

(2016) 01 AHC CK 0161
In the Allahabad High Court

Case No : Review Petition No. 749 of 2014 in Consolidation No. 604 of 2014

Dev Narain Singh

APPELLANT

Vs

Deputy Director of Consolidation, District Sultanpur and
Others

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule XXI, Order 22 Rule 3, Order 22 Rule 4, Order 41 Rule 3-A, Order 9 Rule 13
Constitution of India, 1950 — Article 141
Limitation Act, 1963 — Section 10, Section 10, Section 11, Section 11,

Citation : (2016) 130 RD 665

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

Bench : Single Bench

Advocate : Ravi Nath Tilhari, for the Appellant;

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—1. Heard Sri Ravi Nath Tilhari, for the petitioner/review applicant.

2. The writ petition was filed against the orders of Settlement Officer Consolidation dated 01.08.2013, rejecting the application of the petitioner for deciding delay condonation application, before hearing arguments on merit in appeal and Deputy Director of Consolidation dated 04.06.2014, dismissing the revision of the petitioner against aforesaid order, in the proceeding under Section 11 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

3. The writ petition was dismissed by judgment dated 05.09.2014, holding that the appeal, revision and application in the proceedings under the Act are being decided by consolidation authorities, adopting summary procedure, giving opportunity of hearing to the parties. In the absence of any statutory provision under the Act or Rules framed in it, requiring to decide delay condonation application, before hearing the arguments on merit in appeal, impugned orders

cannot be said to be illegal. The petitioner has filed this petition for review of judgment dated 05.09.2014.

4. The counsel for the petitioner submitted that Section 11 of the Act provides 21 days limitation for filing of the appeal. Section 5 of Limitation Act, 1963 has been applied to the proceedings under the Act, by virtue of Section 53-B of the Act. Section 29(2) of Limitation Act, 1963, provides that provisions of Section 3 to 24 of 1963 Act, are applicable to all proceedings, where any special or local law has provided a different limitation. Section 5 of Limitation Act, 1963 provides that any application, appeal etc. may be admitted after the prescribed period, if the appellant/applicant satisfies the court that he had sufficient cause for not preferring the appeal within such period. Thus Section 5 requires for hearing/decision on delay condonation application, before admission of the appeal. The provisions of Section 3, of Limitation Act, 1963, which mandatorily provides for dismissal of appeal, application etc. filed after prescribed period of limitation. Section 5 used term "may be admitted" which means before admission of the appeal, condonation of delay was necessary. These provisions escaped notice from this Court and in the judgment under review, it has been held that in the absence of any statutory provision, requiring to decide delay condonation application, before hearing the arguments on merit, in appeal, impugned orders cannot be said to be illegal. Co-ordinate Benches of this Court in Bhagwat Vs. DDC and others, 1990 RD 162, Prabhu Vs. DDC and others, , 2013 (118) RD 48 and Jais Lal Vs. DDC and others, , 2014 (122) RD 118, applied the principles contained in Section 5 of Limitation Act, 1963 and Order 41 Rule 3-A C.P.C. and held that so long as delay in filing the appeal is not condoned, Settlement Officer Consolidation has no jurisdiction to examine merit of the case and direction were issued to decide delay condonation application, before deciding the appeal on merit. In case, this Bench was not agreeing with the view of Co-ordinate Benches, then judicial discipline required to refer the issue for consideration of larger bench. Law laid down in Ramesh Chandra Sankla Vs. Vikram Cement, , (2008) 14 SCC 58 has no application in the matter. Thus judgment suffers from error apparent on face of record. He relied upon judgment of Supreme Court in Commissioner of Sales Tax Vs. Pine Chemicals Ltd., , (1995) 1 SCC 58 and Inder Chand Jain Vs. Moti Lal, , (2009) 14 SCC 663 in which it has been held that an application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit* means an act of Court shall prejudice no one.

