AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO.18561 OF 2018
WITH
CIVIL APPLICATION NO.3538 OF 2019

Motiram Bhika More, since deceased
through legal heirs ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

WITH
FIRST APPEAL (ST.) NO.31615 OF 2018
WITH
CIVIL APPLICATION NO.74 OF 2025

Babi Janu Venupure, deceased
through legal heirs ... Applicant

V/s.

The Land Acquisition Officer
No.3, Pune & Others ... Respondents

WITH
FIRST APPEAL (ST.) NO.13364 OF 2023
WITH
INTERIM APPLICATION NO. 9240 OF 2024

Kashinath Hiru Katekar, deceased
through LRs Sunil Kashinath Katekar
& Others ... Applicants

V/s.

Special Land Acquisition Officer 1
Raigad & Others ... Respondents

WITH
FIRST APPEAL (ST.) NO.30044 OF 2024
WITH
INTERIM APPLICATION NO. 3973 OF 2025

Govind Ziprya Bhoir, since deceased
through legal heir Ananta Govind
Bhoir & Others … Applicants

V/s.

Special Land Acquisition
Officer, Panvel … Respondent

Mr. Prathamesh T. Bhanuvanshe i/by Mr. Sanjay P. Shinide for the appellant in FAST/18561/2018.

Ms. Amrita Kharkar with Ms. Sayalee Bhosale i/by P.H. Potnis for the appellant in FAST/31615/2018.

Mr. Shriram S. Kulkarni with Pranjal Khatavkar i/by Mr. Sujay Palshikar for the appellant in FAST/13364/2023.

Mr. Shriram S. Kulkarni with Mr. Gaurav Ugle and Mr. Aryvrat Dubey for the appellant in FAST/30044/2024.

Mr. A.R. Patil, Additional G.P. for the State in all the matters

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 1, 2026

PRONOUNCED ON : SEPTEMBER 8, 2026

JUDGMENT:

1. Following questions arise for consideration in the present group of applications

(i) Question No. 1: Whether the Court can direct a party to give an undertaking that they will waive their interest as and by way of condition for condonation of delay in a land acquisition matter/appeal?

(ii) Question No. 2: Whether such condition can be permitted to be imposed under Section 5 of the Limitation Act, 1963?

(iii) Question No. 3: In which situation can a direction be given that the claimant's waiver would waive off interest, since there is no burden on the exchequer of the State for the inaction of the claimant for the period of delay?

(iv) Question No. 4: Whether, considering cross appeal or cross objections filed by claimants in State's or acquiring body's appeal, the same considerations for imposing condition of waiver of interest for the period of delay shall apply?

(v) Question No. 5: What can be a reasonable period of delay after which such condition to waive interest can be imposed?

2. I have considered the provisions of Section 5 of the Limitation Act, 1963, Order XLI Rules 22 and 33 of the Code of Civil Procedure and Sections 28 and 34 of the Land Acquisition Act, 1894. The decisions in *Dhiraj Singh v. State of Haryana* (2014) 14 SCC 127*, Nimna Dudhna Project v. State of Maharashtra*, (2020) 3 SCC 255*, Ningappa Thotappa Angadi v. LAO, Mahadev Govind Gharge v. LAO*, (2011) 6 SCC 321*, State* *of Maharashtra v. Kalu Ladku Mhatre,* (2011) 4 Mah LJ 741*,* *Pralhad v. State of Maharashtra*, (2010) 10 SCC 458 and *Suresh Kumar v. State of Haryana*, 2025 SCC OnLine SC 896 and Others have been considered. In my view, the principles arising from these judgments have to be seen together and in their proper perspective. The questions before the Court cannot be answered merely by reading Section 5 of the Limitation Act in isolation.

