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**(2014) 12 AHC CK 0083**

**In the Allahabad High Court**

**Case No :** C.M. Review Application No. 215787 of 2014 in Writ-B No. 39133 of 2014

Saurabh Gupta

APPELLANT

Vs

D.D.C., Lalitpur and Others

RESPONDENT

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**Date of Decision :** 22-12-2014

**Acts Referred:**

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19-A, 9B

**Citation :** (2015) 126 RD 383

**Hon'ble Judges :** Anjani Kumar Mishra, J

**Bench :** Single Bench

**Advocate :** H.M.B. Sinha, Advocates for the Appellant; Ray Sahab Yadav and S.C. Surendra K. Yadav, Advocates for the Respondent

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## **Judgement**

Anjani Kumar Mishra, J.—Heard Shri H.M.B. Sinha, learned Counsel for the petitioner-applicant and Shri Anand Yadav, who appears for the Gaon Sabha. This review application has been filed seeking review of an order dated 31.7.2014. By this order, three writ petitions, namely 39133 of 2014, 39186 of 2014 and 39180 of 2014 were decided by a common order. The review application has been filed on the ground that the facts of the three cases were different and, therefore, separate orders should have been passed therein. It has been contended that the orders impugned have been passed in separate proceedings/one under section 9-B and the other under section 19-A of the U.P. Consolidation of Holdings Act.

2. In proceedings under section 9-B, plots in dispute, recorded as Banjar, Marghat & Pahar were valued at 70 paise and thereafter in proceedings under section 19-A proposed in the chak of the petitioners. A complaint against the order under section 19-A as treated as an appeal and Gaon Sabha land was excluded from the chak of the petitioner.

3. Against the order passed in proceedings under section 9-B, two revisions, being Revision No. 2 (State of U.P. v. Saurabh Gupta) and Revision No. 20 (Gaon

Sabha v. Saurabh Gupta) were filed. Against the order in proceedings under section 19-A, Revision No. 390 (Saurabh v. Sudha Sagar) was filed.

4. The revisions filed by the State of U.P. and Gaon Sabha are said to have been dismissed in default on 10.12.2002 while the belated revision of the petitioner, namely, Revision No. 390 arising out of proceedings under section 19-A was allowed by the Deputy Director of Consolidation on 15.10.2003 allotting 22 decimal of plot No. 780 in his chak as his construction existed thereon. Recall applications were filed on 19.6.2013 and 8.5.2014 on behalf of the Gaon Sabha and State of U.P. for recall of the order dated 15.10.2003.

5. It is contended that these recall applications were not accompanied by an application under section 5 of the Limitation Act for condonation of delay. On the petitioner raising this objection, applications under section 5 was filed but the same was not supported by any affidavit.

6. Yet another application was filed for recalling the order dated 10.12.2002 whereby the Revision Nos. 2 and 20 filed on behalf of State of U.P. and Gaon Sabha, respectively, had been dismissed for default.

7. It is further the case of the petitioner that in fact the delay in filing these restoration applications was condoned even though they were not supported by any affidavit which was a mandatory requirement.

8. He further submits that this Court in the judgment sought to be reviewed has wrongly observed that after condoning the delay, a date has been fixed for hearing the case on merits while in fact, the Deputy Director of Consolidation had only allowed the section 5 of the application and fixed a date for hearing on the restoration application.

9. It has been further taken as a ground in the review application that delay could have been condoned only after recording a finding regarding the sufficiency of cause shown for the delay and that the restoration application was not maintainable as the Deputy Director of Consolidation had passed the order dated 15.10.2003 after hearing the member of the Consolidation Committee.

10. In so far as the question of maintainability of the restoration application is concerned, the same prima facie is beyond the scope of the writ petitions. As stated by the learned Counsel for the petitioner-applicant, only the delay condonation application was allowed and the restoration applications thereafter are required to be decided on their merits and, therefore, the question of maintainability of the restoration application is required to be raised and decided by the Court concerned and till such time this issue is decided, it is not open for the Court to pass an order in this regard which will amount to prejudging and issue which necessarily is required to be raised and decided before the Subordinate Court which is seized of the matter.

11. In so far as the primary contention of the learned Counsel for the petitioner that the order sought to be reviewed was passed on a misconception of facts, it

may be stated that the correct facts have been noted in this order and, therefore, the factual defect if any, in the order under review, shall stand cured in case, it is held that the facts noted herein above are the correct facts and the earlier order be read in conjunction with this order.

12. In so far as the primary ground of challenge in the writ petition that the delay condonation application was necessarily required to be accompanied by an affidavit, this Court in the order sought to be reviewed had observed that the objection was purely technical in nature. The petitioner had been granted liberty to press all such technical pleas in case, occasion arose for the petitioner to challenge the order to be passed on the restoration application which was to be considered and decided once the delay in filing the same, has been condoned. It was also specifically provided that the issue as to whether the delay had been wrongly or rightly condoned would remain open to be raised, in case, occasion arose for the petitioner to challenge the orders to be passed on the restoration application on its merits. Under the circumstances, the order dated 31.7.2014 does not require to be reviewed.

13. Interest of justice would stand served in case, it is provided that the said order be read in conjunction with this order passed on the review application which notices the correct facts of the cases.

14. The review application is, therefore, dismissed. It is, however, provided that any discrepancy as regards, the narration of facts in the order sought to be reviewed stand remedied by the correct narration of facts in instant order and the two orders be read together.