
(2016) 09 AHC CK 0149
In the Allahabad High Court
Case No : Writ C. No. 44451 of 2016

Sunil Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Limitation Act, 1963 — Section 5
Stamp Act, 1899 — Section 47A

Citation : (2016) 11 ADJ 749 : (2016) 6 AILLJ 626 : (2016) 6 AIWC 6522 :
(2016) 119 ALR 818 : (2017) 1 CivilLJ 27 : (2017) 1 RJ 621

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Nipun Singh and Anurag Khanna, Advocates, for the Petitioner;
C.S.C, for the Respondents

Final Decision : Allowed

Judgement

Ran Vijai Singh, J. - Heard Sri Nipun Singh, learned counsel for the petitioner and learned standing counsel for the State-respondents.

2. Through this writ petition, prayer has been made to issue a writ of certiorari quashing the order dated 9.9.2016 passed by the Additional Collector (Finance and Revenue) Hapur by which the earlier order dated 23.5.2016 passed in Case No. D2016117300171 (State v. Sunil Kumar) has been set aside and 14.9.2016 has been fixed for hearing and evidence.

3. While assailing the aforesaid order, learned counsel for the petitioner has made following submissions :-

(i) The order impugned is patently illegal for the reason that the recall application itself was not maintainable as the counsel for the applicant seeking recall was heard, therefore the order was not ex parte order.

(ii) Along with the recall application, an application under Section 5 of Limitation Act 1908 was filed on 29.7.2016 but without disposing of the application filed

under Section 5 of the Limitation Act, the application seeking recall of the order dated 23.5.2016 has been allowed illegally.

(iii) Since no ground was taken in the application that on 23.5.2016, the counsel for the applicant has not argued the case, therefore the recall could not be sought and in absence of such assertion, recall application could not be allowed.

4. The facts of this case in brief are that the against the petitioner, a proceeding under Section 47-A of Indian Stamp Act, 1899 was initiated, which was numbered as Stamp Case No.D2016117300171. The petitioner, herein, has filed his objection and after due deliberation, the Additional Collector (Finance and Revenue, vide order dated 23.5.2016, has dropped the proceeding after hearing both the parties by holding that there is no deficiency of the stamp duty. Thereafter on 29.7.2016, the State respondents through its counsel has filed an application seeking recall of the order dated 23.5.2016 on the ground that he was unaware of the fact that any order was passed on 23.5.2016. Along with the aforesaid application, an application under Section 5 of Limitation Act for condoning the delay was also filed. The Additional Collector (Finance and Revenue) has set aside the order dated 23.5.2016 and restored the case to its original number fixing 14.9.2016 for hearing and evidence.

5. Learned counsel for the applicant contended that the application was barred by time and there was an application for condonation of delay, therefore unless the delay was condoned, the restoration application could not be heard and allowed.

6. I find substance in the submissions of learned counsel for the petitioner as once the application under Section 5 of Limitation Act was filed, the restoration application could not be decided on merit unless the delay was condoned and the application filed under Section 5 of Limitation Act was allowed or the finding was recorded to the effect that there was no need of filing Section 5 application and the application was within time.

7. Here in this case, admittedly, the recall application was barred by time and it was accompanied with an application for condonation of delay, therefore, unless the delay was condoned, the recall application could not have been decided.

8. The view taken by me finds support from the decision of the apex Court in Noharlal Verma v. District Cooperative Central Bank Ltd. Jagdalpur 2008 14 SCC 445, where the Apex Court has held as under :-

1. " 32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

33. Sub Section (1) of Section 3 of the Limitation Act, 1963 reads as under:

"3. Bar of Limitation.- (1) Subject to the provisions contained in Sections 4 to 24

(inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not be set up as a defence."

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in the absence of such plea by the defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation."

In *V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao* and another 2005 Volume 4 SCC 613, following observation has been made by the Apex Court.

20 "The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is *ex facie* barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation."

In the case of *Sneh Gupta v. Devi Sarup and others*, (2009)6 SCC 194, in paragraph 70, the Apex Court has held that in absence of any application for condonation of delay, the court has no jurisdiction in terms of Section 3, Limitation Act, 1963 to entertain the application filed for setting aside of decree after expiry of period of limitation.

In 2001 (9) SCC 717, *Ragho Singh v. Mohan Singh*, the Apex Court has held as under:-

(6) "We have heard learned counsel for the parties. Since it is not disputed that the appeal filed before the Additional Collector was beyond time by 10 days and an application under Section 5 of the Limitation Act was not filed for condonation of delay, there was no jurisdiction in the Additional Collector to allow that appeal. The appeal was liable to be dismissed on the ground of limitation. The Board of Revenue before which the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous. In this situation, the High Court was right in setting aside the judgment of the Additional Collector as also of the Board of Revenue. We find no infirmity in the impugned judgment. The appeal is dismissed. No costs."

