 22 of Order 41 of the Code has to be liberally exercised in case where a Cross-objection is sought to be filed after inordinate delay.

10. In view of the statement made by the cross-objector that if the cross-objector succeeds in enhancement of the compensation, he is ready to waive the interest for the delayed period and subject to the same, delay application deserves to be allowed.

11. In view of that Civil Application No.113/2023 is allowed.

12. Delay of 933 days is condoned subject to the waiver of interest, if cross-objector succeeds in enhancement of the compensation.

13. Cross-objection be registered.

CROSS OBJECTION NO. OF 2023

1. Learned Advocate Smt. Patil waives notice for the respondent No.1/VIDC.

2. Learned AGP Ms. T. Udeshi, waives notice for respondent No.2.

3. Stand over after four weeks.

(URMILA JOSHI-PHALKE, J.)

Sarkate