
(1989) 12 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 20240 of 1989

Bhagwat and Others

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(1), 397(2)
Limitation Act, 1963 — Section 4, 5

Citation : (1990) 1 AWC 485

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Yasharth, for the Appellant;

Final Decision : Allowed

Judgement

B.L. Yadav, J.—By the present petition under Article 226 of the Constitution prayer is, that the orders dated 12-9-1989 and 7-7-1989 passed by the Assistant Director and Assistant Settlement Officer Consolidation Bulandshahr respectively may be quashed by issuing a writ of certiorari.

2. The controversy appears to be very short. A time barred appeal was filed by Smt. Chandrawati before the Settlement Officer Consolidation alongwith an application for condonation of delay u/s 5 of the Limitation Act. But this fact has been refuted by the learned Counsel for the Respondents and it is alleged under para 11 of the counter-affidavit that the appeal was within time. The Settlement Officer Consolidation, however, accepted that the appeal was time barred.

3. Once a statement of fact is made in the judgment by a Court, that has to be accepted as correct by all concerned. In State of Maharashtra v. Ramdas Srinivas AIR 1982 SC 1245 it has been held that statement of fact regarding proceedings in a court of law in respect of admission, confession or other matters in the judgment of the court, shall be taken to be conclusive and not open to be contradicted. The same can be challenged only by making an application before

that court which has recorded the statement of fact in the judgment. Consequently it is, now not open to this Court to take that judgment of Settlement Officer of Consolidation to be incorrect rather this Court has to proceed on the assumptions that the appeal was time barred.

4. When the appeal came up for hearing an objection was taken on behalf of the Petitioners that application u/s 5 of the Limitation Act for condonation of delay may be decided first, before proceeding to decide the appeal on merits. The reason was that till the application u/s 5 of the Limitation Act was allowed and the appeal was held to be within time, there would be no competent appeal for decision on merits. Assistant Settlement Officer Consolidation under the impugned order dated 7th July, 1989 rejected that objection and held that the application u/s 5 of Limitation Act for condonation of delay, and the appeal both would be decided together the same day. The revision preferred by the Petitioner against that order failed with the observations that the order of the Assistant Settlement Officer Consolidation was "an interlocutory order," hence no revision would lie against it in view of the provisions of Section 48 as amended by Section 19 of U.P. Ordinance No. 15 of 1982, which added the expression "other than an interlocutory order"

5. Dr. Gyan Prakash learned Counsel for the Petitioner urged that as appeal was held time barred under the orders of Assistant Settlement Officer Consolidation and application u/s 5 of the Limitation Act has been filed, unless that application was disposed of first, appeal cannot be decided, as in-case application is rejected appeal has also to be rejected. In case application is allowed only in that event the appeal would be competent and would be decided on merits. Under these circumstances there was no justification for deciding the appeal and application u/s 5 of the Limitation Act together on the same day. It was further urged that as the disposal of the application u/s 5 of the Limitation Act attaches finality to the matter because in case the application was rejected holding the appeal to be time barred, such orders could not be said to be "interlocutory order" nor order directing Section 5 application and appeal itself being decided together can be said to be an "interlocutory order."

6. Mr. M.C. Singh, learned Counsel for the Respondents on the other hand urged, that the order in appeal was correct and revision bus been correctly rejected as the order passed by the appellate court was an interlocutory order. Relying upon paras 10, 11 and 12 of the counter affidavit it was also urged that the appeal itself was not time barred and incorrect statement of fact has been made in the judgment of Assistant Settlement Officer Consolidation.

7. Having beard learned Counsel for the parties I am of the view that as the statement of fact has been made in the judgment of Assistant Settlement Officer Consolidation that the appeal was time barred and an application u/s 5 of the Limitation Act was moved for condonation of delay in filing the appeal, at this stage it cannot be assumed that the appeal was within time.

