



-623-2024

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

CIVIL APPLICATION NO. 623 OF 2024
IN FIRST APPEAL ST. NO. 19047 OF 2023

(Atul s/o Narayan Bobde & Anr. Vs. The State of Maharashtra & Ors.)

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

Court's or Judge's orders.

Shri R.S. Kurekar, Counsel for the applicants/appellants.
Shri M.A. Kadu, A.G.P. for the respondents/State.

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CORAM : ANIL L. PANSARE, J.
MARCH 27, 2024.

By present application, the applicants are seeking to condone delay of 471 days in filing appeal against the judgment and award dated 31/3/2022 passed by the Presiding Officer, Land Acquisition, Resettlement & Rehabilitation Authority, Nagpur in Case No. 811/AMT/YTL/2018.

2] The reasons assigned for delay finds place in paragraph 2 of the application, which reads thus :

"2. It is respectfully submitted that the present applicants are agriculturist. They are possessing land admeasuring 3.77 hectares at Gat No.116, Mouza-Shelodi, Tq. Darwha, District Yavatmal. Out of the said land, 0.84 hectares of their land has been acquired for the purposes of Wardha-Nanded Railway Track. The Land Acquisition Officer has granted compensation. Being not satisfied with the amount of compensation, they have preferred reference before the Collector, Wardha. The said reference has been transferred to the Land Acquisition, Resettlement and Rehabilitation Authority at Nagpur. The said Authority has enhanced with meagre amount of compensation for which the applicant has preferred the appeal. Since their land has been acquired which was their earning

source, they are facing hardship. The applicants are poor person and facing financial constraints due to acquisition of land and that too, the amount of compensation granted to the applicants has not been paid to them till date. Due to these reasons, the applicants could not able to file the appeal within time. As such there appears delay in filing the appeal.”

3] Thus, the reason for delay is financial constraint, which continued till filing the application. In other words, there is no change in circumstances that enabled the applicants to now file appeal.

4] The question therefore is, if the applicants, despite being in financial constraint, could file appeal in September – 2023, what prevented them from doing so well within the stipulated period.

5] Further, the financial constraint indicates that the applicants could not procure Court fee. This is not a good ground to condone delay. The Hon’ble Supreme Court in the case of *Ajay Dabra Vs. Pyare Ram and Others [2023 SCC OnLine SC 92]*, while dealing with ground of being short of funds to pay the Court fee to condone the delay, 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. XXXX

8. XXXX

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 [AIR 1951 ALL 64] 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. XXXX*

10. XXXX

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 supplied)

6] 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 applicants herein from adopting such a mode.

7] The learned Counsel for the applicants submits that they have a good case on merits. To my mind, in absence of showing sufficient cause, plea of good case on merits cannot be considered. The Supreme Court in the case of *Lingeswaran Etc. Vs. Thirunagalingam [Special Leave to Appeal © Nos. 2054-2055/2022]* decided on 25/2/2022] has held that once it was found that the delay has been not properly explained, the matter should rest there and the application ought to be dismissed. Paragraph 5 of the judgment reads thus :

“5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.”

8] Thus, the Supreme Court has held that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

9] Merely because the matter pertains to provision of beneficial legislature, one cannot let go the provisions of the Limitation Act, 1963. The theory of liberal interpretation is well recognized. However, under the garb of liberal interpretation, the Court cannot extend benefit where the applicant has failed to show any cause, much less sufficient cause to condone the delay. Nothing prevented the applicants from filing appeal in deficient with Court fee and make good the same. The applicants were not only negligent but have remained inactive for no justified reason. They are, therefore, not entitled for any relief.

10] The application is accordingly rejected.

(ANIL L. PANSARE, J.)

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