



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

**Civil Application (CAF) No. 1522 of 2023
in
First Appeal St. No. 1659 of 2023**

(1) Vidarbha Irrigation Development
Corporation, through its
Executive Engineer,
Bembla Project Canal Division,
Yavatmal, Tq. and Dist. Yavatmal.

(2) The Executive Engineer,
Bembla Project Canal Division,
Yavatmal, Tq. and Dist. Yavatmal.

... Applicants

- Versus -

(1) Pravasha Prafull Patil (Minor),
Aged about : 06 years, Occ : None,
through his natural guardian father,
Shri. Prafull Sharad Patil,
R/o Gujar, Post : Nagathana,
Dist. Yavatmal.

(2) The State of Maharashtra,
through the Collector, Yavatmal.

(3) The Special Land Acquisition Officer,
Minor Irrigation Works No. 2,
Yavatmal, Tq. and Dist. Yavatmal.

... Non-Applicants

Mr. M. A. Kadu, Advocate for the applicants
Mr. A. A. Daryapurkar, Advocate for non-applicant no. 1
Mrs. D. I. Charlewar, AGP for non-applicant nos. 2 and 3

CORAM : ANIL L. PANSARE, J.
DATE : 01-03-2024

P. C.

The appellants have filed application under Section 5 of the
Limitation Act, 1963.

2. On 24-1-2024, following order was passed.

“The applicant – Vidarbha Irrigation Development Corporation (VIDC) has filed present application under Section 5 of the Limitation Act, 1963 seeking to condone delay of 236 days in filing appeal against the judgment and award dated 12/10/2021 passed by the 4th Joint Civil Judge Senior Division, Yavatmal in Land Acquisition Case No. 25/2018.

The grounds put forth for delay are as under :

2] The judgment has been delivered on 12/10/2021. The Counsel, who appeared for the applicant, had applied for certified copy on 13/10/2021, which was received on 21/10/2021. The Counsel communicated his opinion on 22/10/2021, which was received by the office of the applicant on 28/10/2021. Thereupon, it was opined (who opined is not stated) to file appeal and, therefore, proposal was made, which was examined by superiors in hierarchy (the names and designations are absent). The file was thereafter sent to legal advisor (name absent) for opinion, who allotted the file for drafting to the concerned Counsel (name absent) on 6/9/2022, which was received on 8/9/2022. The concerned Counsel sent a request for Court fees on 8/9/2022. The Court fees was received on 16/9/2022 and thereafter (on which date is absent) applied for e-court fee and after receipt of e-court fee (when was it received is absent), the application has been filed.

3] As could be seen, the reasons does not really justify the delay that has occurred for the period from 28/10/2021 till 6/9/2022 and also for the period from 16/9/2022 onwards till the application has been filed, viz., 20/1/2023.

4] The attention of the learned Counsel was invited to the judgment passed by the Hon’ble Supreme Court in the case of

State of Madhya Pradesh And Others Vs. Bherulal [(2020) 10 SCC 654], wherein the Supreme Court has held that law of limitation undoubtedly binds everybody including the Government and deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies, to which the learned Counsel for the applicants has invited my attention to the judgment of the Supreme Court in the case of Sheo Raj Singh (Deceased) Through Lrs. And others Vs. Union of India [AIR 2023 SC 5109] wherein the Supreme Court considered various rulings on the point of condonation of delay and held in paragraph 37 as under :

37. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests."

5] The learned Counsel for the applicants submits that in view of above, the delay may be condoned.

6] The request cannot be accepted unless sufficient cause is shown by the applicants. The Supreme Court, in the aforesaid

judgment, has also referred to two other cases, in the following terms :

“35. According to Mr. Sharma, University of Delhi (supra) is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding University of Delhi (supra), was seized of a situation where even if the delay were to be condoned, it would cause grave prejudice to the respondent Delhi Metro Rail Corporation at the instance of the casual approach of the appellant University. This Court, on the argument of non-availability of the Vice-Chancellor for granting approval to file the appeal, and other reasons put forth in the matter, could not conclude that there was fulfilment of sufficient cause for condonation of delay; hence, the refusal to condone the delay. The decision really turns on the facts before this Court because of the prejudice factor involved.

36. We can also profitably refer to Koting Lamkang (supra), cited by Mr. Sen, where the same Bench of three Hon’ble Judges of this Court which decided University of Delhi (supra) was of the view that the impersonal nature of the State’s functioning should be given due regard, while ensuring that individual defaults are not nit-picked at the cost of collective interest. The relevant paragraphs read as follows:

“7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected.””

7] Thus, at the end of the day, the delay will have to be condoned only upon showing sufficient cause. At the same time, the institutional interest of the State will have to be considered but then the default of individuals cannot be ignored as well.