8. As regards the point as to whether the order passed by Assistant Settlement Officer Consolidation directing the application u/s 5 of Limitation Act and the appeal itself to be decided together on the same day was an "interlocutory order," suffice it to say that this expression "other than interlocutory order" was added by U.P. Ordinance No. 15 of 1982 qualifying or modifying the expression as to the regularity of the proceedings or as to the correctness, legality or propriety of any order. This expression "other than interlocutory order" has to be read alongwith other expressions. Wide sweep of language of Section 48 indicates that the expression "interlocutory order" has to be construed in a restricted sense and not in a broad sense. This in fact indicates the order of purely a temporary or of an interim nature where something has not been decided finally even though the rights of the parties might not be affected. Against the orders either passed by Assistant Consolidation Officer, Consolidation Officer or Consolidation Lekhpal or Settlement Officer Consolidation, the power of revision has been conferred on the Director of Consolidation. The Director of Consolidation is expected to correct all the illegalities and irregularities committed by any authority subordinate to it. This expression "interlocutory order" has therefore to be interpreted in such a way so as not to defeat the purpose of the provisions of Section 48. It has to be kept in mind that the consolidation proceedings are not voluntary litigation just like some body files civil suit or revenue suit out of cause of action arising on a particular date but the consolidation proceedings are, statutorily compulsorily imposed rather the villagers have been compelled for the litigation which otherwise they would not have chosen or liked to litigate in any court. For such compulsory nature of litigation imposed upon innocent villagers by the State Government by issuing a notification u/s 4 of the Act, provisions have to be construed with a view to do complete justice with the rights and interest of village people. The villagers in this country constitute the backbone of this great nation as Mahatma Gandhi, the father of nation, used to say that India lives in villages, therefore, if the justice has to be dispensed with to these people, it has to be kept in mind as to what is the nature of litigation and how the provision came in existence and with what object and purpose.

9. In *Madhu Limaye Vs. The State of Maharashtra*, while considering meaning of expression "interlocutory order" their lordships of Supreme Court observed as follows:

But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code.

10. In *Amar Nath and Others Vs. State of Haryana and Another*, it was observed

while interpreting the provisions of Section 397 of Code of Criminal Procedure that the term "interlocutory order" in Section 397(2) of 1973 Code has been used in a restricted sense and not in a broad sense.

11. In my opinion expression "interlocutory order" has to be construed consistent with the wide sweep of the language of Section 48. The connotation "interlocutory order" has to be interpreted not with a view to render almost nugatory the revisional power of the Director of Consolidation, unless it is a purely interim order of temporary nature, it has to be taken as final even though certain rights, of the parties need not be decided. In the present case by the order of Assistant Settlement Officer Consolidation what was done was that it was directed that the application u/s 5 of Limitation Act would be decided together the same day which cannot be said to be an order just of interim or temporary nature. This finally disposes of matter in dispute for that stage which was very material. The nature of that order can be judged by the fact that unless application u/s 5 of Limitation Act was allowed and delay was condoned there was no question of considering the appeal on merits, hence the application u/s 5 of the Limitation Act must have been decided first and in case it was allowed the appeal should have been heard on merits otherwise the appeal would be decided as time barred. An order of this nature cannot be said to be interlocutory order rather it was in the form of a final order. It is the substance of, the order which has to be analysed rather than the garb and the present order was not an interlocutory order hence the revision was maintainable.

12. Applying priori and posteriori reasonings I am of the view that impugned orders date 12-9-1989 and 7-7-1989 cannot be sustained. Petition succeeds and is allowed. Impugned orders dated 12-9-89 and 7-7-89 passed by Assistant Deputy Director of Consolidation and Settlement Officer Consolidation respectively are hereby quashed. Assistant Settlement Officer Consolidation is directed to decide the application u/s 5 of the Limitation Act first and then in case it is allowed, the appeal may be decided on merits on subsequent date. It shall however be open to him to ascertain as to whether the appeal was actually time barred or not. There shall be no order as to costs.