

**(2018) 05 MP CK 0089**  
**In the Madhya Pradesh High Court**  
**Case No : W.P.No. 8522 OF 2015**

Arun Kumar & Another

APPELLANT

Vs

Arvind Kumar

RESPONDENT

**Date of Decision :** 14-05-2018

**Acts Referred:**

Limitation Act, 1963 — Section 5  
Madhya Pradesh Land Revenue Code, 1959 — Section 44, 50

**Citation :** (2018) 05 MP CK 0089

**Hon'ble Judges :** VIVEK RUSIA, J

**Bench :** Single Bench

**Advocate :** Sumit Nema, Hitendra Sharma, A.K. Sethi, Nitin Phadke

**Final Decision :** Dismissed

## Judgement

The petitioners have filed present writ petition being aggrieved by the order dated 11.08.2015 passed by the Board of Revenue, Gwalior and order dated 25.04.2015 passed by the SDO, Gwalior.

Facts of the case are as under:

The petitioner No.1 is claiming himself to be the nephew of Late Dattaray Gupte and the petitioner No.2 is son of petitioner No.1. Late Dattaray

Gupte was the coowner of agricultural land bearing Survey Nos.3, 4, 6, 8, 9 & 10 total area 12.767 hectare situated at Village Garoth, District

alongwith petitioner Nos.1 and 2. After the death of Dattaray Gupte on 25.06.1992, the present petitioners filed an application before the Tehsildar for deleting the name of Dattaray Gupte. The petitioner No.1 gave declaration before the Tehsildar that Dattaray Gupte had not left behind any heirs and

after his death, the petitioners are entitled for getting their names mutated in the revenue record as exclusive owner of entire land.

The respondent came to know about this fact and challenged the order of Tehsildar before the SDO by way of appeal. Since, the respondent No.1

was not party before the Tehsildar, therefore, he filed an application seeking permission to file appeal. Since, there was a delay in filing the appeal,

therefore, the respondent also filed an application under Section 5 of the Limitation Act seeking condonation of delay.

The present petitioners after appearance in the appeal filed objection to the application for condonation of delay as well as to the application seeking

permission to file appeal. On 25.04.2015 all the three applications came up for consideration before the SDO. Learned SDO has considered all the

three applications and decided in favour of the respondent and fixed the appeal for arguments.

Being aggrieved by the order dated 25.04.2015 the present petitioners preferred a revision under Section 50 of the Madhya Pradesh Land Revenue

Code, 1959 before the Board of Revenue. By order dated 28.11.2015, the Board of Revenue has dismissed the appeal, hence, the present petition

before this Court.

By order dated 07.01.2016, this Court issued notice to the respondent and by way of interim relief, directed parties to maintain status quo till the next

date of hearing. Now, the respondent has filed reply as well as application for vacating stay.

With the consent of parties, this petition is heard finally.

I have heard the arguments of Shri Sumit Nema, learned senior Advocate for the petitioner & Shri A.K. Sethi, learned senior Advocate for the

respondent.

Shri Nema, learned Senior Advocate for the petitioner submits that without condoning the delay, an appeal before the SDO is not maintainable. By

order dated 25.04.2015, the SDO has decided all the pending three applications but did not give any specific finding in respect of applications filed

under Section 5 of the Limitation Act. Learned Board of Revenue in a revision filed by the present petitioners has wrongly condoned the delay in filing

the appeal before the SDO, therefore, the SDO as well as Board of Revenue both have wrongly adopted procedure of law, hence, the matter is liable

to be remanded back to the SDO to decide the application filed under Section 5 of the Limitation Act. In support of his contention he has placed

reliance over the judgment of the apex Court passed in the case of Jatan Kumar Golcha Vs. Golcha Properties Private Limited, reported in (1970) 3

SCC 573. He has further placed reliance over the judgment of this High Court in case of V.K. Verma Vs. Dawoodi Bohra Masjid Committee, Betul,

reported in MPLJ (2008) 2 531 and in case of Smt. Lalita Dubey Vs. The State of Madhya Pradesh (W.P.No.22372/2017).

Shri A.K. Sethi, learned senior counsel for the respondent submits that vide order dated 25.04.2015 the learned SDO has decided all the pending three

applications and fixed the case of final arguments. The Board of Revenue has rightly come to the conclusion that there was a valid justification on part

of the respondent in approaching the SDO beyond the period of limitation, hence, no interference is called for and petition is liable to be dismissed.

Admittedly, the respondent did not make the petitioner party before the Tehsildar despite he being son of Late Dattaray Gupte, therefore, he filed an

appeal under Section 44 before the SDO with an application seeking permission to file appeal alongwith an application for condonation of delay. The

reasons for condonation of delay as well as permission for filing the appeal are same. The petitioner sought permission to file appeal as he was not

party to the mutation proceedings, therefore, he had no knowledge about the said order. In an application filed under Section 5 of the Limitation Act he

explained the delay by submitting that he had no knowledge about the order passed by the revenue authorities because he was not party. Learned

SDO while deciding these two applications together has specifically recorded the finding that the respondent was not made party before the

subordinate Court because the petitioners have not made him nonapplicant. Learned SDO has rejected the objection taken by the present petitioners

and permitted the respondent to file appeal and held that being a legal heir of Dattaray Gupte he has right to file appeal. Therefore, on these grounds

he has allowed both the applications.

The respondent has claimed himself to be the son of Dattaray Gupte and behind his back the present petitioners have got mutated their names. After

the death of Dattaray the revisional Court has also found that the delay has rightly been condoned by the SDO looking to the facts and circumstances

of the case.

The Hon'ble Apex Court in the case of Esha Bhattacharejee Vs Managing

Committee of Raghunathpur Nafar Academy and Other reported in (2013)

12 SCC 649 has held thus:-

“The Principles applicable to an application for condonation of delay are as follows:-

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the

courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their

proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to

the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be

vigilant so that in the ultimate eventuate there is no real failure of justice.”

Therefore, in view of the above, I do not find any ground to interfere with the impugned order. Petition is accordingly dismissed. The appeal before the

SDO is pending since 2015, therefore, the SDO is directed to decide within two months from the date of production of certified copy of this order on

merits.