

A.F.R.

Court No. – 49

Case :- WRIT- B No. - 2688 of 2023

Petitioner :- Ram Ajour And 3 Others

Respondent :- Board of Revenue And 2 Others

Counsel for Petitioner :- Awadesh Kumar Yadav

Counsel for Respondent :- C.S.C., Amrendra Pratap Singh

Hon’ble Syed Qamar Hasan Rizvi, J.

1. Heard, Sri Awadesh Kumar Yadav, learned Counsel for the petitioners, Sri Anshul Nigam, learned Standing Counsel for the State-respondent nos. 1 & 3 and Sri Amrendra Pratap Singh, learned Counsel for the respondent no. 2.

2. With the consent of the learned counsel for the parties, this Court proceeds to finally decide the present Writ Petition at the admission stage itself.

3. The relevant facts in brief, as narrated by the petitioners in the writ petition, are that the petitioners and respondent no.2 belong to the same family and the dispute is in respect of a property that belonged to Late Shiv Gulam, who was the ancestor of the petitioners and the respondent no. 2.

4. The submission of the learned counsel appearing on behalf of the petitioners is that the father of the petitioners filed a partition suit bearing Suit No. 35 of 1970 (Ram Aasre and another versus Jhinnu) in the Court of learned Sub Divisional Officer, Bansi, District Basti (the then). The said Suit, on the basis of a compromise between the parties,

was decided on 19.08.1970 and the decree was passed on 30.01.1971. The respondent no.2-Rajendera along with two others namely Sri. Motilal and Smt. Jamuni filed an application dated 03.01.1987 under Order IX Rule 13 of the Civil Procedure Code, 1908 against the judgement and decree dated 19.08.1970 and 30.01.1971 respectively; before the learned Court of Sub Divisional Officer, Bansi. The parties to the said proceeding amicably settled their dispute and accordingly moved an application dated 01.11.1995 before the aforesaid Court, inter alia, praying that the said restoration application dated 03.01.1987, filed under Order IX Rule 13 of the Civil Procedure Code, 1908 be dismissed as withdrawn.

5. It has been asserted on behalf of the petitioners that the Village Auraiyya Manjhriya, Tappa Gosiya, Paragana Manghar Paschim, Tehsil Mehdawal, District Sant Kabir Nagar; came under consolidation operation and Notification No. 1425/G 610/2012 under Section 4(2) of the Consolidation of Holdings Act, 1953 (hereinafter referred to as the '**Consolidation Act**'), was issued on 03.05.2014.

6. Further, the respondent no. 2, namely, Rajendera after a period of about 19 years, again filed an application dated 30.01.2015 under Order IX Rule 13 read with Section 151 of the Civil Procedure Code, 1908 (herein after referred to as 'Restoration Application') before the learned Court of Sub Divisional Officer, Mehdawal, Sant Kabir Nagar, inter alia, praying for setting aside of the aforesaid judgement and decree

dated 19.08.1970 / 30.01.1971 passed in the partition Suit No. 35 of 1970 and to restore the same to its original number to be decided on merit after entertaining the objections raised by him.

7. On the aforesaid Restoration Application, the learned Sub Divisional Officer Mehdawal, vide order dated 11.02.2015 directed the *Peshkar* to place the same along with the records by fixing a date and issuing notices to the opposite parties.

8. Against the aforesaid Restoration Application, petitioners filed detailed objection dated 15.03.2018 with the prayer to dismiss the same and to maintain the judgement and decree dated 19.08.1970 / 30.01.1971 passed in the partition Suit No. 35 of 1970.

9. It has been further submitted on behalf of the petitioners that the respondent no. 2 also filed an objection under Section 9A (2) of the Consolidation Act before the Consolidation Officer, Sant Kabir Nagar on 20.05.2016 in respect of the same dispute and on receipt of the notices the petitioners appeared on 08.11.2016 and filed a counter reply to the said objection.

10. The learned Sub Divisional Officer, Mehdawal after hearing the parties; vide order dated 25.04.2018, directed to consign the aforesaid Restoration proceeding to records as having been abated, on the ground that since the Village Auraiyya (Manjhriya), Tappa Gosiyari, Paragana Maghar Paschim, Tehsil Mehdawal, District Sant Kabir Nagar, has been declared under consolidation operation.

