

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.986 OF 2012
IN
FIRST APPEAL (ST) No.1987 of 2012**

The Commissioner, Nashik
Municipal Corproation

..Applicant

Vs

Dattu Mahadu Gaikwad, since
deceased, by his heirs and Lrs
and ors

.. Respondents

WITH

CIVIL APPLCIATION NO.988 OF 2012 IN FAST NO.1994 OF 2012
WITH

CIVIL APPLCIATION NO.990 OF 2012 IN FAST NO.2013 OF 2012
WITH

CIVIL APPLCIATION NO.992 OF 2012 IN FAST NO.2041OF 2012
WITH

CIVIL APPLCIATION NO.994 OF 2012 IN FAST NO.2009 OF 2012
WITH

CIVIL APPLCIATION NO.996 OF 2012 IN FAST NO.2004 OF 2012
WITH

CIVIL APPLCIATION NO.998 OF 2012 IN FAST NO.1997 OF 2012
WITH

CIVIL APPLCIATION NO.1000 OF 2012 IN FAST NO.2001 OF 2012
WITH

CIVIL APPLCIATION NO.1002 OF 2012 IN FAST NO.1991 OF 2012
WITH

CIVIL APPLCIATION NO.1004 OF 2012 IN FAST NO.2016 OF 2012

Shri M.L.Patil, Advocate for the applicant.

Shri A.R.Patil, AGP, for respondent no.8 in CA/986/12, Respondent no.2 in CA 988/2012, CA 1000/12, CA 1002/12. respondent no.3 in CA/990/12. R. No.10 in CA/992/12, R.No.6 in 994/12, R.No.9 in 996/12,R.No.7 in 998/12 and R.No.4 in CA/1004/12.

Shri Vipin Kasle i/b Ram & Co for respondent nos 1 to 6 in CA no.998/12.

Shri A.J.Ahuja, for respondent no.1A to 1F and R.Nos 4 to 6 in CA 986/12, R.No.1 in 988 and 1002/12, R.Nos.1 and 2 in 990/12, R.No. 1 to 9 in 992/12, R.No.5 in 994/12, R.Nos 1 to 8 in 996/12 and R.Nos 1 to 3 in 1004/12.

CORAM : A.M.KHANWILKAR & R.G.KETKAR,JJ.
DATE : 30/04/2012

PC:

1. Heard learned counsel for the parties.
2. These applications are for condoning delay of around 167 days in filing the First Appeals against the Judgment and decree dated 18.4.2011. The appeals accompanied by the delay applications have been filed by the corporation on 13.1.2012. The reason mentioned is that for the first time the officials of the corporation became aware about passing of the impugned judgment and decree on 4.11.2011 after the receipt of communication from the Office of the Collector to deposit the compensation amount. Soon thereafter, a proposal was prepared by the department on 9.11.2011 and instructions were given to apply for certified copies of the impugned Judgment and

decree. That was applied on 23.11.2011 and was ready to be delivered on 13.12.11. The Appeals were filed as aforesaid on 13.1.12 accompanied by the delay applications.

3. The respondents have opposed these applications. In the reply affidavit, except saying that the applicant was having knowledge of the impugned judgment immediately after the same was delivered, no other evidence is produced to substantiate this plea. The applicant cannot be expected to prove a negative fact that they had no knowledge. It would be a different matter if the respondents were to produce some record to establish that the representative of the corporation was present in court on the given day or copy of the judgment and decree was served in the office of the corporation in the earlier point of time soon after the same was passed. That is not the case of the respondents. Indeed, the respondents contend that the corporation was party to the proceedings and the corporation was represented before the court. Therefore, it should be assumed that the corporation had full knowledge about the passing of the impugned judgment and decree. The argument though appears attractive at the first blush, will have to be rejected. It is common knowledge that the concerned department of the corporation would initiate proposal for filing of appeals only after receipt of the copy of the judgment and decree. That, as is

stated in the application, was not received by the authorized officer either unofficially or officially as the case may be. In that case, it is too much to assume that the officers of the corporation have intentionally not filed the appeals in time so as to deny the fruits of the decree to the respondents. On the other hand, we find that immediately after getting information from the office of the Collector on 4.11.11, officials of the corporation processed the matter and have filed the present appeals on 13.1.2012. In our opinion, considering the fact that the amount of compensation to be paid by the corporation would ultimately be out of the State Exchequer, in the interest of justice, it is appropriate that the delay in filing the Appeals should be condoned, more particularly, because the delay is only of around 167 days. Hence, these applications are allowed in terms of prayer clause (b).

These Appeals be registered and placed for admission on 8.5.2012.

(R.G.KETKAR, J.)

(A.M.KHANWILKAR,J.)