

**Court No. - 48**

**Case :-** WRIT - B No. - 11360 of 1983

**Petitioner :-** Rajdhani

**Respondent :-** The Deputy Director Of Consolidation And Others

**Counsel for Petitioner :-** Faujdar Rai, Archana Singh, C.K. Rai, Prem Shankar Kushwaha

**Counsel for Respondent :-**

R.N.Singh, R.K.Shahi, S.C., S.N.Singh

with

**Case :-** WRIT - B No. - 5117 of 1983

**Petitioner :-** Ram Pragas

**Respondent :-** D.D.C.

**Counsel for Petitioner :-** R.N.Singh, A.K. Rai, S.N. Singh

**Counsel for Respondent :-** Faujdar Rai, Archana Singh, Prem Shankar Kushwaha, S.C.

**Hon'ble Saurabh Shyam Shamshery, J.**

**Order on Delay Condonation Application No. 9/2023**

1. Heard.
2. Cause shown is sufficient.
3. Delay Condonation Application is **allowed**.

**Order on Substitution Application No. 10/2023**

1. Heard.
2. Substitution Application is **allowed**.
3. Let substitution be carried out during course of day.

**Order on Delay Condonation Application No. 11/2023**

1. Heard.
2. Cause shown is sufficient.
3. Delay Condonation Application is **allowed**.

**Order on Substitution Application No. 12/2023**

1. Heard.

2. Substitution Application is **allowed**.
3. Let substitution be carried out during course of day.

**Order on Substitution Application No. 35251/2002**

1. Heard.
2. Substitution Application is **allowed**.
3. Let substitution be carried out during course of day.

**Order in Writ B No. 11360/1983 and Writ B No. 5117/1983**

1. Both writ petitions are pending since 1983. However, issue involved therein is very limited.
2. The facts of present case in brief are that in the concerned village, during consolidation proceedings, a notification under Section 9 of U.P. Consolidation of Holdings Act, 1953 (for short "Act of 1953") was published on 30.11.1975. The petitioner has filed objections on 25.12.1975 i.e. with a delay of two days since limitation as provided under Section 9 of the Act of 1953 is 21 days.
3. The Consolidation Officer vide order dated 26.06.1976 condoned the delay of two days with a cost of Rs 10/-.
4. The respondents herein have challenged the above order of Consolidation Officer before Deputy Director of Consolidation, Allahabad. The Revisional Authority by impugned order dated 19.07.1977 allowed the revision petition mainly on two grounds, first, that no objections were filed by petitioner as required under the provisions of Act of 1953 before Assistant Consolidation Officer as well as that delay of two days could not be condoned since petitioner herein was well aware about notification issued under Section 9 of the Act of 1953.
5. Sri Prem Shankar Kushwaha, learned counsel for petitioner in Writ No. 11360/1988 submits that Revisional Authority has taken a hyper technical and strict approach though in such cases where delay is of very short i.e. 2 days in present case, the approach ought to have been liberal and in support of his contention, he has placed reliance upon a judgment of Supreme Court in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and**

**others, (2013) 12 SCC 649.**

6. Sri Vishnu Singh, learned counsel for respondents submits that there was no dispute between the parties at the stage of Assistant Consolidation Officer, therefore, no objections were filed by petitioner. The objections were filed directly before Consolidation Officer at the first instance and has by-passed mandatory provision as provided under Section 9 and 9-A of the Act of 1953. However, he fairly submits that delay of two days could be condoned.

7. He further submits that subsequently, fresh objections were filed on behalf of other person viz., Bhuwari, however, objection to it was dismissed with an observation that all contentions could be raised on merit at the time of final hearing. Said order dated 18.11.1981 was challenged at the instance of respondents before Revisional Authority which was dismissed by an order dated 05.01.1983. Said order is impugned in connected writ petition being Writ B No. 5117/1983.

8. Heard learned counsel for parties and perused the record.

9. As referred above, there are two issues before this Court for consideration, firstly, whether in facts and circumstances of the case, the petitioner could raise dispute directly before Consolidation Officer by way of filing an application under Section 9-A of the Act of 1953 without approaching at first instance before Assistant Consolidation Officer and, secondly, whether delay of two days in filing objection under Section 9(2) of the Act of 1953 could be condoned.