11. Aggrieved by the aforesaid order dated 25.04.2018 passed by the learned Sub Divisional Officer, Mehdawal, the respondent no.2 namely Rajendera filed a Revision under Section 333 of U.P. Zamindari Abolition and Land Reforms Act, 1950, before the learned Board of Revenue, U.P. (respondent no.1). The said Revision was registered as Case No. REV/1228/2018/Sant Kabir Nagar (Computerised Case No. R20181765001228).

12. The learned Board of Revenue (respondent no.1) vide Order dated 27.06.2023, allowed the said Revision thereby set aside the Order dated 25.04.2018 passed by the learned Sub Divisional Officer, Mehdawal, by holding the same as legally erroneous and remanded the matter to the learned Court of Sub Divisional Officer, Mehdawal with the direction to firstly decide the Restoration Application on merits and thereafter to consider the question of abatement of Suit.

13. The learned Board of Revenue (respondent no.1) while deciding the aforesaid Revision vide Order dated 27.06.2023 returned a categorical finding that since the aforesaid Restoration Application was filed on 31.01.2015 as is evident from the order-sheet and, the publication under Section 4(2) of the Consolidation Act was made on 06.02.2015, goes to show that the restoration application was pending for consideration when the commencement of consolidation operation was notified, as such, the jurisdiction to decide the said restoration application on merit, lies with the Sub Divisional Officer, Mehdawal, accordingly, the trial

Court has committed a manifest error of law by not deciding the Restoration Application and declaring the same as abated.

14. Being aggrieved by the Order dated 27.06.2023 passed by the learned Board of Revenue (respondent no.1), the petitioner approached this Court by preferring the present writ petition under Article 226 of the Constitution of India, praying for the following reliefs,

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 27.06.2023 passed by respondent no. 1 (Annexure no. 9 to the writ petition).

(ii) Issue any other suitable order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iii) To award the cost of the writ petition in favour of petitioners.

15. Assailing the impugned order dated 27.06.2023 the learned counsel for the petitioners raised the following arguments:

15.1. That the learned Board of Revenue (respondent no.1) has miserably mistaken to consider 06.02.2015 as the date of Notification under Section 4(2) of the Consolidation Act, while the correct date is 03.05.2014 with effect from which the Village concerned came under consolidation operation.

15.2. That the finding recorded by the learned Board of Revenue (respondent no.1) to the effect that the Restoration Application was pending for consideration when the commencement of consolidation operation was notified and as such it was well within the jurisdiction of the Sub Divisional Officer, Mehdawal to decide the said restoration application is factually incorrect and erroneous.

15.3. That the impugned Order dated 27.06.2023 passed by the learned Board of Revenue (respondent no.1) remanding the matter to the Court of learned Sub Divisional Officer, Mehdawal with the direction to firstly decide the Restoration Application on merits and thereafter to consider the question of abatement is totally against the provisions of Section 5(2) of the Consolidation Act that specifically provides that every pending proceeding shall stand abated once the land lying in the area which has been declared to be under consolidation operation vide notification under Section 4(2) of the Consolidation Act. In support of his contention, the learned Counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court of India in the case of **Mool Chand versus Deputy Director, Consolidation** reported in 1995 (5) SCC 631.

15.4. That the partition Suit bearing Case No. 35 of 1970 was decided in the year 1970 on the basis of compromise between the parties, the same cannot be reopened by way of restoration after such a long period of about 19 years and that too after the commencement of the consolidation operation in the village concerned.

15.5. That apart from the above mentioned reasons, the Restoration application in question is not at all maintainable as the same is the second restoration application filed by the respondent.

16. Per contra, the main contentions advanced by the learned Counsel appearing on behalf of the respondent no.2 are as under:

16.1. That no 'Suit' was pending at the time of the start of the consolidation operation in accordance with Section 4(2)(a) of Consolidation Act and the proceeding under Order IX Rule 13 of the Code of Civil Procedure does not, by itself, revive the Suit and as such the said proceeding will not stand abated under Section 5(2) of the Consolidation Act.

16.2. That it is well settled that the proceeding under Order IX Rule 13 of the Code of Civil Procedure / restoration application does not fall within the bar as contemplated under Section 49 of the Consolidation Act.

