
(2014) 09 AHC CK 0150
In the Allahabad High Court
Case No : Consolidation No. 604 of 2014

Dev Narain Singh

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 21 Rule 21, Order 41 Rule 3A
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 48, 53B, 9A

Citation : (2014) 125 RD 137

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Ravi Nath Tilhari, Advocate for the Appellant; Azad Khan, Advocate for the Respondent

Judgement

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Ram Surat Ram (Maurya), J.—Heard Sri Ravi Nath Tilhari, for the petitioner. The writ petition has been filed against the orders of Settlement Officer Consolidation dated 1.8.2013, rejecting the application of the petitioner for deciding delay condonation application first, before hearing arguments on merit in the appeal and Deputy Director of Consolidation dated 4.6.2014, dismissing the revision of the petitioner against the aforesaid order, arising out of title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. Gaon Sabha and State of U.P. (respondents-3 and 4) filed an appeal from the order of Consolidation Officer dated 3.8.1987, on 27.12.1991, along with delay condonation application. The petitioner filed an objection in delay condonation application as well as his reply to memorandum of appeal on 21.1.2011. The petitioner requested Settlement Officer Consolidation, for deciding delay condonation application, before hearing arguments on merit in the appeal. Settlement Officer Consolidation, by order dated 1.8.2013, rejected the request

of the petitioner and held that arguments in delay condonation application and in the appeal on merit would be heard together. The petitioner filed a revision against the aforesaid order, which has been dismissed by Deputy Director of Consolidation. Hence this writ petition has been filed.

3. The Counsel for the petitioner submitted that section 11 of the Act provides 21 days limitation for filing the appeal against the order of Consolidation Officer. Although by virtue of section 53-B of the Act, section 5 of Limitation Act, 1963 has been applied in the proceedings under the Act but so long as delay in filing the appeal is not condoned, a time barred appeal cannot be treated a valid appeal nor it can be heard on merit. Issue relating to limitation is an issue relating to jurisdiction of the Court. So long as delay is not condoned, Settlement Officer Consolidation has no jurisdiction to hear and decide the appeal on merit. Otherwise also, if delay is not condoned, there will no obligation on the respondent in the appeal to argue it on merit. Orders of respondents-1 and 2 are illegal and liable to be set aside. He placed reliance on the judgment of this Court in Bhagwat and Others Vs. Dy. Director of Consolidation and Others, Parbhu and Another Vs. Deputy Director of Consolidation, Ghazipur and Others, and Jais Lal Vs. Deputy Director of Consolidation, Jaunpur and Another, in which it has been held that delay condonation application should be decided first and in case delay is condoned, then arguments in appeal on merit be heard otherwise the appeal be dismissed as time barred.

4. I have considered the arguments of the Counsel for the petitioner and examined the record. Section 11 of the Act, which provides the provision for appeal is quoted below:

Section 11-Appeal.--(1) Any party to the proceedings under section 9-A aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that section may within 21 days of the date of the order, file an appeal before Settlement Officer Consolidation, who shall after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any Court of law.

5. By virtue section 53-B of the Act, provisions of section 5 of the Limitation Act, 1963 has been applied to all the proceedings under the Act. Section 5 of the Limitation Act, 1963 is quoted below:--

Section 5.--Extension of prescribed period in certain case.--Any appeal or application, other than the application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

6. There is no provision like Order XLI, Rule 3-A Code of Civil Procedure, 1908, in the Act, which made mandatory requires for deciding delay condonation

application, before passing any order in the appeal. A Full Bench of this Court in *Bijai Narain Singh and Others Vs. State of Uttar Pradesh*, has held that the provision of Code of Civil Procedure has not been applied in the proceeding under the Act. Section 5 of the Limitation Act, 1963 requires for giving explanation of the cause, for not preferring the appeal or the application within period of limitation prescribed under the Act. U.P. Consolidation of Holdings Act, 1953 does not prescribe for filing a separate application for condonation of delay as required under Order XLI, Rule 3-A in Code of Civil Procedure, 1908. Explanation of delay can be given even in memorandum of the appeal and technical provisions of Code cannot be borrowed suo moto. In *Bhagwat's case* (supra) this Court found that consolidation is State imposed compulsory litigation on rustic villagers. Right of the parties are decided finally during consolidation for ever. On the one hand the Act provides shorter limitation for filing appeal etc. than the limitation as provided under Limitation Act, 1963, which shows the purpose is for speedy disposal of cases and finalization of consolidation but at the same time authorities were given power of condonation of delay in appropriate cases to prevent miscarriage of justice.

7. The appeal, application and revision under the Act are decided, adopting summary procedure. This Court in *Ram Rati Vs. Dy. Director of Consolidation, Banda and others*, held that delay condonation application can be decided while deciding the objection on merit. In the absence of statutory provision, consolidation authorities used to decide delay condonation application in the appeal, application and revision under the Act, along with the appeal, application and revision. Giving opportunity of hearing to the parties is only requirement under sections 11 and 48 of the Act, for deciding the appeal and revision. In the absence of statutory provision, requiring to decide delay condonation application first, order of Settlement Officer Consolidation directing to hear delay condonation application and along with final arguments in appeal cannot be held to suffer from any illegality.

8. Supreme Court in *Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.*, held that the Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order XIV (before the amendment), the Commission stated:

"This Rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the Courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue, the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a Court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force."

Apart from the fact that the provisions of the Code do not *stricto sensu* apply to

"industrial adjudication", even under the Code, after the Amendment Act, 1976, the normal rule is to decide all the issues together in a civil suit.

In view of judgment of Supreme Court, view taken by this Court in Bhagwat v. DDC and others, 1990 RD 162 Parbhu and Another Vs. Deputy Director of Consolidation, Ghazipur and Others, and Jais Lal Vs. Deputy Director of Consolidation, Jaunpur and Another, is not liable to be accepted.

In view of the aforesaid discussion, the writ petition has no merit and is dismissed.