



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

CIVIL APPLICATION (CAF) NO. 533 OF 2022

IN

FIRST APPEAL (st.) NO. 9786 OF 2020

General Manager Western Coalfields Limited, Jaripatka, Nagpur

.VS.

Shri Dinesh S/o. Gambhirrao and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr C. S. Samudra, Advocate for the appellant
Mr Aradhya V. Pande, Advocate for respondent No.1
Mr G. S. Umale, AGP for respondent No.2

CORAM : G.A. SANAP, J.

DATE : MARCH 13, 2024.

Heard learned Advocate for the appellant,
learned Advocate for respondent No.1 and learned AGP
for the State.

2. This is an application for condonation of 1712 days delay caused in filing the appeal against the judgment and decree dated 09.04.2015 passed by the Civil Judge Senior Division, Nagpur in Land Acquisition Case No. 133 of 2003. It is stated that the appellant initially decided not to challenge the impugned judgment and decree. However, when they realized that

in an execution proceeding, excessive interest was claimed on the decretal amount, a decision was taken to challenge the judgment and decree. It is stated that the said part of the judgment and decree was not strictly in consonance with the law. It is stated that this fact was brought to the notice of the executing court. However, considering the limited scope of the execution, the grievance of the appellant could not be appropriately redressed. It is submitted that the appellant is a Government of India undertaking. There was administrative procedural delay as well as lack of communication between the officials. It is submitted that a very vital issue has been raised in the appeal and the adjudication of the said issue on merits is necessary.

3. Learned Advocate for the appellant, in his oral argument, reiterated the facts stated in the application. Learned Advocate submitted that, subject to appropriate conditions, including the condition of plantation of sufficient number of trees, the delay may be condoned.

4. Learned Advocate for respondent No.1 has argued this matter without filing a reply. Learned

Advocate submitted that the delay is inordinate. It is further submitted that the merits of the matter could not be the criterion while deciding the delay application.

5. On going through the record, it is seen that the decretal amount has been deposited. It appears that there is some dispute about the calculation of the interest etc. In my view, that can be taken care of by the parties by filing the claim statement. The appellant is a Government of India undertaking. According to the appellant, initially it was decided not to file the appeal. However, when they realized after filing the execution application by respondent No.1 that the interest granted was not in consonance with the provisions of the law, the decision was taken to file the appeal. In my view, considering the nature of the issue involved in the appeal and the fact that adjudication of the matter on merit would be in the interest of both parties, it would be just and proper to condone the delay. The questions raised in the appeal, in my view, are required to be decided on merit. As far as, the condition for condonation of delay is concerned, in a similar matter filed by the appellant i.e. Civil Application No. 1765 of 2022 an order was passed

directing the appellant to either pay the cost of Rs.10,000/- or to plant 25 Neem trees. Learned Advocate submits that Court may impose the appropriate conditions, including the condition of plantation of trees. In the facts and circumstances, I am satisfied that the appellant has made out a case for condonation of delay. The reasons stated in the application are sufficient to accept the claim. In my view, the direction to plant the trees on condonation of delay would serve the larger interest. As such, instead of imposing costs it would be proper to direct the appellant to plant 100 trees.

6. Accordingly, the civil application is allowed.

7. The delay of 1712 days caused in the filing the appeal stands condoned, subject to the condition that the appellant shall plant 100 trees, subject to the availability of saplings of a particular type. The plantation shall be made in the coming rainy season. The deponent in this appeal shall file an undertaking that the plantation of 100 trees shall be made in the coming rainy season. As far as, the report of the plantation and the maintenance etc.

shall be in terms of the order dated 13.09.2023 passed in Civil Application No. 1765 of 2022.

8. On registration, the appeal be registered.

9. The civil application stands **disposed of**, accordingly.

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10. Heard.

11. **ADMIT.**

12. Learned Advocate Mr Aradhya Pande waives service of notice on behalf of respondent No.1.

13. Learned AGP waives service of notice on behalf of respondent No.2/State.

14. Call for record and proceeding.

15. Paper book be filed within four weeks from the date of receipt of record and proceedings.

(G. A. SANAP, J.)

Namrata