
(2002) 05 AHC CK 0043
In the Allahabad High Court
Case No : C.M.W.P. No. 20463 of 2002

Shabbir and Others

APPELLANT

Vs

Special Judge (E.C. Act), Bulandshahr and Others

RESPONDENT

Date of Decision : 20-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 29(2), 5

Citation : (2002) 3 AWC 2292 : (2002) 93 RD 611

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Satish Mandhyan and B.D. Mandhyan, for the Appellant; S.A. Shah, for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By the impugned order, the revisional court has set aside the order of the trial court whereby the application for setting aside the ex parte decree was allowed and the matter was directed to be decided on merit. The revisional court set aside the order of the trial court allowing the application for setting aside the ex parte decree on the ground that the Hon'ble Supreme Court in the case of P.K. Chandran v. State of Kerala and Anr. JT 1998 (7) 21. has held that the principles regarding the condonation of delay is that the Courts have no power to extend the limitation on equitable ground. Here in the present case, the Court certainly had power to set aside the ex parte order. The delay in filing the application has been sufficiently explained as observed by the trial court.

2. In these circumstances, considering the provisions of Section 29(2) of Limitation Act since the applicability of the provisions has not been expressly excluded by virtue of the aforesaid provisions, the provisions of Sections 4 to 24 of Limitation Act will be applicable and, therefore, provisions of Section 5 of Limitation Act will apply with full force and perusal of provisions of Section 29(2) of Limitation Act will demonstrate that in the present case, exercise of right of

condonation of delay was exercised u/s 5 of Limitation Act.

3. In view of what has been stated above, the order of the revisional court, setting aside the order of the trial court allowing the application for setting aside the ex. parte decree dated 20.3.2002 is set aside and the order of trial court condoning the delay in filing the application for setting aside the ex parte decree is upheld. The matter is directed to be decided by the trial court as expeditiously as possible.

4. In the result the writ petition is allowed. However, there will be no order as to cost. Both the parties are agreed that they will appear before the trial court on 15.7.2002.