
(2013) 02 AHC CK 0065
In the Allahabad High Court
Case No : Civil Misc. Writ Petition No. 5833 of 2013

Bodda	Vs	APPELLANT
Deputy Director of Consolidation and Others		RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 52

Citation : (2013) 5 ADJ 248 : (2013) 5 AWC 4848 : (2013) 119 RD 180

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Ram Swaroop Singh and Shivakant Singh, for the Appellant;

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—Heard Sri Ram Swaroop Singh, alongwith Sri Shivakant Singh, learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.

Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 8.1.2013 passed by the Deputy Director of Consolidation (in short, "DDC") in revision No. 156 [Bodda v. Raghuvir and others), by which the DDC has dismissed the revision of the petitioner holding it as not maintainable. While assailing this order, Sri Singh contends that the Settlement Officer of Consolidation has erred in condoning the delay of 23 years in the appeal filed by the other side challenging the order dated 23.3.1987 passed by the Assistant Consolidation Officer. It is also contended that the delay was condoned ignoring the objection to the delay condonation application. The DDC has dismissed the revision on the ground that the revision, being against an interlocutory order, is not maintainable. In the submissions of learned counsel for the petitioner, an order condoning the delay in filing the appeal would fall in the ambit of final order and not interlocutory order and revision would be

maintainable.

2. I have heard learned counsel for the parties and perused the record.

With the consent of learned counsel for the parties, the writ petition is taken up for final disposal with a liberty to respondent Nos. 4 to 7 to file an application for recall, variation or modification of the order, which is being passed today.

3. The facts giving rise to this case are that it appears, against the order dated 23.7.1987 passed by the Assistant Consolidation Officer, an appeal was filed in the year 2012, being appeal No. 121. The said appeal was barred by time, therefore, an application for condonation of delay was also filed. The other side has filed an objection on the ground that appeal was not maintainable after notification u/s 52 of the U.P. Consolidation of Holdings Act, 1953 (in short, "the Act"). It was also contended that 23 years delay has not been properly explained. The Settlement Officer of Consolidation, ignoring the petitioner's objection, has condoned the delay vide order dated 8:8.2012. Aggrieved by this order, the petitioner herein has filed revision, which was numbered as revision No. 156. The learned DDC dismissed the revision as not maintainable being against an interlocutory order.

4. For appreciating the controversy in hand, it would be useful to look into the provisions contained under sub-section (1) of Section 48 of the Act and explanation (2) thereto, which confers a right of revision under the U.P. Consolidation of Holdings Act, 1953. The same is reproduced hereinunder:

48(1). The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, made such order in the case or proceedings as he thinks fit.

Explanation (2).-- For the purposes of this section the expression "interlocutory order" in relation to a case or proceeding, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.

From the perusal of sub-section (1) of Section 48 of the Act, it would transpire that the revision would be maintainable against any order except interlocutory order and the interlocutory orders have been explained in explanation (2), which means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.

The literal meaning of the word "interlocutory order" has been defined in various dictionaries as under:

(1) Lata Lexicon (P. Ramanath Ayer) 1997 Edition: Interlocutory order: An interlocutory order is one which is made pending the case and before a final hearing on the merits.

An interlocutory order is made to secure some end and purpose necessary and essential to the progress of the suit, and generally collateral to the issues formed by the pleadings and not connected with the final judgment.

(2) Halsbury's Law of England, 4th Edition, Vol. 26, Paragraph 506:

Interlocutory order: An order which does not deal with the final rights of the parties, but either. -- (1) is made before judgment and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, even though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which/ideals.

(3) Concise Oxford English Dictionary, 11th Edition:

Interlocutory: (of a decree or judgment) given provisionally during the course of a legal action.

5. On bare perusal of the meaning of the word "interlocutory order", it would transpire that an order, which does not have the effect of finality of the proceedings. In other words, an order in a pending proceeding, which is made during the progress of an action and which does not finally dispose of the rights of the parties.

6. The word "interlocutory order" has also been used in Section 397 of Code of Criminal Procedure and the same came up for consideration before the Apex Court in the case of Amar Nath and Others Vs. State of Haryana and Another, , where the Apex Court has held that the term "interlocutory order" merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. In the case of V.C. Shukla Vs. State through C.B.I., , the Apex Court held that the interlocutory order has to be construed in contradiction to or in contrast with final order, it means not a final order, but an intermediate order. It is made between the commencement of an action and the entry of the judgment.

7. 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 S. 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 Chap. XXIX of the Code.

Here in this case, the delay has been condoned, meaning thereby, the other side had right to pursue the appeal. Had the delay not been condoned, the right of pursuing appeal would have never arisen, as unless the delay is condoned, there can be no appeal. Explanation (2) of Section 48 of the Act explains the interlocutory order, here the effect of allowing the application filed u/s 5 of the Limitation Act would mean attaching the finality to the proceeding, therefore, such order will not fall in the ambit of interlocutory order and the revision was maintainable. The learned DDC has erred in dismissing the revision as not maintainable.

The view taken by me finds support from the judgments of this Court in *Bhagwat and Others Vs. Dy. Director of Consolidation and Others*, and in *Meharban and others v. Deputy Director of Consolidation and others*, 2006 RD 646.

In the result, the writ petition succeeds and is allowed. The impugned order dated 8.1.2013 passed by the DDC in revision No. 156 (*Bodda v. Raghuvir and others*) is hereby quashed. The DDC is directed to pass a fresh order, treating the revision as maintainable, on merit in accordance with law after due notice to the parties.