(2015) 04 RAJ CK 0235

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 585 of 2014

Govind Prasad Sharma APPELLANT

Vs

Board of Revenue, Ajmer and Others RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Rajasthan Tenancy Act, 1955 — Section 230

Citation : (2015) 3 RLW 2313

Hon'ble Judges : Sunil Ambwani, C.J;Prakash Gupta, J

Bench : Division Bench

Advocate : Ajay Kumar Bajpai, for the Appellant; Dilip Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prakash Gupta, J—There is delay of 622 days in filing the Special Appeal, challenging the order of learned Single Judge dated 9.5.2012, by which he has, in exercise of powers under Article 226 & 227 of the Constitution of India, considering the facts of the case, heard the matter ex parte, and while disposing of the writ petition, issued directions to the Revenue Appellate Authority, Bharatpur, to firstly consider whether there were sufficient grounds for condonation of delay in filing the appeal, after about 37 years of the impugned order dated 29.5.1970, and directed that he should decide the matter, on delay, before exercising the jurisdiction to hear the appeal on merits. In the application for condonation of delay, in the accompanying Special Appeal, it is stated that the impugned order 9.5.2012, was filed by the respondents before the Revenue Appellate Authority on 24.2.2014, and that as soon as the appellant acquired the knowledge of the order of learned Single Judge, the present Appeal was filed within 30 days on 22.3.2014.

2. The appellant has challenged the order of learned Single Judge, on the ground that in revision, the Revenue Board, vide its order dated 31.10.2011, had

directed that the question of delay will be considered, along with merits of the matters, at the time of final hearing. The appellants were not heard by learned Single Judge, whereas he was seriously prejudiced in the order to decide the matter on the question of delay, before the appeal was heard on merits.

3. It is admitted that the appellants have taken more than three adjournments, after filing the Special Appeal, alongwith application for condonation of delay.

4. The appeal was filed before the Revenue Appellate Authority on 25.6.2007, by Smt. Sheela Devi against the order of the Revenue Court with a delay of 37 years. An application was filed to decide the question of delay, before considering the appeal on merits. The Revenue Appellate Authority rejected the application, on which a revision was filed under Section 230 of the Rajasthan Tenancy Act, 1955, which was heard on 31.10.2011, in which a Single Member of the Revenue Board has maintained the order of the Revenue Appellate Authority dated 18.9.2009, and directed to decide the question of limitation, along with merits of the matter.

5. It is submitted by learned counsel appearing for the appellant that the order deciding the question of delay along with merits was an innocuous order, with which this Court should not have interfered, and in any case, the writ petition could not have been decided, without issuing notice and hearing the appellants.

6. In the peculiar facts and circumstances, in which the Revenue Appeal was filed with delay of 37 years on the ground that a decree was obtained by playing fraud, on the rights of the minor, the question of delay ought to have been considered, before the appeal was heard on merits. It was necessary for the appellant, before the Revenue Appellate Court to firstly establish that the appellant did not have knowledge of the decree dated 29.5.1970, and that the appellant was still in possession of the land. The appellants were also required to establish the date when they came to know of the decree, for maintaining the appeal.

7. We do not find that learned Single Judge had committed any error of law, in directing the Revenue Appellate Authority to firstly consider the delay of 37 years, before the considering the matter on merits.

8. We further find that the order was passed by learned Single Judge on 9.5.2012, after which the matter has not proceeded in the Court of Revenue Appellate Authority. It is apparent that the appellant having secured an advantage, is seeking adjournments, and thus has disentitled itself to challenge the order.

9. We also find that the appellant will not suffer in any manner, in case he had a good case for condonation of delay before the Revenue Appellate Authority. The delay of 37 years is not an ordinary delay, which may be ignored by the Revenue Appellate Authority, and to decide the matter on the question of delay, along with merits. The delay condonation application is thus, rejected, and consequently,

the Special Appeal is dismissed. The Revenue Appellate Authority is directed to decide the matter as expeditiously as possible. The matter regarding condonation of delay will be decided, as far as possible within a period of three months, after which, if necessary, the appeal may be considered and decided on merits expeditiously.

