

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

**CIVIL APPLICATION NO.762 OF 2022 IN
CROSS-OBJECTION (ST.) NO.15032 OF 2022 IN
FIRST APPEAL NO.123 OF 2022**

(Smt. Shashikala wd/o Charandas Nagdeve and anr. Vs. MSEDCL 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 D.M. Kale, Advocate for the appellants.
Shri R.N. Sen, Advocate for respondent Nos.1 and 2.
Shri T.N. Thombre, Advocate for respondent Nos.3 and 4.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 08, 2023.

Heard.

2. This application is filed for condonation of delay in filing cross-objection under Order XLI Rule 22 of the Code of Civil Procedure.

3. As per the contention of the cross-objectors, the appellant had filed an appeal against the judgment and order dated 12/12/2019 passed by the Commissioner under the Employee's Compensation Act, Judge 2nd Labour Court, Nagpur in ECA No.(C)24/2012.

4. The cross-objectors have received the notice in the first week of June, 2022. After receipt of the notice they contacted the Counsel and filed their Vakalatnama.

5. It is submitted by Shri Thombare, learned Counsel that in fact, there is no delay but office has raised objection that the delay of 97 days is caused in preferring the appeal. For substantiating his submission, he placed

reliance on *V.I.D.C. thr. Executive Engineer, Minor Irrigation Works, Wardha Vs. Kawadu Narayan Tandulkar and ors. 2017 (6) Mh.L.J. 780* wherein this Court has held that in view of Order XLI Rule 22 period of one month contemplated must be calculated from date of service of notice upon the cross-objector of final hearing of appeal. This date should not be confused with date fixed for taking some steps in between admission of appeal and fixing of appeal for final hearing. It is further held by this Court that as regards the manner in which time of one month stipulated for filing cross-objection must be calculated, the law is equally well settled in the case of *Mahadev Govind Gharge and ors. Vs. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, 2011 (5) Mh.L.J. (S.C.) 532* wherein the expression after fixing a date for hearing the appellant obviously means the date fixed for hearing the appeal on merits. In other words, the period of one month contemplated under Order XLI Rule 22(1) of Code of Civil Procedure must be calculated from the date of service of the notice upon the cross-objector of final hearing of the appeal. It is also held that this date should not be confused with the date fixed for taking some steps in between admission of the appeal and fixing of the appeal for final hearing.

6. Learned Counsel Shri Thombare, further submitted that in the present appeal paper book is yet to be filed.

7. Per contra, learned Counsel Shri Kale, submitted that delay is not properly explained. The delay is intentional one and hence, application deserves to be rejected.

8. Heard both the sides and perused the application.

9. The appellant has not filed paper book yet.

10. In view of the observation of this Court in the judgment of V.I.D.C. thr. Executive Engineer (supra) no delay is caused. In view of that the application is allowed.

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Cross-objection be registered.

2. Shri R.N. Sen, learned Counsel waives notice for respondent Nos.2 and 3.

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Heard.

2. **ADMIT.**

3. The appellant to file paper book within ten weeks.

4. Place the matter for final hearing after paper book is filed and its verification, as per its turn.

(URMILA JOSHI-PHALKE, J.)

**Divya*