8] The default will have to be dealt with in terms of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short “the Act of 2005”), which reads thus :

“10. (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible :

Provided that, normally no file shall remain pending with any Government servant in the Department or Office for more than seven working days :

Provided further that, immediate and urgent files shall be disposed of as per the urgency of the matter, as expeditiously as possible, and preferably the immediate file in one day or next day morning and the urgent file in four days :

Provided also that, in respect of the files not required to be referred to any other Department, the concerned Department shall take the decision and necessary action in the matter within forty-five days and in respect of files required to be referred to any other Department, decision and necessary action shall be taken within three months.

(2) Any wilful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate 1.[disciplinary action under the All India Services (Discipline and Appeal) Rules, 1969, the] Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

(3) The concerned competent authority on noticing or being brought to its notice any such dereliction of duties on the part of any Government servant, after satisfying itself about such dereliction on the part of such Government servant shall, take appropriate disciplinary action against such defaulting Government servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Government servant.”

9. As could be seen, sub-section (1) of Section 10 of the Act of 2005 provides that every Government servant shall discharge his official duties assigned or pertaining to him most diligently and expeditiously and that no file shall remain pending with any Government servant in the department, usually for more than seven working days. Thus, additional time taken will have to be properly justified. In addition,

Rules 10 to 13 of the Maharashtra Prevention of Delay in Discharge of Official Duties Rules, 2013 (for short “the Rules of 2013) provides for detailed mechanism to prevent/avoid delay. Despite such a provision and several judgments of the Supreme Court deprecating casual approach in processing files, there is no improvement.

10. There is a reason for the same and the reason is not taking action, provided under sub-sections (2) and (3) of Section 10. It is unfortunate that the effect of sub-section (1) of Section 10 has been neutralized by not taking recourse to sub-sections (2) and (3) of Section 10. Resultantly, the casual approach of Government servants continue and on top of it, the judgments of the Supreme Court are cited to argue as if the Government Servants have to sit over the files and to expect the Courts to take liberal view.

11. In the circumstances, while protecting the institutional interest of the State, the Court will have to also address the issue of individuals default.

12. Accordingly, the applicants are directed to give details of the officials along with time taken by each official to process the file, which should include name of the official, time when the file was received, time taken to process the file and reasons for delay in processing the file, etc. so that appropriate orders could be passed. The applicants shall also state the amount of interest (15%) which the public exchequers will have to bear because of such delay, i.e., 236 days, if the appeal is ultimately dismissed. In other words, the applicants will mention the amount of interest which could have been saved by discharging duty in terms of Section 10 of the Act of 2005 and the Rules of 2013. The details be furnished on affidavit before the next date. Hopefully time will not be sought to furnish these details also. Parties to act upon authenticated copy of the order.

13. Stand over to 15/2/2024.”

3. In compliance to order, an affidavit has been filed by the applicants. It states that the reference Court has passed the award on 12-10-2021. The counsel appearing before the trial Court has applied for certified copy of the award on 13-10-2021. The certified copy was received on 21-10-2021. The counsel forwarded the certified copy along with his opinion to the office of the applicant on 22-10-2021 which was received in the office on 28-10-2021. Thereafter Clerk Shri Suraj Kale along with Junior Clerk have undertaken exercise in terms of Government Resolution (G.R.) dated 3-11-2016 for calculation of amount and thereafter forwarded the file to Sub Divisional Officer on 10-2-2022.

4. The officer has conveniently omitted to state as to what calculation were to be made in terms of G.R. dated 3-11-2016 and why should it take more than three months to calculate the amount. To my mind, the aforesaid G.R. *inter alia* provides for filing appeal against the award passed by the reference Court only if the amount of compensation awarded by the reference Court is above four times the amount calculated as per ready reckoner. In that sense, one has to find whether amount granted by the reference Court is within the limit as stipulated in the G.R. These calculations is a matter of few minutes and by no stretch of imagination would it require more than three months.

5. The affidavit further disclose that the Assistant Engineer had forwarded the file to Deputy Executive Engineer on 15-2-2022, who in turn, forwarded the same with remarks to the office of the Superintending Engineer. The Office of Superintending Engineer, on 25-2-2022, forwarded the file to the office of applicants/appellants. The office thereafter on 12-8-2022 forwarded the file to legal Advisor Advocate Mr. S. G. Jagtap, Nagpur. The file was pending with the office for the period from 25-2-2022 to 12-8-2022 because of transfer of concerned clerk and procedure for appointing new clerk. Thereafter a Clerk, namely, Mr. Suraj Kale came to be appointed. He has no knowledge and experience to deal with court cases and due to oversight, workload and absence of knowledge, he failed to send the file to Legal Head, Nagpur.

6. The Legal Head opined to file appeal and then file was sent to Advocate Mr. Mangesh Kadu on 6-9-2022 for filing appeal. Advocate Mr. Kadu demanded Court Fees, the office of applicants has then undertaken the procedure to get Court Fees. The Court Fee was sanctioned on 25-9-2022. The cheque was, however, handed over on 3-11-2022 and it was received by Mr. Kadu on 16-11-2022. The cheque was encashed on 23-11-2022. Thereafter the draft of applications for

delay and stay along with 20 other cases was forwarded on 4-1-2023 at Digras. Thereafter, the appeal has been filed.