3. The first submission on behalf of the claimants is that Section 5 of the Limitation Act does not contain any provision authorising the Court to direct the claimant to give up or waive interest as a condition for condoning delay. According to the claimants, Section 5 only enables the Court to condone delay when sufficient cause is shown. To this limited extent, the submission is correct. Section 5 does not contain the words "waive interest". But the absence of these words cannot conclude the entire issue which arises before the Court. Section 5 confers a discretionary power upon the Court. For exercising that power, the Court has to be satisfied that sufficient cause has been shown for not filing the appeal or application within the prescribed period. The object of Section 5 is not to punish a party merely because the proceeding was filed late. The object is to enable the Court to do substantial justice when there is a proper reason for the delay. The purpose is to prevent a genuine matter from being rejected at the threshold when sufficient cause is shown, so that the matter can be considered on merits. It does not mean that the Court is prevented from examining the separate financial consequence which may arise because of the delayed approach. This becomes relevant where the financial burden is sought to be placed upon the opposite party for a period during which the claimant had not approached the Court.

4. This distinction assumes importance in land acquisition matters. In such cases, the land has been taken from the landowner by compulsory acquisition. The dispute remains regarding the amount of compensation payable for the land so acquired. It may be that one claimant has received lesser compensation while another landowner, whose land was acquired under the same notification or for the same project, has received higher compensation. If the delay is not condoned, the claimant may lose the opportunity to obtain the higher compensation. On the other hand, if the delay is condoned and interest is granted for the entire period of delay, the acquiring authority may become liable to pay interest for a period during which the claimant had not approached the Court. Therefore, the right to compensation and the claim for interest for the delayed period have to be considered separately.

5. The Supreme Court has made this distinction in *Dhiraj Singh*. In paragraph 15, it held:

> "*15.* Equities can be balanced by denying the appellants' interest for the period for which they did not approach the court. The 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.”

6. The expression "equities can be balanced" is of importance. The Supreme Court did not hold that the claimant should be deprived of enhanced compensation merely because the appeal was filed after some delay. The right of the claimant was kept protected. What was denied was interest for the period during which the claimant had not approached the Court. Thus, the entitlement to compensation and the financial consequence arising from delayed approach were treated as separate matters.

7. The same issue subsequently came before the Supreme Court in *Nimna Dudhna Project*. In that matter, there was a delay of five and a half years in filing the appeals. The High Court had condoned the delay and had enhanced the compensation so that the claimants received compensation at par with other landowners. The Supreme Court did not find fault with the condonation of delay. In paragraph 5, the Court noticed that the question which still required consideration was whether the claimants were entitled to statutory benefits and interest for the period of delay.

8. The Supreme Court considered this issue in paragraph 5.1 after referring to *Dhiraj Singh* and *K. Subbarayudu*. It held:

> “Merely because at the time of condoning the delay no such condition was imposed that the claimants shall not be entitled to the interest on the enhanced amount of compensation for the period of delay, the appellant who is

> otherwise a public body cannot be saddled with the liability to pay the interest for the period of delay, which is not at all attributed to them."

9. The above observation has direct bearing upon the question, which is being considered. It makes the position clear that merely because the order condoning delay did not impose a condition regarding interest, the claimant does not thereby become entitled to interest for the delayed period. The Supreme Court held that a public body cannot be burdened with interest for a period of delay which was not attributable to that public body.

10. Therefore, the submission of the claimants that Section 5 does not provide for imposing a condition of waiver of interest is correct to that limited extent. But this submission cannot lead to the conclusion that the Court has no power to exclude interest for the delayed period in any circumstance. The question of interest has to be considered along with the effect of permitting the delayed proceeding to be heard and the necessity of balancing the equities. The Supreme Court has held this principle in the judgments referred to above.

11. The same position is seen from *Ningappa Thotappa Angadi*. In paragraph 7, the Supreme Court followed the principle laid down in *Dhiraj Singh*. It held that the right of the claimant should not be defeated only because there was delay in approaching the Court. At the same time, it held that the equities can be balanced by denying interest for the period during which the claimant did not approach the Court.

12. In paragraph 10 of *Ningappa Thotappa Angadi*, the Supreme Court stated:

> "The appellant(s) are 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 the other landowners. The appellant(s) are not entitled to seek interest for the period for which they did not approach this Court."

