

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

924 CIVIL APPLICATION NO. 13041 OF 2019
IN FAST/31621/2019

Venkat Niloba Kabade and Ors

.. Applicants

Versus

The State of Maharashtra and Ors

..Respondents

.....

Advocate for Applicants : Shri. Shailendra S. Gangakhedkar
AGP for Respondents No.1 & 3 / State : Smt. V. S. Chaudhari
Advocate for Respondent No.2 : Shri. B. R. Surwase

.....

IN

FIRST APPEAL (ST.) NO.31621 OF 2019

...

CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : February 6, 2024

PER COURT :-

In Application :

. This is the Application for condonation of 2231 days delay in preferring the First Appeal for enhancement of compensation towards the acquisition of land.

2. We have heard learned Advocate for the Applicants, learned Advocate for the Respondent / Acquiring Body and the learned AGP for Respondents No.1 and 3 / State.

3. The Reference Court had passed the Judgment and order in

L.A.R. No.228/1998 along with connected matters on 25.02.2013.

Now, the Claimants have preferred this Application for condonation of 2231 days delay in preferring the Appeal. The reasons cited in the Application for condonation of delay read as follows :

“5. That, after this due to festival period and due to drought situation and due to financial problem applicant skipped to file appeal immediately. Applicants are from a rural area and they were not aware of procedure of court and after arrangement of sufficient money applicant decided to file the appeal.

6. That, Applicant submits, the delay of 2231 caused by applicant to file this first appeal is purely accidental and not intentional. The present delay is caused only and only due to lack of communication, financial problem and lack of legal knowledge of the applicant.”

4. Learned Advocate for the Applicants relies on the Judgment of the Hon'ble Apex Court in the case of **Dhiraj Singh (D) through LRs v. State of Haryana, (2014) 14 SCC 127** wherein Section 5 of the Limitation Act is considered. Perusal of the said Judgment show that delay was in respect of the Land acquisitions matters. The relevant paragraphs from the said judgment are quoted below:

“15. Equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the court has to be pragmatic and not pedantic.

16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in [Collector\(LA\) Vs. Katiji](#) 1987(2) SCC 107, where it is stated in para 3 as under:-

"3. The legislature has conferred the power to condone delay by enacting [Section 5](#) of the Indian Limitation Act of

1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits".

The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

17. The aforesaid judgment was followed by this Court in DDA Vs. Bhola Nath Sharma 2011(2) SCC 54, which was also a matter concerning land acquisition."

5. Learned Advocate for the Applicants further submits that the Applicants shall not claim any interest for the delayed period and shall file the undertaking in that regard.

6. Learned Advocate for Respondent No.2 and learned AGP for Respondents No.1 and 3 opposed the Application.

7. The present application has been filed for condonation of 2231 days delay caused in preferring the First Appeal. According to the Applicants, the Judgment and order / decree was delivered on 25.02.2013. Thereafter, due to drought situation and financial problem, they could not take steps to file Appeal immediately. They are from rural area and they were unaware about legal process and thus, the aforesaid delay is caused.

8. The law in respect of condonation of delay is well settled by catena of judgments of this Court as well as of the Hon'ble Apex Court. In recent judgment in the case of **Sheo Raj Singh (Deceased) Through L.R.s and Others vs. Union of India & Anr., MANU/SC/1098/2023**, the Hon'ble Apex Court has considered the earlier judgment on the subject matter.

9. Considering the position of law in **Dhiraj Singh (D) through LR's (supra)** as well as in **Sheo Raj Singh (Deceased) Thr. LR's (supra)** and for the reasons stated in the Application, the Application is allowed. The delay of 2231 days caused in preferring the First Appeal is condoned. However, it is made clear that the Applicants shall

furnish undertaking to the effect that they would not claim interest for the entire delayed period. The Application stands disposed of.

In Appeal :

10. Heard.

11. **Admit.**

12. Issue notice to the Respondents. Learned AGP waives notice on behalf of Respondents No.1 and 3 / State. Learned Advocate Shri. B. R. Surwase waives notice on behalf of Respondent No.2.

13. Call for Record and Proceedings.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP