



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CIVIL APPLICATION NO.7382 OF 2024
IN FAST/29356/2013

ANANDA NARAYAN PATIL

VERSUS

THE SPECIAL LAND ACQUISITION OFFICER UPPER TAPI
PROJECT HATNOOR-2 JALGAON AND ANR

WITH

CIVIL APPLICATION NO. 968 OF 2014
IN FAST/29356/2013

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Advocate for Applicant : Mr. Kshirsagar Hemraj P.

APP for Respondent/s-State : Mr. K. K. Naik.

Advocate for Respondent No.2 : Mr. Subhash S. Chillarge

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CORAM : SHAILESH P. BRAHME, J.

DATE : 16.04.2025

PER COURT :-

1. This application is for condonation of delay of 1309 days in preferring first appeal soliciting challenge to the judgment and order dated 17.11.2009 passed by Reference Court in LAR No.836 of 2005.

2. Learned counsel for the applicant is relying on a separate affidavit filed along with the application explaining the delay. Learned counsel would submit that for the grounds mentioned in paragraph Nos.1 to 4, it is desirable to condone the delay. He would also rely on order passed by Co-ordinate Bench,

dated 18.04.2017 in Civil Application No.1419 of 2017 in FAST No.9434 of 2014 preferred by similarly placed claimants. In that matter, delay was condoned by forfeiting interest and the statutory benefits for the delayed period. The financial condition of the applicant was very precarious and Civil Application No.968 of 2014 was required to be filed for waiving the court fees. It is further submitted that delay is not intentional and there are no malafides.

3. Learned counsel Mr. Chillarge appearing for the contesting party repels the submission of the applicant. He would submit that delay is inordinate and has not been explained adequately. He would submit that no steps were taken by the applicant to circulate the present application till 06.09.2024. He would submit that reliance on the order dated 18.04.2017 is misplaced because application for condonation of delay in that matter was promptly taken before the Court for the orders. Lastly, he would pray to dismiss the application.

4. I have gone through civil application as well as supporting affidavit explaining the delay. There is no reason to doubt contents of paragraph Nos.1 to 4 of the affidavit. I do not find that there is any oblique motive or malafides in not presenting appeal in time. Filing of civil application No.968 of

2014 also indicates that applicants were not in proper financial position to furnish the court fees.

5. Civil Application No.968 of 2014 was heard on 16.06.2022 and the notices were issued. However, fact remains that from date of filing i.e. 15.10.2013 till 16.06.2022 no steps were taken. Application for condonation of delay is first time circulated on 06.09.2024. But, it would be too technical to deprive the applicant from the statutory benefits and the interest strictly from 15.10.2013 to 06.09.2024.

6. Learned counsel for the respondent is right in contending that the view taken by this Court vide order dated 18.04.2017 cannot be strictly made applicable to the present case. In that case, applicants were deprived of interest and statutory benefits for the delayed period. Similarly situated persons could take the steps and circulate the matter on 18.04.2017, but the present applicant failed to do so. However, to strike the balance, I propose to deprive the applicant the interest and the statutory benefit for delayed period of 1309 days and certain period from 15.10.2013 to 16.06.2022.

7. It is desirable to hear the present appeal on merits. The appeals of the similarly situated persons are awaiting for decision on merits. On the ground of parity, applicant is

entitled to succeed to some extent. Therefore, I pass the following order :

ORDER

- (i) Civil application is allowed in terms of prayer clause “B” on condition that applicant shall not be entitled to interest and statutory benefit for the delayed period of 1309 days as well as for three (3) years period from 15.10.2013.
- (ii) Office is directed to register the appeal.
- (iii) Civil application No.968 of 2014 does not survive and hence disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-