13. Thus, the above judgments make a distinction between the right to receive fair and just compensation and the right to claim interest for the period of delay. A claimant may be entitled to receive the same compensation which has been granted to other similarly situated landowners. However, the claimant may still be denied interest for the period during which the claimant had not approached the Court.

14. The judgment in *Suresh Kumar* gives support to this position. The Supreme Court considered the question of delay in a land acquisition matter after referring to *Dhiraj Singh* and other decisions. In paragraph 9, the Court referred to *Huchanagouda* and noticed that the delay had been condoned while the equities were balanced. The Court stated:

> "In other words, the appellants who approached the Court with delay, would not be granted interest for such period."

15. In paragraph 10, while considering the decision in *Nimna Dudhna Project*, the Supreme Court held that the acquiring body should not be made liable to pay interest for the period of delay in filing the appeal.

16. In paragraph 13 of *Suresh Kumar*, the Supreme Court condoned the delay and at the same time directed:

> "However, for the delayed period that is being condoned, the appellant shall not be entitled to any interest."

17. The above direction leaves no ambiguity about the principle. Condonation of delay does not by create right to interest for the entire delayed period. The Court may condone the delay so that the claimant's case can be considered on merits. At the same time, interest for the period of delay may be excluded. The claimants may contend that *Suresh Kumar* did not consider the question as to whether an undertaking can be obtained under Section 5. The Supreme Court did not say that the claimant must furnish an undertaking. But the material question is whether, while granting the relief of condonation, the Court can attach a condition excluding interest for the delayed period. The decision in *Suresh Kumar* holds that such exclusion of interest is legally permissible.

18. In my view, the undertaking cannot be treated as the source of the Court's power. The power to impose the condition must exist independently in law. The Court imposes the condition while exercising its discretion to condone delay. The undertaking merely records the claimant's acceptance of that condition. Merely because an undertaking is obtained, the Court does not acquire a jurisdiction which it otherwise does not possess. Equally, the absence of an undertaking cannot by mean that interest for the delayed period must necessarily be paid.

19. I, therefore, answer Question No. 1 partly in the affirmative. In an appropriate land acquisition matter, the Court can require the claimant to give an undertaking that interest on the enhanced compensation shall not be claimed for the period attributable to the delay. Such condition can be attached while condoning the delay, for the purpose of balancing the equities. However, the condition has to be reasonable and confined to the actual period of delay.

20. Question No. 2 is whether such a condition can be described as a condition imposed under Section 5 of the Limitation Act.

21. Section 5 does not confer upon the Court a separate power to reduce, alter or cancel statutory interest. Its principal purpose is to permit a delayed appeal or application to be entertained when sufficient cause is shown. Therefore, Section 5 by cannot be treated as creating an independent power to change or extinguish interest payable under Sections 28 or 34 of the Land Acquisition Act. This does not mean that while considering an application for condonation under Section 5, the Court must shut its eyes to the effect of the delay. Once the Court decides to exercise its discretion and permits a delayed proceeding to be entertained, it can regulate the relief in accordance with the principles laid down by the Supreme Court. *Dhiraj Singh, Nimna*

Dudhna Project, Ningappa Thotappa Angadi and *Suresh Kumar* recognise exclusion of interest for the delayed period in appropriate cases. Thus, the legal position would be that the power to impose such condition is not power given by the language of Section 5 to alter statutory interest. The condition is attached to the discretionary relief of condonation. It is imposed for balancing the equities and is supported by the principles held by the Supreme Court in land acquisition matters. This distinction is necessary because Section 5 cannot be used to ignore or defeat mandatory provisions concerning interest under the Land Acquisition Act. The Supreme Court in *Kapil Mehra v. Union of India, (2015) 2 SCC 262* explained the position relating to interest under Section 34. In paragraph 45 it held:

> "45. Award of interest under Section 34 is mandatory inasmuch the word used in the section is "shall". The scheme of the Act and the express provisions thereof establish that the interest payable under Section 34 is statutory."

22. Regarding Section 28, the same paragraph states:

> "The award of interest under Section 28 is discretionary power vested in the court and it has to be exercised in a judicious manner and not arbitrarily."