7. Thus, in addition to three month's delay in calculating the amount of G.R. dated 3-11-2016, the further delay between 25-2-2022 to 12-8-2022 is attributed to transfer of concerned clerk and procedure for appointing the new clerk.

8. It is awful to note that the office and officers of Vidarbha Irrigation Development Corporation (VIDC), in their wisdom find this reason to be a sufficient cause for not filing the appeal in time. If this reason is to be taken into account the word 'sufficient cause' used in Section 5 of the Limitation Act will lose its significance. The concept of handing over of charge of a post is completely missing in the said plea.

9. That apart, the counsel, who drafted the application, took four months to prepare application and appeal and forward it to office. May be, in the intervening period, there occurred correspondence as regards Court Fees, but that, by itself, would not prevent the counsel from drafting the application/appeal and forward the same to the office of applicants. In fact pending approval of Court Fees, the applicants may have filed appeal by invoking Section 149 of the Code of Civil

Procedure, 1908. The applicants may not realize but the result of delay is that the exchequer will have to pay the amount of Rs. 26,243/- towards interest. This is in one case. If taken together it may seen in Lakhs or Crores of Rupees because seldom the appeal is filed in time, and there are thousands of appeal pending.

10. As such it is well settled that the expression “sufficient cause” is to receive liberal construction so as to advance substantial justice. However, it is equally well settled that the discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence [*GMC Engineering Industries Vs. Issa Green Power Solution (AIR 2015 SC 2675)*].

11. If the explanation tendered by the applicant is to be viewed in the light of the aforesaid judgment, I do not find any diligence much less due diligence exercised at the hands of the applicants and the officers of VIDC. As noted above, the three months delay in calculating the amount in terms of G.R. dated 3-11-2016 is not acceptable nor is the reason of transfer of concerned clerk is acceptable to condone delay of six months. Further the delay of four months in drafting application for want of Court Fees is also unpardonable.

12. The Supreme Court in the case of ***Ajay Dabra Vs. Pyare Ram and ors., [2023 SCC Online SC 92]***, while dealing with ground of being short of funds to pay the Court Fee to condone the delay, has referred to Section 149 of the Civil Procedure Code, 1908, which refers to power to make up deficiency of court fee and held thus:

“6. It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870. In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to the incorporation of Section 149 in CPC would explain this aspect.

7. ...

8. ...

9. In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima wherein it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured.

10. ...

11. We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay

in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done.”

(Emphasis now)

13. Thus, the Supreme Court has held that the appellants therein could have filed the appeal deficient in court fee and made good subsequently. Nothing prevented the VIDC from adopting such a mode. Appellant - VIDC is equipped with panel of advocates who ought to be aware of the scope of Section 149 of the Code. Thus, justification for delay on account of Court Fees is not acceptable.

14. One cannot ignore the consequences of the delay. It has accrued right in favour of the decree holder to treat the decree as binding between the parties. The decree holder may proceed further with legitimate expectation of fruits of the decree. The Apex Court in ***Ramlal Vs. Rewa Coalfields Ltd. [AIR 1962 SC 361]***, while interpreting the provisions of Section 5 of the Limitation Act, held thus :

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first

consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed.”

15. Thus the Supreme Court held that in absence of showing sufficient cause, the legal right accrued in favour of the decree-holder, by lapse of time, cannot be lightheartedly disturbed.

16. On the point of ‘sufficient cause’, the Supreme Court in the case of ***Basawaraj and anr. Vs. The Spl. Land Acquisition Officer [AIR 2014 SC 746]*** in paragraph 15, held as under:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning

the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

17. Thus, the Supreme Court has held that in a case, if a party is found to be negligent or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay and, therefore, the delay cannot be condoned by imposing any condition whatsoever.

18. The explanation given, if considered, in the light of the judgments referred above, the only inference that follows is that the applicants were negligent and further remained inactive for months together viz. for three months in calculating amount, six months in clerk's transfer and four months in waiting for Court Fees.

19. To add to above, the negligence of the officers of VIDC in handling Court matters will be further certified from the following facts.

20. On 25-8-2023, this Court, while granting stay to the execution of the impugned judgment and award, has directed the applicants/appellants to deposit entire amount of compensation within nine weeks. This order has been not complied till date. The applicants/appellants have not even filed an application to seek extension of time

to deposit the amount. The word 'diligence' appears to be absent in the dictionary of the officers of VIDC. How to then expect 'due diligence' ?

21. Considering the above, I am of the considered view that the applicants have failed to show any cause, much less, sufficient cause to condone delay. The application is, therefore, rejected.

22. The applicants/appellants shall proceed to act in terms of impugned judgment and award.

23. Copy of order be forwarded to Chief Engineer, Water Resources Department, Amravati of VIDC for taking action in terms of sub-section (2) and (3) of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, of course, after giving an opportunity of hearing to concerned officials. Compliance report be filed by 3rd August, 2024.

(Anil L. Pansare, J.)