The same view has been reiterated by this Court in *Prabhu and Another v. Deputy Director of Consolidation and others* 2013 (118) RD 48, wherein this Court has observed as under :-

(i) When the statute provides limitation for approaching the Court and a person approaches the Court after the expiry of the period of limitation, then he has to

approach the Court along with an application under Section 5 of the Limitation Act praying extension of period of limitation or to condone the delay in approaching the Court.

(ii) Once the application under Section 5 of the Limitation Act is filed and unless the delay is condoned, no order can be passed on merit.

(iii) The delay cannot be condoned without having the version of other side and for that, other side is required to be noticed and heard.

9. Here in this case, both the things are missing as neither the application filed under Section 5 was decided nor any finding has been recorded that the application was within time.

10. Learned counsel for the petitioner further contended that in the restoration application, it was not the case of the respondents that the State was not heard on 23.5.2016 and unless it was the case that the order impugned dated 23.5.2016 is ex parte one, recall application was not maintainable. Here too, I find substance in the submissions of learned counsel for the petitioners that once the order was passed after hearing both the sides, the recall application was not maintainable and the order could not be treated as an ex parte order. Otherwise also, the Additional Collector (Finance and Revenue) has no power to review his own order as there is no provision of review under the Indian Stamp Act while deciding such cases.

11. It can not be disputed that the impugned order has been passed by a quasi judicial authority and such authority cannot review its order in absence of power of Review conferred under the Statute.

12. The power of review of quasi judicial authority in absence of specific provision under the statute has been dealt with in several cases of this Court as well as by the Apex Court. The Apex Court in the case of Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P. and Ors. reported in (1987) 4 Supreme Court Cases 525 has held that unless power of Review is expressly conferred on the authority by any statute under which it derives its" jurisdiction, the authority concerned has no power to Review its" earlier order. In Para-11 of the aforesaid judgment following observations has been made:

A quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissed of the Principal, acts as a quasi-judicial authority. The provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing, his/her earlier order. The review order of the Vice-Chancellor was, therefore, a nullity.

13. In the case of G. Srinivas v. Govt. of A.P. and Ors. reported in AIR 2005 SC 4455 . Hon"ble Apex Court has observed:

An order passed by mistake and ignorance of the relevant facts indisputably can be reviewed, if inter alia it is found that a fraud was practised or there was wilful suppression on the part of the appellant.

14. The Full Bench of this Court reported in 1997 (31) A.L.R. 680 (Smt. Shvraji and Ors. v. Dy. Director of Consolidation, Allahabad and Ors.) has held:

36. Coming to the provisions of the U.P. Consolidation of Holdings Act, it is our considered view that the consolidation authorities, particularly the Deputy Director of Consolidation while deciding a revision petition exercises judicial or quasi judicial power and, therefore his order is final subject to any power of appeal or revision vested in superior authority under the Act. The consolidation authorities, particularly the Deputy Director of Consolidation, is not vested with any power of review of his order and, therefore, cannot reopen any proceeding and cannot review or revise his earlier order. However, as a judicial or quasi judicial authority he has the power to correct any clerical mistake/arithmetical error, manifest error in his order in exercise of his inherent power as a tribunal.

15. In the case of Syed Madadgar Husain Rizvi and Anr. v. State of U.P. and Ors. reported in 2007 (9) ADJ 581 (DB) this Court has held:

A quasi judicial authority is not permitted to review its order unless it is so expressly conferred by the Statute itself.

16. In view of foregoing discussions, I am of the considered opinion that the impugned order dated 9.9.2016 is without jurisdiction and it cannot be sustained in the eyes of law. It is well settled that an order without jurisdiction is a nullity and no legal consequences can flow such orders. Reference may be made to the decisions of the Apex Court in Managing Director, Army Welfare Housing Organization v. Sumangal Services Pvt. Ltd. (2004)9 SCC 619 ; Sarup Singh and Anr. v. Union of India and Anr. (2011) 11 SCC 198 and a Division Bench decision of this Court in the case of Committee of Management Shri Jawahar Inter College and Anr. v. State of U.P. and Ors. in Special Appeal No. 164 of 2012 decided on 25.1.2012 in which it has been held that the order without jurisdiction is a nullity.

17. In the result, the writ petition succeeds and is allowed. The impugned order dated 9.9.2016 passed by the Additional Collector (Finance and Revenue) Hapur in Case No. D2016117300171 (State v. Sunil Kumar) is hereby quashed. However allowing of this writ petition will not preclude the respondents to proceed in accordance with law.