



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

CIVIL APPLICATION (CAF) NO. 702 OF 2024
IN
FIRST APPEAL ST. NO. 17196 OF 2023

PRALHAD RODBAJI SHINDE
Vrs.
THE STATE OF MAHARASHTRA AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V. N. Patre, Advocate for applicant/appellant.
Ms. D. I. Charlewar, AGP for respondent Nos.1 to 3.
Shri M.A.Kadu, Advocate for respondent No.4.

CORAM: SANJAY A. DESHMUKH, J.
DATE : 18/09/2024.

1. This is an application for condonation of delay of 11618 days caused for preferring appeal.
2. Perused the application.
3. The grounds for condoning the delay are that applicant is illiterate and he came to know that other claimants have got enhanced amount of compensation. It is also ground that applicant is suffering from illness of Asthma. Thereafter when he got the advice of his advocate, he has decided to file the appeal. It is lastly prayed to allow the application by condoning delay, in the interest of justice.
4. Learned counsel for the respondents have strongly objected the application and submitted that delay cannot be condoned as there are no sufficient reasons as per Section 5 of the Limitation Act, 1963.

5. Learned advocate for the respondents are relying upon the Judgment of Hon'ble Supreme Court in the case of **Pathapati Subba Reddy (D) by LR's and others Vrs. Special Deputy Collector (LA), 2024 DGLS (SC) 371** in Para Nos.20, 24, 30 and 31 which read as under :-

"20. In this connection, a reference may be made to **Brijesh Kumar and Ors. vs. State of Haryana and Ors.**, 2014 (4) SCALE 50 wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

24. It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands. Paragraph 12 reads as under:

"12. It is a settled legal proposition that 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. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." 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. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

30. The aforesaid decisions would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay. Secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own case. Condonation of delay in such circumstances is in violation of the legislative intent or the express provision of the statute. Condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions have been rendered in ignorance of the earlier pronouncement in the case of **Basawaraj** (supra).

31. Learned counsel for the petitioners next submitted on the basis of additional documents that in connection with the land acquisition in some other Special Leave Petitions, delay was condoned taking a lenient view and the compensation was enhanced with the rider that the claimants shall not be entitled for statutory benefits for the period of delay in approaching this Court or the High Court. The said orders do not clearly spell out the facts and the reasons explaining the delay in filing the appeal(s) but the fact remains that the delay was condoned by taking too liberal an approach and putting conditions which have not been approved of by this Court itself. In the absence of the facts for getting the delay condoned in the referred cases, vis-à-vis, the facts of this case, it cannot be said that the facts or the reasons of getting the delay condoned are identical or similar. Therefore, we are unable to exercise our discretionary power of condoning the delay in filing the appeal on parity with the above order(s)."

6. It is lastly prayed to reject the application. Learned advocate for the applicant is relying upon the Judgment of **Ningappa Thotappa Angadi (Dead) through LRs Vrs. The Special Land Acquisition Officer and another,**

2019 (17) SCALE 635. Para Nos. 8 and 11 of this Judgment read as under :-

"8. We find that the issue raised in this appeal is no longer res-integra. This Court in *Dhiraj Singh (Dead) through LRs. and Others v. State of Haryana and Others* held that:

"14. The appellants are identically situated and there is no reason to meet out a different treatment to them. We also note that, while in these cases, the High Court had refused to condone the delay and dismissed the LPAs of the appellants, other LPAs were allowed by the High Court itself by condoning the delay of the same magnitude in the same circumstances.

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. [Emphasis applied].

11. The appellant(s) are also similarly placed claimants. They are, thus, entitled to seek parity and claim the same amount of fair and just compensation as has been awarded to other land owners. The appellant(s) are, however, not entitled to seek interest for the period for which they did not approach this Court."

7. No doubt, there is delay of 11618 days. It is not ordinary delay. However, delay is not deliberately caused. It appears that other villagers have got enhanced compensation and therefore, the applicant is also entitled

for the enhanced amount of compensation on the principle of parity.

8. Considering all these reasons, the Judgment of **Pathapati Subba Reddy (D) by LRs and others** cited supra, which is delivered by Two Judges of Hon'ble Supreme Court, cannot be relied upon as the Judgment of **Ningappa Thotappa Angadi (Dead) through LRs** cited supra on behalf of applicant is delivered by Three Judges of Hon'ble Supreme Court. Therefore, the argument of learned advocate for the respondents is not acceptable. The application deserves to be allowed in the interest of justice. Hence, the following order :-

ORDER

- i] Application is allowed.
- ii] Delay of 11618 days caused for filing the appeal is condoned.

9. It is also clarified that the applicant is not entitled for statutory benefits like interest, etc. for the delayed period in view of Judgment of Hon'ble Supreme Court in the case of **New Okhla Industrial Development Authority v. Rameshwar @ Ramesh Chandra Sharma (Dead), through Legal Heir and another (2022 SCC Online SC 1599)**.

10. The application is disposed of.

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11. Issue notice to the respondents.

12. Ms. D. I. Charlewar, learned AGP waives service of notice for respondent Nos.1 to 3.
13. Shri M. A. Kadu, learned advocate waives service of notice for respondent No.4.
14. **Admit.**
15. Filing of paper book is dispensed with.
16. Stand over to **26/09/2024.**

[SANJAY A. DESHMUKH, J.]

Choulwar