

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

**CIVIL APPLICATION NO.3323 OF 2019 IN
FIRST APPEAL (ST.) NO.5896 OF 2019**

(Nana Shantaram Deshmukh (dead) thr. L.R's and ors. Vs. Executive Engineer, Bembla
Project Division, Yavatmal and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Ingole, Advocate for the appellants.
Ms Haider, AGP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 01, 2023.

Heard.

2. Present application is filed by the appellants for condonation of delay which is caused in preferring the appeal.

3. As per the contention of the applicants, they are the legal representatives of the appellant-deceased Nana Shantaram Deshmukh who is the original owner of the acquired property.

4. The applicants are the agriculturist by profession and were facing financial crisis. After passing of the award they could not receive the amount of compensation. As they have lost the earning source as their agricultural land was acquired by the Government they could not manage for the expenses for filing of the appeal. It is further the contention of the applicants that they are illiterate and rustic villagers not aware about the legal provisions, and therefore, they could not approach to

the Counsel for preferring the appeal. Hence the delay is caused.

5. After service of the notice, the non-applicant No.1 failed to appear.

6. Learned Assistant Government Pleader is present for respondent Nos.2 and 3. She raised objection on the ground that the delay is not properly explained and hence prayed for rejection of the application.

7. Heard Shri Ingole, learned Counsel for the applicants. Perused the application.

8. It is apparent that initially the reference was filed by the appellant – Nana Shantaram Deshmukh. After his death his legal representatives filed this application for condonation of delay.

9. It is not disputed that their land is acquired by the Government and as adequate compensation was not awarded, they preferred the reference.

10. As per the contention of the applicants, the Reference Court had also not considered the entitlement of the applicants and awarded inadequate compensation hence, they preferred this appeal. However, being they are the rustic villagers not aware about the legal provisions, they filed the appeal belatedly. There is just and reasonable cause for condonation of delay.

11. It is well settled that while considering the delay application, Court has to consider the reasons mentioned in the application and to take liberal approach to do the substantial justice. To prefer an appeal is a

statutory right of the appellants and they cannot be deprived from the said right for technical reasons.

12. In view of the same, in the present matter also delay which is not intentional one deserves to be condoned subject to waiver of the interest on the compensation amount as well as statutory amount for the delayed period of 803 days.

13. Civil application is disposed of.

FIRST APPEAL (ST.) NO.5896 OF 2019

Heard.

2. The appeal be registered.

3. Call for R. and P.

4. The appellant to file private paper book within ten weeks after receipt of R. & P.

5. Place the matter for final hearing as per its turn.

(URMILA JOSHI-PHALKE, J.)

**Divya*