

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

CIVIL APPLICATION (CAF) NO.1020 OF 2021
IN
FIRST APPEAL STAMP NO.26297 OF 2017

Martand Bhimrao Gadade (since Dead) through his LR's 1) Raju s/o Martand Gadade
and another

Vs.

The State of Maharashtra, through 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. S. S. Nemade, Advocate h/f Mr. S. U. Nemade, Advocate for the appellants.
Mr. K. L. Dharmadhikari, AGP for respondent Nos.1 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13/03/2023

Leave is granted to prefer an appeal.

Civil Application is disposed of.

Civil Application (CAF) No.2387/2021

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

2. Though notice is served on respondent no.2, none appeared for respondent No.2. Learned AGP Mr. K. L. Dharmadhikari is present for respondent Nos.1 and 3.

3. As per contention of the appellants, initially the original claimant Martand Bhimrao Gadade was pursued the proceeding before the Reference Court. However, he was suffering from Tuberculosis and died in the year 2009. The present applicants who are legal heirs were not aware about the said proceedings pending before the Reference Court. They came to know about the said proceeding in the year 2017, and thereafter they preferred this appeal. However, there a delay of 3655 days in preferring the appeal. It is contention of the applicants that as they were not aware about the proceedings and therefore, they could not file the appeal within time. Moreover, time was consumed in getting some instructions as well as some documents therefore, delay is caused in preferring the appeal.

4. Said application is strongly opposed by learned AGP for respondent Nos.1 and 3 on the ground that delay is not properly explained. There is huge delay, hence delay application be rejected.

5. Heard learned Advocate Mr. S. S. Nemade, for the appellants, he submitted that in connected matters **Civil Application (CAF) No.3771 of 2018 in First Appeal Stamp No.4292 of 2018 (Hasanrao Nagorao Kawade (since dead) through his L.Rs. Smt. Sulochanabai Wd/o Hasanrao Kawade and Ors. Vs. The State of Maharashtra through Collector, Yavatmal and**

Ors.) this Court has condoned the delay of 3736 days. He further submitted that there is just and reasonable cause for condonation of delay as the applicants were not aware about the proceedings pending before the Reference Court and after they came to know about the said proceeding it was already decided, therefore they collected the necessary documents wherein the time was consumed. Moreover, they are illiterate villagers were not aware about the legal provisions. Thus, there is sufficient and reasonable cause for condonation of delay. In support of his contention he place reliance on **Imrat Lal and others Vs. Land Acquisition Collector and others** reported in **(2014) 14 SCC 133** wherein Hon'ble Apex Court held that:

“We can take 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 and either grant time to the party to file a better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination

of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.”

6. Herein also the connected matters are pending before this Court wherein the delay is already condoned. As observed by the Hon’ble Apex Court and it is well settled that while considering the delay application liberal approach is to be taken to do substantial justice. In view of that, delay application is allowed. Delay of 3655 days is condoned subject to the waiver of the interest, if appellants succeeds in enhancement of the compensation for the delayed period.

7. Civil Application is disposed of.

8. Appeal be registered.

FIRST APPEAL STAMP NO.26297 OF 2017

1. Heard.

2. **Admit.**

3. Learned AGP waives notice for respondent Nos.1 and 3.

4. Call for record and proceedings.

(5)

31.caf.1020.2021

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

6. Place the matter for final hearing after filing of the paper book, as per its own turn.

(URMILA JOSHI-PHALKE, J.)

Sarkate