23. Therefore, merely because the power to condone delay is discretionary, the Court cannot proceed on the footing that statutory interest can be cancelled whenever it considers such course convenient or proper. Such an approach would go beyond the statutory provisions. The exclusion of interest must have a clear connection with the delayed proceeding and with the period during which the claimant did not approach the Court. The difference between Sections 28 and 34 was explained in the portions of *Gurpreet Singh v. Union of India, (*2006) 8 SCC 457 reproduced in *Kapil Mehra*. Section 28 relates to interest on the excess compensation awarded by the Court. Section 34 relates to statutory interest payable on compensation in the circumstances mentioned in that provision. The two provisions operate differently and for different purposes. While directing exclusion of interest, the Court must identify the particular interest which is being excluded. Accordingly, whenever such condition is imposed, the order of the Court should state what interest is being waived or excluded., the condition would relate to interest on the enhanced compensation for the period during which the claimant delayed the appellate proceeding. It should not be understood as taking away every right to interest available to the claimant. I therefore answer Question No. 2 in the following manner. Section 5 does not empower the Court to alter statutory interest. However, while exercising the discretionary power of condonation under Section 5, the Court can attach a reasonable condition excluding interest for the period of delay where the facts justify such condition and where it is consistent with the principles laid down by the Supreme Court. The condition is thus attached to the relief of condonation. It is not an independent power under Section 5 to alter the provisions relating to interest.

24. Question No. 3 relates to the circumstances in which such direction concerning waiver or exclusion of interest can be made. There cannot be one uniform rule applicable to every land acquisition matter. The Court must first consider whether the delay deserves to be condoned. If sufficient cause is found and the delay is condoned, the Court can consider what should be the consequence of that delay upon the claim for interest. A proper case for imposing such condition may arise where similarly situated landowners have received higher compensation and the delayed claimant seeks the same benefit. This was the position in *Dhiraj Singh*. In paragraph 9, the Supreme Court noticed that landowners whose lands were acquired under the same notification had received Rs 200 per square yard, whereas the appellants had received only Rs 101 per square yard. The Supreme Court therefore did not consider it proper to deny the appellants the benefit of higher compensation merely because they had approached the Court late. In such a case, if the claimant is denied enhancement altogether, there may be injustice because similarly situated landowners would receive different amounts of compensation. On the other side, if the claimant is granted interest for the entire delayed period, the acquiring authority may have to pay interest for a period during which the claimant had not approached the Court. The Supreme Court therefore balanced the two aspects. The benefit of enhancement was preserved, while interest for the delayed period was excluded.

25. This position is in line with paragraph 11 of *Dhiraj Singh*, where the Supreme Court observed that land acquisition matters require a different approach and that landowners should not be deprived of reasonable compensation. At the same time, paragraph 15 states:

> "Equities can be balanced by denying the appellants' interest for the period for which they did not approach the court."

26. The reason for the delay is relevant. Poverty, illiteracy, ignorance or other genuine difficulties may explain why a landowner could not approach the Court within time. *Dhiraj Singh* and *Huchanagouda* show that substantial delay may be condoned in such circumstances. However, *Suresh Kumar* shows that even where the delay was not personally attributable to the landowner, interest for the delayed period could still be excluded. Therefore, exclusion of interest for the period of delay should not be viewed as punishment for the claimant. The Court is considering the financial consequence of permitting a delayed proceeding. Where the acquiring authority did not cause the delay and the claimant did not approach the Court during that period, the acquiring authority should not be made liable for interest for such period.

27. The acquiring authority cannot be relieved from interest for a period which has no connection with the claimant's delay. Interest which had become payable before the delayed appeal cannot be taken away merely because the appeal was filed late.

Similarly, interest for a period after the claimant had properly approached the Court cannot be denied merely because there was an earlier period of delay. The order of the Court should therefore mention the relevant dates. The Court should identify the date from which the delay is to be considered and the date on which the delayed proceeding was filed or otherwise brought before the Court. It should then be made clear that interest is being excluded only for that particular period and only upon the enhanced compensation which arises from the delayed proceeding. The same care should be taken if an undertaking is obtained from the claimant. The claimant should not be asked to state in general terms that he gives up "all interest". Such wording would go beyond the principle held in the judgments. The undertaking should be confined to interest on the enhanced compensation for the specific period of delay.

