

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

CIVIL APPLICATION (CAF) NO.919 OF 2022
IN
FIRST APPEAL STAMP NO.11360 OF 2021

Kausallyabai Ramchandra Rathod deceased through LR's 1a) Suresh Ramchandra
Rathod and others

Vs.

The State of Maharashtra through its Collector, Yavatmal and others

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

Court's or Judge's orders

Mr. A. R. Chavhan, Advocate for applicant.
Ms. T. Udeshi, AGP for non-applicant Nos.1 and 2.
Mr. M. A. Kadu, Advocate for non-applicant No.3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/03/2023

Present application is filed for condonation of delay of 1440 days which is caused in preferring the appeal.

The Judgment and Award passed by the Civil Judge Senior Division, Darwha. The appeal is for the enhancement of the compensation. As per contention of the appellants, they were the owner of field Gat No.7/2 which was acquired by the Government for Kumbharkinh Dam Project. The Reference Court has awarded the inadequate compensation amount and therefore they preferred this appeal for enhancement of the compensation. As the compensation amount was not received by them, and they have to pay the loan amount of the others which was obtained by them. They could

not approach to this Court due to the paucity of fund and therefore delay is caused. There is sufficient and reasonable cause for condonation of delay and hence delay be condoned.

The said application is strongly opposed by learned AGP for non-applicant Nos.1 and 2 and learned Advocate Mr. Kadu for respondent No.3 on the ground that delay is not properly explained. Delay is intentionally one. Hence delay condonation deserves to be rejected.

Heard Learned Advocate A. R. Chavhan for the applicant and learned AGP Ms. Udeshi, for respondent Nos.1 and 2 and learned Advocate Mr. Kadu, for the non-applicant Nos.3.

Considering that the appellants have lost their land as it was acquired compulsory and they have not received the compensation amount, therefore they could not arrange the money to pay the deficit court fee stamp, and therefore appeal is not file within time.

The reasons mentioned in the application appears to be just and reasonable one, as the appellants are claiming compensation under the beneficial legislation sufficient opportunity is to be granted to them without adopting the technical approach. It is well settled that while considering the delay condonation application, liberal approach is to be taken to do the substantial justice. In view of the reasons mentioned in the application, delay of 1440 days is condoned subject

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to the waiver of the interest, if claimants succeed in appeal in enhancement of the compensation.

Civil Application is disposed of.

Appeal be registered.

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Admit.

Learned AGP waives notice for non-applicant Nos.1 and 2.

Learned Advocate Mr. Kadu, waives notice for non-applicant No.3.

Call for record and proceedings.

Appellants to file paper book within ten weeks, after receipt of the record and proceedings.

Appeal be placed for final hearing, after filing of the paper book, its verification, as per its own turn.

(URMILA JOSHI-PHALKE, J.)

Sarkate