

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

CIVIL APPLICATION (F) NO. 782 OF 2022
IN
FIRST APPEAL (STAMP) NO. 4131 OF 2022

KAILASH SHAMRAO KALE

VS

THE STATE OF MAHARASHTRA THROUGH COLLECTOR, YAVATMAL AND OTHERS

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.Chaitanya Kulkarni, Advocate h/f. Mr.Anand
Deshpande, Advocate for applicant.
Ms. Trupti Udeshi, AGP for respondent Nos.1 and 2.

CORAM : URMILA JOSHI-PHALKE J.

DATE : 03/02/2023

Heard.

2. By this application the applicant/claimant is seeking condonation of delay of 2556 days, which is caused in filing the present appeal against the judgment and Award passed by the Land Reference Court in LAC No. 114 of 2005. The reference Court has decided the Reference which was filed under Section 18 of the Land Acquisition Act.

3. As per the contention of the applicant, that he is a poor agriculturist and completely

dependant upon the agricultural income. But his land was acquired and now he has no source of income. He is a rustic villager and unaware about the legal provision. He was having full faith on his counsel and therefore, he handed over all the documents to the counsel. He was not keeping well due to ailments and was unable to visit the counsel. Therefore, he could not adduce evidence in the reference Court and the reference Court has partly allowed the application.

4. He further contended that the applicant was facing financial crisis as well as there was COVID-19 pandemic situation therefore, he could not engage counsel to prefer an appeal and thus delay caused is reasonable one. There was no intentional delay and hence, delay be condoned.

5. Said application is strongly opposed by the respondents on the ground that delay is not properly explained. It is alternatively submitted that if this Court condoned the delay, then it should be on the waiver of the interest for the said period.

6. Heard both sides. Perused the application. Learned Advocate in support of his contention relied upon *Dhiraj Singh (Dead) through LRs and others*

vs. State of Haryana and others (2014) 14 SCC 127 and *Imrat Lal and others vs. Land Acquisition Collector and others (2014) 14 SCC 133* wherein Hon'ble Apex Court observed judicial notice of the fact that the villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the courts 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.

He further placed reliance on the decision of this Court passed in Civil Application (F) No. 1211/2019, wherein also the case of *Imrat Lal*(supra) was considered and delay of 4569 days is condoned.

7. In the case in hand, it is apparent that the applicant has filed a reference petition which was partly allowed. He assigned reason that due to his ailment, he could not contact his counsel and could

not adduce evidence before the reference Court, therefore, his reference was partly allowed. It is well settled that the court should not adopt hyper technical approach while considering the delay application. Parties are permitted to litigate their cause on merits.

8. In view of the reasons mentioned in the application and to afford one more opportunity to the applicant to litigate his cause on merits, the liberal approach is required to be taken. In view of that, delay is hereby condoned, subject to the waiver of the interest for the delayed period, if the appellant succeeds in appeal.

9. Application stands allowed in above terms. Appeal be registered accordingly.

FIRST APPEAL NO. OF 2023

Heard.

2. **Admit.**

3. Learned AGP waives notice on behalf of respondent Nos.1 and 2.

4. Call for record and proceedings.
5. Appellant to file paper book within eight weeks after receipt of the record and proceedings.

[URMILA JOSHI-PHALKE J.]