(1979) 11 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ No. 3453 of 1979

Lal Giri and Another — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 07-11-1979

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331, 331(3)

Citation : (1980) AWC 47

Hon'ble Judges : R.S. Singh, J

Bench : Single Bench

Advocate : Prakash Chandra, for the Appellant; G.N. Verma and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.S. Singh, J.—This writ petition is directed against the order of the Board of Revenue dated 15-5-1979 by which the second appeal filed by the Petitioners was dismissed as time-barred.

2. The facts of the case, in brief, are that a second appeal was filed on behalf of the Petitioners before the Board of Revenue on 30th July, 1975. It was accompanied with an application u/s 5 of the Limitation Act for condonation of delay. The delay was according to their calculation of three days. The application for condonation of delay was opposed on behalf of the Respondents. The Board of Revenue after hearing the parties dismissed the appeal as time-barred.

3. It has been contended by the learned Counsel for the Petitioners that there was sufficient ground for condonation of delay, but the application u/s 5 of the Limitation Act was illegally rejected. It has further been pointed out that the decree against which the second appeal was filed was prepared and signed on 7th May, 1975 and counting the limitation from the date of the decree the appeal was well within time. Therefore, the order of the dismissal of the appeal as time-barred is on the face of it illegal.

4. It has been contended by the learned Counsel for the contesting Respondents (hereinafter referred to as the Respondents) that the point that the decree was prepared and signed on 7th May, 1975 and the appeal was within time was not argued before the Board of Revenue. It was, however, contended that the Board of Revenue has rightly rejected the application for condonation of delay.

5. The learned Counsel for the Petitioners further contended that this point was canvassed before the Board of Revenue. But this fact is disputed by the other side.

6. I have considered the arguments of the learned Counsel for the parties. u/s 331(3) of the U.P. Zaraindari Abolition and Land Reforms Act an appeal lay to the Board of Revenue against the final order or decree passed by the Additional Commissioner. Section 331 of the said Act has been amended, first by an Ordinance and thereafter by Act No. 30 of 1975 which came into force from 16-7-1975 and 19-8-1975 respectively. By this amendment now the appeal lies against the decree and not against a final order. There is no dispute about the fact that the decree was also on the record along with the judgment and memorandum of appeal. This fact is clear that the decree was prepared and signed on 7th May, 1975. In that case the appeal was Clearly within time. Irrespective of the fact whether this point was argued or not before the Board of Revenue it was necessary for the Board of Revenue to verify this fact from the record whether the appeal was filed within time and if due to some misapprehension or miscalculation, the learned Counsel for the Petitioners moved an application u/s 5 of the Limitation Act for condonation of delay and it was rejected, it will not make the appeal time barred. But strictly speaking the application or order will not make an appeal having been filed beyond time if actually it was filed within time. The decree Was very much on the record of the Board of Revenue from which it is proved that the appeal was filed within time. Irrespective of the fact, an application u/s 5 of the Limitation Act had been made, the appeal cannot be held to have been filed beyond time. In the present case the Board of Revenue has not applied its mind to check up from the record whether the appeal was filed within time or not, but without looking the decree and calculating the limitation from the decree it has rejected the appeal as time barred. Such a hasty disposal without looking to the record always causes a great hardship and harassment to the parties. However, the Board will now try to dispose off this case as expeditiously as practicable in order to avoid further harassment to the parties.

7. In the result, I allow the petition, quash the order of the Board of Revenue dated 15-5-1979 and direct it to decide the appeal according to law as expeditiously as possible. The parties shall, however, bear their own costs.