10. The Court will firstly consider second issue.

11. It has not been disputed that there was a delay of only two days in filing objections. The Consolidation Officer has considered it and condoned the delay with a cost of Rs. 10/-. Relevant part of order is quoted below -:

"आज यह आपत्ति पेश हुई दोनों पक्षों के विद्वान् अभिवक्ताओं को सुना गया। स०ब०अ० ने रिपोर्ट दी है कि खाता सं० ६३ व १४९ के बारे में यह आपत्तियाँ उनके समक्ष पेश नहीं की गयी थी और अब रिपोर्ट भेजी जा रही है यदि उचित समझा जाये तो अंदर मियाद ले लिया जाये। आकार पत्र ५ के अवलोकन से स्पष्ट है की इस ग्राम का धारा ९ का प्रकाशन दिनांक ३०.११.१९७५ को किया गया है और ग्राम में परचा बटने में हो सकता है कि २ या दिन का समय लग

गया हो यह आपत्तियां दिनांक २४ व २५-१२-७५ को दाखिल की गयी। ऐसी दशा में विशेष देर भी नहीं है फिर भी दोनों आपत्तियां को दस रुपए हजाने के साथ अंदर मिया किया जाता है।"

12. The Revisional Authority has rejected the order of condoning the delay of two days and relevant part thereof is quoted below -:

"प्रथमतः आपत्ति मियाद बाहर विना धारा भा०मि०अधि० का लाभ प्राप्त करने के लिए शपथ पत्र के प्रस्तुत की गयी थी और दूसरे यह आपत्ति स०च०अ० के यहाँ न प्रस्तुत करने वाला चकबंदी अधिकारी के यहाँ प्रस्तुत की गयी, जो अवैधानिक है। ऐसी परिस्थिति में मैं विद्वान् चकबंदी अधिकारी के आदेश से मैं सहमत नहीं हूँ और राजधानी की आपत्ति प्रत्येक दशा में प्रतिपादन योग्य नहीं है। उपर्युक्त विवेचन के आधार पर यह निगरानी स्वीकृत की जाती है तथा विद्वान् चकबंदी अधिकारी के आदेश दिनांक २६.०६.७६ को निरस्त किया जाता है।"

13. It is well settled that while considering an application for condonation of delay, the Court or Authority normally takes a liberal view especially when there is a short delay and only in cases where there is an extraordinary delay, the Authority or Court is at liberty to take strict view. In this regard, relevant part of judgment of **Esha Bhattacharjee (supra)** is quoted below -:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public

mischievous because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

14. In aforesaid circumstances, since there was a delay of only two days and there was sufficient reason to condone the delay and Consolidation Officer has rightly condoned the delay, therefore, no circumstances exist for interference and Revisional Authority has committed an error by interfering in it, therefore, approach of Revisional Authority was not legally sustainable.

15. Now, Court will consider the first issue.

16. The first issue is whether in facts and

circumstances of the case, petitioner could have filed objections under Section 9-A of the Act of 1953 directly before Consolidation Officer.

17. In this regard, it would be relevant to mention herein that petitioner has filed objection before Consolidation Officer subsequent to a report submitted by Assistant Consolidation Officer.

18. Considering above submissions, this Court is of considered opinion that since matter is arising out of consolidation proceedings, therefore, to take a very strict approach would be against the interest of parties, especially when objection has still to be considered and all parties have liberty to raise all legal contentions on merit before the Consolidation Officer, therefore, impugned order dated 19.07.1977 passed by Revisional Authority is legally unsustainable and accordingly, set aside and Consolidation Officer is directed to consider the objections. It is made clear that parties are at liberty to raise all legally permissible submissions.

19. This writ petition is **disposed of** with above observations.

20. In view of aforesaid facts and circumstances, I do not find any merit in writ petition being Writ B No. 5117/1983 filed by respondents, therefore, this writ petition is **dismissed**.

21. It is further made clear that in both writ petitions, parties are at liberty to raise all legal grounds and this Court has not entered into merit of the cases so far as rival claim is concerned.

22. The Consolidation Officer will take all endeavour to conclude the proceedings expeditiously since matter is very old and will decide the same in accordance with law preferably within a period of six months from today, if there is no legal impediment.

**Order Date :- 7.12.2023**

Nirmal Sinha