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(2012) 05 AHC CK 0116
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25368 of 2012

Nagar Palika Parishad, Seohara, District
Bijnor

APPELLANT

Vs

Raghuraj Singh Public Inter College,
Seohara, Dhampur, District Bijnor and
Others

RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A
Limitation Act, 1963 — Section 3, 5

Citation : (2012) 8 ADJ 210

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Manu Saxena, ,

Final Decision :

Judgement

Hon''ble Ran Vijai Singh, J.

This Court on 22.5.2012 has passed the following order.

Shri Manu Saxena, learned counsel, appearing for the petitioner contends that the impugned order dated 25.5.2011, passed by respondent No. 4 in Revision No. 1819 (LR) of 2010-11 is perfectly illegal, as the delay has been condoned without issuing any notice to the petitioner and without there being any application for condonation of delay. In his submission, in view of Article 137 of the Limitation Act, 1963 (hereinafter referred to as the Act) if there is no limitation provided, the limitation would be three years. In his submission, the respondent No. 1, herein, ought to have filed an application for condonation of delay in filing the revision. The revisional Court, without issuing the notice as required under Order XLI, Rule 3A of the Code of

Civil Procedure, 1908 (hereinafter referred to as the CPC) to the other side, could not condone the delay. In his submission, it is settled that the delay condonation application can be rejected by the Court if there is no sufficient explanation for condonation of delay. In no case, it can be condoned without there being any notice to the other side.

Refuting the submissions of the learned counsel for the petitioner, learned Standing Counsel submits that u/s 219 of the Land Revenue Act 1901 (hereinafter referred to as the Act) no limitation is provided and the applicant can only explain the delay, even if in view of Article 137 the revision has been filed after three years.

Put up this matter as fresh day after tomorrow, i.e., on 24.5.2012.

Supplementary affidavit filed today is taken on record.

2. Sri Manu Saxena, learned counsel for the petitioner has today invited attention of the Court towards paragraph 195 of the Revisional Court Manual which is reproduced hereunder:

3. In his submissions the procedure for filing revision u/s 219 of the Act, would be like the procedure for filing appeal against the decree/order. He has also contended u/s 214 of the Act, the limitation for filing appeal is 30 days, and, therefore limitation provided u/s 214 of the Act shall also be made applicable in the case of revision pursuant to paragraph 195 of the Revenue Court Manual. He has further contended that in view of paragraph 176 of the Revenue Court Manual, provisions contained in Order XLI, Rule 3A would be applicable meaning thereby, if a revision is filed beyond prescribed period of limitation then that should be accompanied with an application u/s 5 of Limitation Act for extending the period of limitation, and in view of the aforesaid provision, if the Court is satisfied that there is no sufficient explanation for condonation of delay, it can reject the application for condonation of delay but it cannot condone the delay without issuing notice to the respondent and hearing other side on the question of limitation.

4. He has also invited attention of the Court towards sub-section 1 of Section 3 of Limitation Act which provides bar of limitation subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence, and thus he invited attention of the Court towards Section 5 of the Limitation Act which provides the power to the a Court to extend the period of limitation on the satisfaction of the Court provided the application contain the sufficient ground for condonation of delay. In support of his submission he placed reliance upon the judgment of the Apex Court in the case of Noharlal Verma v. District Cooperative Central Bank Ltd. Jagdalpur, 2008 14 SCC 445. Particular attention has been invited towards paragraphs 32 and 33 of the aforesaid judgment which are reproduced here-in below:

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.

5. Attention has also been drawn towards paragraph 20 of [V.M. Salgaocar and Bros. Vs. Board of Trustees of Port of Mormugao and Another,](#). For appreciation paragraph 20 of the aforesaid judgment is reproduced herein under:

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.

6. Attention has also been drawn towards the decision of the Apex Court in the case of [Sneh Gupta Vs. Devi Sarup and Others,](#). In paragraph 70 of the said judgment 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.

7. Attention has also been drawn towards the decision of the Apex Court in [Ragho Singh Vs. Mohan Singh and Others,](#). The attention has been drawn towards paragraph 6 of the aforesaid judgment which is reproduced hereinbelow:

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 u/s 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.

8. From the bare reading of the aforesaid judgments it transpire that if a revision or appeal filed beyond the period of limitation as prescribed under the law then that has to be accompanied with an application u/s 5 of Limitation Act supported with an affidavit explaining the reason for not approaching the Court well within the time, and in absence of such application or in absence of any notice to the other side, the Court can only dismiss the appeal/revision as barred by time and in no case it can condone the delay or admit/allow the Appeal/Revision.

9. The matter requires scrutiny.

10. Issue notice.

11. Notices on behalf of respondent Nos. 2 to 4 has been accepted by the office of the Chief Standing Counsel, therefore, notice need not be served upon them again.

12. Issue notice to respondent No. 1 returnable at an early date. As an interim measure, without prejudiced to the right and contention of the parties, the effect and operation of the order dated 25.5.2011 passed by Board of Revenue, U.P., Lucknow in Revision No. 1819(LR) of 2010-11 and the order dated 7.12.2006 passed by S.D.O.(D), Sheohara shall remain stayed till the next date of listing.