



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

CIVIL APPLICATION (CAF) NO. 861 OF 2023
IN

FIRST APPEAL (ST) NO. 2006 OF 2023

The Executive Engineer, Bembla Canal Divsion, Yavatmal
VS.

Babitai Kishor Kuradkar and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri Tariq M. Zaheer, Advocate the appellatant.
Shri M.A. Kadu, AGP for respondent Nos. 2 and 3.

CORAM : G.A. SANAP, J.
DATE : OCTOBER 7, 2023.

1. Respondent No.1 is served though absent.
2. Heard Shri Tariq M. Zaheer, learned Advocate for the appellatant and Shri M.A. Kadu, learned AGP for respondent Nos.2 and 3.
3. This is an application for condonation of 239 days delay caused in filing appeal against the impugned judgment and award dated 15.01.2022.
4. The reasons for delay have been set out in the application. It is stated that due to administrative procedural delay, the appeal could not be filed within time. It is further stated that there was lack of communication between the officials. The opinion of the superiors was required for filing the appeal. By the time the opinion was received, the period

of limitation was over.

5. Learned AGP for the State submits that Court may pass an appropriate order.

6. In view of the reasons stated in the application, I am of the view that a case is made out to condone the delay subject to certain conditions. The appellant is acquiring body. In my view, in such cases, saddling the public undertaking only with cost, may not serve larger public interest. In such cases, other options need to be explored and made available to the party. Issuing direction to the public undertaking or other Government bodies to plant particular number of trees in each case, could be the best available option. Plantation of trees would be beneficial to one and all. In my view, therefore, by way of a condition for condonation of delay, the appellants can be given an option. Accordingly, in this case, delay is condoned. It is subject to condition that the appellant shall plant twenty-five trees or pay cost of Rs.10,000/- (Rupees Ten Thousand only) and deposit the said cost in this Court. Learned advocate for the appellant shall file a pursis and exercise the option.

7. As far as the mechanism for implementation of this direction is concerned, the same shall be identical to the one set out in para Nos. 7 and 9 of the order dated 25.09.2023 passed in CAF No. 130 of 2020. Para Nos. 7 and 9 are extracted below :

“7. Concerned acquiring body, Government office or the appellant, as and when directed to plant trees, shall comply the said order and make a report of the

same to the District Forest Officer of the concerned district. The District Forest Officer of the concerned district from Vidarbha Region, on receipt of the report, as above, shall depute a responsible officer to the spot for inspection. The District Forest Officer shall maintain record of the same for two years. The District Forest Officer of the concerned district, after inspection, shall forward the compliance report to the Secretary, High Court Legal Services Sub-Committee, Nagpur. The Secretary of High Court Legal Services Sub-Committee, Nagpur shall maintain case-wise record and as and when required, shall place the same before this Court. The Secretary, High Court Legal Services Sub-Committee, Nagpur can take help of the Secretary of the District Legal Aid Services Authority of the concerned district from Vidarbha Region for the purpose of verification and report.

9. The appellant/authority concerned on exercising option of plantation of trees, will be responsible to maintain the planted trees for two years from the date of plantation. The appellant/authority, in all such cases, shall first utilize the land available with it. In case, the land is not available, the concerned appellant/body/authority shall make request to the in-charge of the Social Forestry Department of the concerned district as well as to the Collector or the Tahsildar of the concerned district/taluka for making the Government land available for plantation. The officer of Social Forestry Department/Collector/Tahsildar shall do the needful as and when such request is received.”

8. The concerned party or authority, on exercise of option, shall comply the order as early as possible and in any case within one month. The Registry shall register the appeal on filing pursis by the appellant exercising option.

9. In case the appellant exercise the option of plantation

of trees, copy of this order be forwarded to the Secretary, High Court Legal Services Sub-Committee, Nagpur, the District Forest Officer, Yavatmal for information.

11. The application stand **disposed of**, accordingly.

12. Appeal be registered.

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1. Heard.

2. **ADMIT.**

3. Issue notice to the respondents.

4. Learned AGP waives service of notice on behalf of respondent Nos. 2 and 3.

5. Call for record and proceedings.

6. Paper book be filed within twelve weeks from the date of receipt of record and proceedings.

7. Four weeks time is granted to deposit the compensation amount along with the accrued interest. There shall be stay to the execution of impugned judgment and order dated 15.01.2022 in view of order dated 27.03.2023 subject to deposit the balance amount with accrued interest. If not deposited within eight weeks then stay shall stand vacated automatically without further reference to the Court.

(G. A. SANAP, J.)

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