

(2018) 01 BOM CK 0219
In the Bombay High Court
Case No : 15424 of 2017

The State of Maharashtra & Ors.

APPELLANT

Vs

Onkar Manaji Kokani

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

[Limitation Act, 1963](#), [Section 5](#) -
Extension of prescribed period in certain cases

Citation : (2018) 01 BOM CK 0219

Hon'ble Judges : M.S.Sonak

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr.A.M.Phule, learned AGP for the applicants in each of these applications.
2. By these Civil Applications, the applicants are seeking condonation of delay of 1590 days in instituting appeals against the Judgment and Award dated 4.5.2013 made by the Reference Court enhancing the compensation awarded to the respondents/claimants.
3. Mr.Phule, learned AGP submits that since the applicant is impersonal agency, the issue of condonation of delay may be liberally considered. He submits that decisions are required to be taken at different levels and this necessarily resulted in "some delay". He submits that the applicants have good case to succeed on merits and discretion may be exercised to condone the delay. He submits that the explanation furnished in the Civil Applications constitutes sufficient cause and therefore, delay may be condoned.
4. Mr.Phule, learned AGP submits that in such matters, the length of delay is not relevant but what is relevant is the explanation offered. He relied on the decisions of the Supreme Court in the cases of N.Balakrishnan vs M. Krishnamurthy, reported in [1998 (7) SCC 123], and Collector Land Acquisition

vs Mst. Katiji & Ors, reported in [1987 (2) SCC 107]. For all these reasons, Mr.Phule, learned AGP submits that this is a fit case for condonation of delay.

5. In this case, certified copies of the impugned Judgment and Award dated 4.5.2013 were applied on 4.8.2016 and the same were received on 11.8.2016. There was absolutely no explanation as to why it took over three years to apply for certified copy of the impugned Judgment and Award, particularly, since it is the case of the applicants that the Reference Court has enhanced the compensation almost 17 times i.e. from Rs.750/per Are to Rs.13,200/per Are. In such a situation the least that was expected was that the certified copies could be applied for within some reasonable time for examining whether or not the Award needs to be appealed.

6. In the Civil Applications, there is no explanation as to why it took three years to apply for certified copies of the impugned Judgment and Award. After the certified copies of the Judgment and Award were obtained, the appeals alongwith condonation of delay have been instituted only on 8.12.2017 i.e. after a period one year from the date of receipt of certified copies. The explanation for this delay is also entirely vague. All that is stated is that legal opinion had to be obtained from the Office of the Government Pleader and the Secretary, Law and Judiciary Department. There are vague statements about incomplete documents, nonavailability of typed copies and so on. All such explanations hardly suffice to explain inordinate delay of almost five years (1590 days) in instituting all appeals of this nature.

7. The interest of the respondents for getting proper compensation, whose lands have been acquired cannot be overlooked. At this point of time, the respondents are entitled to have the compensation awarded to them left undisturbed. There is no clarity as to whether till date the amount determined by the Reference Court has been paid or not. In all probabilities, such amount has yet not been paid. It is therefore, possible that only purpose of instituting these appeals is to seek some justification for unreasonable delay in payment of compensation to respondents/claimants. If this is so, it cannot be said that the applications for seeking condonation of delay have been made in good faith. In any case, the cause shown can hardly be said to be sufficient cause.

8. Even, applying a liberal standard prescribed in N.Balakrishnan (supra) and Mst. Katiji (supra), it is not possible to condone inordinate and unexplained delay based upon the vague and unjustifiable grounds set out in these applications. The decision in N. Balkrishnan (supra) case requires the applicant to demonstrate good faith before claiming exercise of discretion. The decision, no doubt, states that the length of delay is not decisive but the quality of explanation is the determinative factor. In this case, quality of explanation is too poor to constitute any sufficient cause. Mst. Katiji (supra), no doubt, absolves explanation of each day's delay. However, the observation does not mean that delay of over five years is to be condoned as a matter of routine in the absence of any sufficient cause.

9. In *Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr .*, reported in [(2008) 17 SCC 448], the Hon''ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude but the law of limitation is same for citizens and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In cases with which we are concerned, no such facts have been either pleaded or proved.

10. In *Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and or s .*, reported in [2(2000) 6 SCC 133], the Hon''ble Supreme Court held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their responsibility to act with reasonable expedition.

11. In *Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & or s .*, reported in [3(2013) 12 SCC 649], the Hon''ble Supreme Court has held that an application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system. Further, the Hon''ble Supreme Court has held that an application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. The increasing tendency to perceive delay as a nonserious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

12. In *Postmaster General and Ors. vs. Living Media India Limited and anr .*, reported in [4(2012) 3 SCC 563], the Hon''ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon''ble Supreme Court observed that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody

including the Government. It is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural redtape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Hon''ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

13. In *Basawaraj and anr. vs. Special Land Acquisition Officer*, reported in [(2013) 14 SCC 81] the Hon''ble Supreme Court went on to observe that 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.

14. The Division Bench of this Court in *State of Maharashtra and ors. vs. Vithu Kalya Govari and ors.*, reported in [2008(6) Mh.L.J.239] has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the nonapplicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicantState.

15. Applying the aforesaid principles to the facts and circumstances of the present case, it is clear that no sufficient cause has been shown for condonation of delay of over four years i.e.1590 days in institution of the appeals. The Civil Applications are therefore, liable to be dismissed and are hereby dismissed. There shall be no order as to costs. As a consequence of dismissal of the Civil Applications, the Appeals and the Civil Applications pending therein also stand disposed of.