28. The submission that the State should not be required to bear the financial burden which arises only because of the claimant's inaction has considerable force. If a claimant does not approach the Court for several years and the acquiring authority has not caused the delay, requiring the public exchequer to pay interest for those years may create a liability which would not have arisen if the claimant had approached the Court within time. However, this consideration alone cannot become a ground for taking away a statutory benefit. The fact that the money is to be paid from public funds cannot permit the Court to ignore the statute. Exclusion of interest must still be supported by the facts of the case and by the principles held by the Supreme Court. The State can be protected from a liability which arises only because of the claimant's delayed approach. But a statutory right cannot be denied merely because the payment is to be made from public funds. Therefore, the submission that there should be "no burden on the exchequer ... for the inaction of the claimant" cannot be treated as an absolute rule applicable in every case. It is one of the circumstances which may support balancing of the equities.

29. Question No. 4 concerns cross-objections and cross appeals. In such cases, it has to be kept in mind that a cross-objection is procedurally different from an appeal. Therefore, the two cannot be treated as identical for all purposes.

30. Order XLI Rule 22 gives power to the appellate Court to grant time for filing a cross-objection. This position was explained by this Court in *State of Maharashtra v. Kalu Ladku Mhatre*. In paragraph 6, the Court stated:

> "Thus, under sub-rule (1) of Rule 22 of Order XLI of the said, Code, a power has been conferred upon the Appellate Court to extend the time to file Cross Objection. The Appellate Court can grant such time as it may see fit to allow."

31. The Court held in paragraph 7 that Section 5 and Order XLI Rule 22 operate in different fields. It observed:

> "Sub-rule (1) of Rule 22 of Order XLI does not incorporate the stringent requirement of establishing a sufficient cause. Thus, a wide power to extend the time to file Cross-

Objection has been vested in the Appellate Court."

32. The same principle has to be considered with *Mahadev Govind Gharge*. In paragraph 61, the Supreme Court held that a cross-objection is to be filed within one month from service of notice, or within such time as the appellate Court may permit. The Supreme Court stated:

> "Since the provisions of Order 41 Rule 22 of the Code provide for extension of time, the courts would normally be inclined to condone the delay in the interest of justice unless and until the cross-objector is unable to furnish a reasonable or sufficient cause…"

33. Therefore, in a delayed cross-objection, the principal procedural power is found in Order XLI Rule 22. Section 5 need not be applied in every such case. To this extent, the submission of the claimants has substance. A delayed cross-objection cannot in every situation be treated in exactly the same manner as appeal governed by Section 5. But this difference does not mean that the principle relating to interest becomes inapplicable to a cross-objection. If a claimant files a cross-objection seeking enhancement of compensation after a considerable period, the same question would arise as to why the acquiring authority should pay interest for the period during which the claimant did not seek such enhancement.

34. I, therefore, hold that the same equitable principle can apply to a delayed cross-objection. Where the Court permits a delayed cross-objection to be filed or grants time for filing it, the Court can direct that interest on the enhanced compensation shall not be payable for the period of delay in filing the cross-objection, where the facts of the case justify such direction.

35. There is one important difference which must be kept in view. In an appeal filed by the State or acquiring body, the claimant may have come before the appellate Court because of the appeal filed by the State or acquiring authority. The claimant may file a cross-objection seeking enhancement. Therefore, the entire period before filing the cross-objection cannot be treated as delay on the part of the claimant. The actual facts have to be examined. The Court should consider when the claimant received notice of the appeal, when the claimant came to know about the proceedings, whether the claimant participated in the proceedings and how much time was taken in filing the cross-objection. If the claimant knew about the appeal and participated in the proceedings but nevertheless waited for a considerable period before filing the cross-objection, the case for excluding interest for that period would become stronger. If the claimant had no reasonable knowledge or opportunity to file the cross-objection earlier, such condition may not be justified.

