



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

**APPLICATION NO. 1140/2022 IN FIRST APPEAL ST. NO. 12134/2021**

Executive Engineer, Chandrabhaga Project, Achalpur Division, Achalpur, Dist.  
Amravati .Vs. Gangotri Sahebrao Choudhari and Others

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

Ms I. P. Khisti, Advocate for appellant-applicant-.  
Mrs. M. R. Kavimandan, A.G.P for respondent-non applicant  
nos.2 and 3.

**CORAM :**     **ANIL L. PANSARE, J.**

**DATE**     :     **07.02.2024**

Heard.

2. By the present application, the applicant-appellant is seeking to condone the delay of 95 days in filing the appeal against judgment and order dated 05.09.2019 passed by Civil Judge Senior Division, Achalpur in Land Acquisition Case No.14/2014.

3. As could be seen, the judgment and order has been passed on 05.09.2019. The period of limitation to file the appeal is 90 days. Thus, the appeal ought to have been filed prior to 04.12.2019. The appeal has been filed on 09.09.2021. Thus, by arithmetic calculation, there is a delay of 646 days.

4. Despite such fact, the applicant has prayed to condone delay of 95 days. Counsel for the applicant submits that it is the registry who has calculated the delay of 95 days. The submission appears to be surprising and shocking.

5. The learned counsel, at this stage, submits that it is not the registry but the counsel herself who has calculated

the delay of 95 days by excluding the period of Covid-19 pandemic in terms of judgment of the Supreme Court in Suo Motu Writ Petition No.3/2020.

6. Learned counsel for the applicant submits that though the judgment was pronounced on 05.09.2019, the counsel appearing for the appellant has applied for certified copy of judgment on 21.11.2019.

7. There is absolutely no explanation as to what prevented him from applying for certified copy immediately after 05.09.2019.

8. The learned counsel then submits that copy was received on 28.11.2019. The Executive Engineer, thereafter, opined to file appeal. When did the Executive Engineer did so is absent.

9. The counsel then states that the Superintending Engineer opined to file appeal (again when did he do so is absent). The counsel then submits that the appellant submitted the matter to the legal adviser of the VIDC (again the date is absent) who opined to file the appeal on 16.03.2020. Thereafter, the Executive Director consented on 06.08.2020. How did and when did the file reach the Executive Director is absent.

10. The learned counsel submits that thereafter all the papers were submitted to the counsel in the month of October, 2020. What has been done between 06.08.2020 to October, 2020 is not explained.

11. The counsel then submits that she requested for court fee amount from the appellant on 09.10.2020. The amount has been arranged in April, 2021 and the appeal has been filed thereafter in September, 2021. There is no explanation as to why did the office took time of 6 months to arrange for the court fee and thereafter why did the appellant took 5 months to file the appeal.

12. Learned counsel submits that this being the period of Covid-19, the delay could be viewed sympathetically.

13. To my mind, had the delay occurred between the period from 15.03.2020 to 28.02.2022, the appellant could not have been compelled to give any explanation because the Supreme Court has excluded that period. What is evident from the application filed by the appellant is that there is complete absence of justification for the period from 05.09.2019 to 21.11.2019 and thereafter till 15.03.2020.

14. In the circumstance, the benefit of judgment passed by the Supreme Court in Suo Motu Writ Petition No. 3/2022, cannot be extended.

15. Let me remind the officers of the department that the ground of administrative difficulty will have to be considered and 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.”*

16. 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.

17. 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.

18. The attention of the appellant is invited to the judgment passed by the Hon’ble Supreme Court in the case of **State of Madhya Pradesh And Others Vs. Bherulal** reported in **(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.

19. On the point of delay in filing appeal, the Supreme Court in the case of **Basawaraj and anr. Vs. The Spl. Land Acquisition Officer,** reported in **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.”*

20. 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.

21. In **Ramlal Vs. Rewa Coalfields Ltd.,** reported in **AIR 1962 SC 361,** the Supreme Court, 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. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.”

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

22. Considering the above, I am of the view that the appellant has failed to show sufficient cause to approach the court belatedly. There is no substance in the application. The application is, therefore, rejected.

**Civil Application No. 3520/2023**

In view of the order passed in Civil Application No.1140/2022, the present application does not survive. It is disposed of accordingly.

**(Anil L. Pansare, J.)**