

(2008) 11 AHC CK 0031
In the Allahabad High Court

Ram Sundar

APPELLANT

Vs

Deputy Director of Consolidation and Another

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4
Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2009) 2 AWC 1435

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.N. Varma, J.—One Ramraji was owner of plot No. 932 situate in village Shividaha, Pargana, tahsil and district Bahraich. She died issueless on 8.11.1982. The petitioner as well as opposite party No. 2 claimed rights to her property on the basis of Will said to have been executed by her in their favour. Proceedings u/s 34 of U.P. Land Revenue Act were thus initiated by the opposite party No. 2 which culminated in his favour. The petitioner thereafter filed a suit u/s 229B of the U.P.Z.A. and L.R. Act which abated on village having been notified u/s 4 of U.P. Consolidation of Holdings Act (hereinafter referred to as the Act). Thereafter the petitioner filed objections u/s 9A(2) of the Act which were barred by limitation by one and half years. An application u/s 5 of the Limitation Act was preferred praying therein for condonation of delay in filing the objections. The Consolidation Officer vide order dated 20th July, 2005 allowed the application u/s 5 on payment of Rs. 100 as costs and posted the matter for framing of issues. Being aggrieved, the opposite party No. 2 filed an appeal u/s 11 of the Act which was dismissed on 23.12.2005. Still not satisfied the opposite party No. 2 filed a revision u/s 48 of the Act. Opposite party No. 1 vide its judgment and order dated 24.6.2008 allowed the revision and set aside the order dated 20.7.2005 as well as 23.12.2005. It is against the said order that the petitioner has approached this Court through the instant petition.

2. I have heard Sri B.L. Misra, learned Counsel for the petitioner as well as Sri S.K. Singh learned Counsel appearing on behalf of opposite party No. 2.

3. Learned Counsel for the petitioner submitted that the opposite party No. 1 committed manifest error of law in allowing the revision and setting aside the order passed by the Consolidation Officer as well as Settlement Officer of Consolidation. According to him, the Consolidation Officer in right perspective allowed the petitioner's application for condonation of delay and directed the matter to proceed on merits. Opposite party No. 1 while allowing the revision has shut out an opportunity of hearing to the petitioner. According to him, since right, title or interest of the parties are to be determined, the objections ought not to have been negated on mere technicalities. It was further asserted that even if the name of opposite party No. 2 was mutated in respect of the land in question on the basis of Will in proceedings u/s 34 of the U.P. Land Revenue Act, the said proceedings were summary in nature and the same did not decide any right, title or interest of the any of the parties. It was further asserted that sufficient-cause having been explained for filing the objections beyond period prescribed, the opposite party No. 1 on correct appreciation ought to have dismissed the revision. In support of his case, he placed reliance upon *Balakrishnan v. M. Krishnamurthy* 1998 (89) RD 607 : and *Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others*, .

4. Learned Counsel for the opposite party No. 2 in opposition submitted that there is absolutely no illegality or infirmity in the order impugned in the petition. According to him, the matter having been settled in 1984 there was no occasion for the Consolidation Officer to reopen the same for decision afresh. He further argued that since there was valid deed by which the property has been bequeathed to opposite party No. 2, therefore, title in respect of the property stood settled and it was not justified for opposite party to reopen the dispute again.

5. Perusal of the judgment and order passed by the opposite party No. 1 reveals that the revision was allowed on two counts (i) the controversy in respect of the land in question was finally settled in 1984 when the proceedings u/s 34 of the Act were finally decided by the Commissioner; (ii) the objections u/s 9A(2) were filed after a lapse of one and half years for which no plausible explanation was furnished for condonation, of delay.

6. Proceedings u/s 34 of the U.P. Land Revenue Act are only summary in nature. They do not decide right, title or interest of any of the parties litigating under the said proceedings. Title in respect of the land is to be established under regular proceedings for which the petitioner filed a suit u/s 229B of U.P.Z.A. and L.R. Act for declaration of his rights which abated in 1993. The approach of opposite party No. 1 that since proceedings u/s 34 of the Act stood finally culminated in favour opposite party No. 2, therefore, fresh proceedings u/s 9A(2) of the Act could not be gone into, is totally erroneous. In right perspective the opposite party No. 1 ought to have held that as consolidation proceedings in village were under

process, therefore, right, title and interest of parties was to be adjudicated upon in the said proceedings.

7. In so far as the question of filing of objection beyond period prescribed, it is settled proposition that any cause which prevents a person from approaching the Court in time, amounts to sufficient cause. In his application the petitioner amply explained that as he was in Punjab in connection with his vocation, therefore, he was not aware of the fact of village having been notified under the Consolidation Act. Upon learning that consolidation has started in the village, objections were filed u/s 9A(2) of the Act which obviously was beyond the period prescribed condonation for which was prayed. The delay according to the petitioner, was not intentional, but was bona fide and genuine and deserved to be condoned. Opposite party No. 1 failed to appreciate that the cause shown for not approaching the Court within the period prescribed was a sufficient-cause. It also appeared to be oblivious of the fact that the Court should exercise its discretion in favour of hearing and not to be shut out hearing. By allowing the revision and rejecting the petitioner's application u/s 5 of the Limitation Act for condonation of delay in filing the objections, the opposite party No. 1 virtually shut out an opportunity to the petitioner to present his case on merits with regard to right, title and interest in respect of the land in question. The Consolidation Officer was perfectly justified in condoning the delay upon appreciation that sufficient-cause had been explained. This finding ought not to have been interfered with by the opposite party No. 1.

8. In *N. Balakrishnan* case (supra), the Apex Court observed that once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding. In this connection, the Apex Court observed as follows:

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

The reason for such a different stance is thus: The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because

on the expiry of such time a bad cause would transform into a good cause.

Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object for providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari and State of West Bengal v. Administrator, Howrah Municipality*.

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss.

9. In *Ram Nath Sao* case (supra), the Apex Court has explained the expression sufficient-cause as follows:

Thus, it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order XXII, Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot

be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking Steps. But one thing is clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by as slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the Courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper-technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuation right of such a party to have the decision on merit. While considering the matter, Courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

10. According to Mon"ble the Supreme Court, sufficient cause should receive a liberal construction so as to advance substantial justice. Thus, as would appear the idea behind Section 5 of the Limitation Act is to protect the rights of the party. The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. By refusing to condone the delay on technical grounds would amount to denial of right to the parties, who may have genuine claim. All these aspects have completely been ignored by opposite party No. 1 while deciding the revision. The judgment and order passed by opposite party No. 1 allowing the revision, thus, cannot be allowed to be sustained.

11. In the result, the writ petition succeeds and is allowed. The judgment and order dated 24.6.2008, passed by opposite party No. 1 as contained in Annexure-1 is hereby set aside.

12. The Consolidation Officer shall now decide the dispute inter se between the parties expeditiously after affording opportunity of hearing to the parties.