5. I have considered the arguments of the counsel for the review applicant. This Court dismissed the writ petition holding that in the absence of any statutory provision under the Act or Rules framed in it, requiring to decide delay condonation application, before hearing the arguments on merit in appeal, impugned orders cannot be said to be illegal. Now the argument is that in view of Section 5 read with Section 3 of Limitation Act, 1963, it is mandatory to condone delay before admission of appeal. Dictionary meaning of word "admit" is "acceptance of an appeal for the purposes of consideration". Here I may take an example that Article 120 of Limitation Act, 1963 provides ninety days limitation

for filing substitution application under Order 22 Rule 3 and 4 C.P.C. If substitution application under Order 22 Rule 3 C.P.C. was not filed within 90 days, consequently an application for condonation of delay and an application for setting aside abatement are also attached with substitution application. This Court decides substitution application adopting summary procedure. Under law all three applications i.e. delay condonation application, application for setting aside abatement and substitution application can be heard and decided simultaneously and there is no need to hear all the applications separately at different stages according to Section 5 of Limitation Act, 1963. Similar is the position before consolidation authorities where appeal, revision and applications are decided adopting summary procedure.

6. Now relevant provisions are quoted below:-

3. Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(2) For the purposes of this Act,--

(a) a suit is instituted,--

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set-off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted--

(i) in the case of a set-off, on the same date as the suit in which the set-off is pleaded;

(ii) in the case of a counter-claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

5. Extension of prescribed period in certain cases.--Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the 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.

7. Supreme Court in *Bhagmal v. Kunwar Lal*, (2010) 12 SCC 159 held that order of the appellate court came to be interfered with by the High Court solely on the

ground that there was no application for condonation of delay made by the appellant-defendants before the trial court in support of their application under Order 9 Rule 13 CPC. The High Court observed that the appellate court had not recorded any finding on the question as to whether the filing of the application under Section 5 of the Limitation Act was necessary or not and went on to decide the application on merits and, therefore, it had exceeded its jurisdiction. The High Court also commented on the fact that the ex parte decree was decided on 19-4-1985, while the application for setting aside the ex parte decree was filed on 8-7-1988 and that no application for condonation of delay under Section 5 of the Limitation Act was filed. Relying on Article 123 of the Limitation Act, the High Court took the view that the application ought to have been filed within 30 days from the date of passing of the decree and since it was not so filed, at least a condonation of delay application should have been made under Section 5 of the Limitation Act and, therefore, in the absence of prayer for condonation of delay, the appellate court could not have allowed the application under Order 9 Rule 13.

In our opinion, the High Court was not justified in taking a hypertechnical view. We have seen all the orders. It is quite clear from the trial court's order that the trial court entertained the application on merits. The trial court undoubtedly has referred to the reply of the respondents to the effect that the application for setting aside the ex parte decree was beyond the limitation. However, the view taken by the trial court was based more on the merits. In fact, it went on to record the finding that there was no compromise and the theory of compromise and delay on account of that was not acceptable. The trial court has more or less based its findings regarding delay on the basis of the order-sheets. That was not right as the order-sheets nowhere bore the signatures of the parties. They were mechanically written mentioning "parties as before". Therefore, the trial court did not throw the application under Order 9 Rule 13 merely on the basis of the fact that no application for condonation of delay was made. It went on to consider the delay aspect as well as the merits and even allowed the parties to lead evidence.

8. Supreme Court in *Mahabir Singh v. Chief of Army Staff*, 1990 Supp SCC 89 (1) condoned delay on oral prayer holding that this petition is barred by limitation and no application for condonation of delay has been made. We have, however, accepted the oral prayer of the counsel to condone the delay and have proceeded to hear the matter on merits.

9. Supreme Court in *State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612, held that an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court. In *S. Bagirathi Ammal v. Palani Roman Catholic Mission*, (2009) 10 SCC 464, it has been held that an error contemplated for review must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error

and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order.

10. The arguments that judicial discipline required to refer the matter for consideration of issue to larger bench in view of disagreement with the view taken by co-ordinate Benches. This Court relied upon judgment of Supreme Court, which is binding upon this Court under Article 141 of the Constitution. In view of contrary view of Supreme Court, reference to larger Bench was not required. In view of aforesaid discussion, there is no ground to review the judgment of this Court. Review petition is dismissed.