36. *Mahadev Govind Gharge* shows the importance of knowledge and participation in appellate proceedings. The Supreme Court considered a case where the respondent had appeared as a caveator and had participated at different stages of the appeal. These procedural facts were relevant for determining when the period for filing the cross-objection commenced. The same approach has to be adopted here. The

Court must first identify the actual period of delay before deciding its financial consequence.

37. The principle stated in Pralhad v. State of Maharashtra, (2010) 10 SCC 458 supports a balanced exercise of appellate power. In paragraph 18, the Supreme Court held:

> "The expression "order ought to have been made" would obviously mean an order which justice of the case requires to be made."

38. At the same time, the Supreme Court made the following qualification:

> "Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law."

39. Therefore, even the appellate power under Order XLI Rule 33 cannot be exercised contrary to a statutory prohibition. The Court can mould the relief where the justice of the case requires it, but such power has to remain within the limits of law. In the present context, the Court can regulate the consequence of a delayed proceeding in the manner held by the applicable law and the binding judgments of the Supreme Court.

40. I, therefore, answer Question No. 4 in the affirmative, subject to the above limitations. Where a claimant files a delayed cross-objection or cross appeal seeking enhancement of compensation in an appeal filed by the State or acquiring body, the Court can apply the principle of excluding interest for the period of delay where the facts justify such course. In the case of a cross-objection, the principal procedural provision is Order XLI

Rule 22. Where appropriate, the appellate power under Order XLI Rule 33 may be considered. The actual period of delay must first be determined. The condition must be reasonable and confined to that period.

41. The fifth question is whether there is any fixed period of delay after which the Court can impose a condition of waiver or exclusion of interest. In my view, no such fixed period can be prescribed. The judgments themselves show that no particular number of days or years has been fixed by law. In *Dhiraj Singh*, substantial delay was condoned. The Supreme Court referred to a case where delay of 3240 days had been condoned. In *Nimna Dudhna Project*, there was a delay of five and a half years. *Suresh Kumar* concerned substantial delay. Therefore, the law does not provide that waiver of interest will follow after a particular number of days or years. At the same time, it cannot be said that every delay, however small, must result in exclusion of interest. Mere existence of delay is not enough. The Court has to consider the reason for the delay, the conduct of the claimant, the length of the delay, the nature of the claim, whether similarly situated landowners have received higher compensation and the effect of the delay upon the acquiring authority.

42. A short delay which is properly explained may not require any condition regarding interest. A long delay may provide a stronger reason for excluding interest. But even in a case of long delay, the Court should not deny all interest. The exclusion should be confined to the period of delay and should have reasonable relation with the circumstances which caused the delay. In my view, therefore, the proper question is not merely "how many days have passed". The Court should consider which part of the claim for interest has arisen because the claimant did not approach the Court during that period. It is that period which can be considered for exclusion. The Court should consider whether the claimant is seeking parity with other landowners. If the claimant states that another landowner whose land was acquired under the same notification has received higher compensation and seeks the same benefit, the Court should consider whether refusing the benefit merely because of delay would result in unequal treatment. In such a situation, exclusion of interest for the delayed period may provide the proper balance. The claimant can receive the same compensation without receiving an additional interest benefit for the period during which the claimant did not approach the Court.

43. This is the approach which can be seen in *Dhiraj Singh*. The same principle was followed in *Ningappa Thotappa Angadi*. It was applied in *Nimna Dudhna Project* and again stated in *Suresh Kumar*. The common principle emerging from these judgments is that a claimant should not be deprived of just and fair compensation merely because the proceeding was delayed, where the case otherwise deserves to be considered. At the same time, the acquiring authority need not be made liable for interest for the period attributable to the claimant's delayed approach. I therefore find no conflict between the submission that interest under the Land Acquisition Act is statutory and the submission that interest for the delayed period can be excluded. These two positions can operate together when the nature of interest and the period concerned are identified. The Court cannot arbitrarily take away statutory interest. But where the Supreme Court has held that the acquiring authority should not bear interest for a period arising only because the claimant approached the Court late, the Court can balance the equities by excluding interest for that particular period.

44. I do not accept the submission that the undertaking changes the character of statutory interest. It does not. The legal basis for exclusion of interest must exist independently. An undertaking cannot create a power in the Court which the law does not provide. The undertaking merely records that the claimant accepts the condition attached to the relief. The Court must, therefore, first decide whether the condition is justified and only thereafter can the undertaking be obtained. The condition must be stated with clarity so that the claimant understands what is being given up. The Court should, therefore, avoid general expressions such as "all interest", "future interest" or "all statutory benefits", unless the facts and the applicable law require such direction. The proper course would be to state that interest on the enhanced compensation shall not be payable for the particular period during which the delayed

appeal or cross-objection was not pursued. Such clarity is necessary because Section 34 interest and Section 28 interest do not operate in the same manner. *Kapil Mehra* explains the distinction between them. Section 34 provides for statutory interest in the circumstances mentioned in that section. Section 28 concerns interest on excess compensation awarded by the Court. The order should, therefore, identify the interest which is being excluded and the period for which such exclusion is directed.

45. Having considered the submissions of both sides and the above legal position, I now proceed to answer the five questions.

(i) Question No. 1: Whether the Court can direct a party to give an undertaking that they will waive their interest as and by way of condition for condonation of delay in a land acquisition matter/appeal?

Answer: In an appropriate land acquisition matter, the Court can require the claimant to give an undertaking that interest on the enhanced compensation shall not be claimed for the period attributable to the delay, as a condition attached to condonation of delay for balancing the equities. Such condition shall be reasonable and confined to the actual period of delay.

(ii) Question No. 2: Whether such condition can be permitted to be imposed under Section 5 of the Limitation Act, 1963?

Answer: Section 5 of the Limitation Act, 1963 does not confer an independent power upon the Court to alter statutory interest. However, while exercising the discretionary power to condone delay under Section 5, the Court can attach a reasonable condition excluding interest for the period attributable to the delay, where the facts justify such condition and the same is consistent with the principles laid down by the Supreme Court.

(iii) Question No. 3: In which situation can a direction be given that the claimant's waiver would waive off interest, since there is no burden on the exchequer of the State for the inaction of the claimant for the period of delay?

Answer: Such direction can be given where the claimant is permitted to pursue a delayed claim and the interest claimed relates to the period during which the claimant did not approach the Court. The principle has application where the claimant seeks parity with similarly situated landowners who have received higher compensation. The acquiring authority should not be made liable for interest for the period attributable to the claimant's delay. However, the condition shall not extend beyond the actual period of delay and shall not affect interest having no connection with such delay.

(iv) Question No. 4: Whether, considering cross appeal or cross objections filed by claimants in State's or acquiring body's appeal, the same considerations for imposing condition of waiver of interest for the period of delay shall apply?

Answer: The same equitable principle can apply to a delayed cross-objection or cross appeal seeking enhancement of compensation in an appeal filed by the State or acquiring body. In the case of a cross-objection, the principal procedural provision is Order XLI Rule 22 of the Code of Civil Procedure, which permits the appellate Court to grant time for filing the cross-objection. Where justified by the facts, interest on the enhanced compensation may be excluded for the period of delay in filing the cross-objection. The Court shall first determine the actual period of delay having regard to the date of service or knowledge of the appeal, participation of the claimant in the appellate proceedings and the circumstances in which the cross-objection came to be filed. The condition shall be reasonable and confined to the period actually attributable to the claimant's delay.

(v) Question No. 5: What can be a reasonable period of delay after which such condition to waive interest can be imposed?

Answer: No fixed period of delay can be prescribed. Waiver or exclusion of interest does not follow upon expiry of any particular number of days or years. The Court shall consider the length and reason for the delay, the conduct of the claimant, the stage of the proceedings, the nature of the claim, the claim for parity with similarly situated landowners, the circumstances in which the claimant approached the Court and the financial consequence of the delay to the acquiring authority. A longer delay may furnish a stronger ground for excluding interest, but the exclusion shall remain confined to the period of delay attributable to the claimant.

46. The questions are answered accordingly.

(AMIT BORKAR, J.)