16.3. That since the partition Suit No. 35 of 1970 (Ram Aasre and another versus Jhinnu) was decided on 19.08.1970 / 30.01.1971 by the Court of learned Sub Divisional Officer, on the basis of a forged compromise alleged to have been entered between the parties and is absolutely ex-parte against the answering respondent, as such, the restoration application under Order IX Rule 13 of the Code of Civil Procedure is maintainable and the said proceeding would not stand abated under Section 5(2) of the Consolidation Act. In support of his argument, he placed reliance on the judgment passed by this Court in the case of **Ram Nath and others versus Additional Commissioner (Administrative) Varanasi, Division Varanasi and others**, reported in

2015 (1) RJ 412 and Sakal Singh & others versus Smt. Devi & another,
reported in **AIR 1979 Allahabad 274.**

17. Sri Anshul Nigam, learned Standing Counsel for the State-respondents has elucidated this Court on the controversy of the date of notification of consolidation operation in the concerned village, by filing an affidavit duly sworn by the Settlement Officer of Consolidation, District Sant Kabir Nagar dated 19.10.2023, wherein it has been deposed that vide order dated 25.03.2014 the Village Auraiyya Manjhriya, Tappa Gosiyari, Paragana Manghar Paschim, Tehsil Mehdawal, District Sant Kabir Nagar, was declared for consolidation operation and the notification to this effect was published vide Gazette dated 03.05.2014. In pursuance of the said gazette notification, the consolidation authorities initiated the consolidation operation on 06.02.2015 by beating drums (Munadi) to make declaration/publication for the public at large so as to be informed that the consolidation operations have started. It is also provided in the aforesaid affidavit that subsequently, the notification under 52(1) of the Consolidation Act for conclusion of the consolidation operation has been made by the Consolidation Commissioner, Government of U.P., Lucknow on 21.06.2023.

18. Having considered the respective arguments as advanced by the learned counsels for the parties, it emerged out that in the instant case, the moot question for determination before this Court is the applicability

/ effect of Section 5(2) of the Consolidation Act, 1953 on the proceeding for Restoration of a suit under Order IX Rule 13 of Civil Procedure Code, 1908.

19. At the very outset, it is imperative to mention that after the declaration, made by the State Government through Gazette, to the effect that the district or part thereof, as the case may be, has been decided to be brought under consolidation operations, as provided under Section 4(1)(a) of the Consolidation Act, any officer or authority duly empowered by the District Deputy Director of Consolidation, becomes legally competent to exercise its' functions as provided in the consolidation Act. For better appreciation of the same, Section 4 of the Act is reproduced hereinbelow,

“4. Declaration and notification regarding consolidation. – (1)(a) The State Government may, where it is of opinion that a district or part thereof may be brought under consolidation operations, make a declaration to that effect in the Gazette, whereupon it shall become lawful for any officer or authority who may be empowered in this behalf by the District Deputy Director of Consolidation -

(i) to enter upon and survey, in connection with rectangulation or otherwise, and to take levels of any land in such area;

(ii) to fix pillars in connection with rectangulation, and;

(iii) to do all acts necessary to ascertain the suitability of the area for consolidation operations.

(b) The District Deputy Director of Consolidation shall cause public notice of the declaration issued under clause (a) to be given at convenient places in the said district or part thereof.

(2)(a) When the State Government decides to start consolidation operations, either in an area covered by a declaration issued under subsection (1) or in any other area, it may issue a notification to this effect.]

[(b) Every such notification shall be published in the Gazette and in a daily newspaper having circulation in the said area and shall also be published in each unit in the said area in such manner as may be considered appropriate.]”

20. The consolidation operation **starts** as soon as it is notified under Section 4(2) of the Consolidation Act. The effect of the aforesaid notification issued under Section 4(2)(a) of the Consolidation Act is that every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Consolidation Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stands abated.

21. The effect of the start of consolidation operation is provided under section 5 of the consolidation Act. The relevant provision as contemplated under sub- section 2 of Section 5 of the Consolidation Act is reproduced hereinbelow,

“5. Effect of notification under Section 4(2). –

(1)

(2) Upon the said publication of the notification under sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely -

(a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated :

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard:

Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated;

(b) such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made thereunder.]
[Explanation. - For the purposes of sub-section (2), a proceeding under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 or an uncontested proceeding under Sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, shall not be deemed to be a proceeding in respect of declaration of rights or interest, in any land.]”

22. The concept of abatement as provided under section 5(2) of the Consolidation Act is that when a scheme of consolidation is undertaken, the jurisdiction for adjudication of various claims to land involved in consolidation should exclusively vest in the consolidation authorities set up under the said Act. Further, in order to permit the authorities to pursue adjudication of rival claims to land unhampered by any proceedings in civil courts or revenue courts, a wholesome provision was made that the pending proceedings involving claims to land in the hierarchy of civil / revenue courts, may be in the trial court, appeal or revision, should abate.

23. The intention of legislation behind the aforesaid provision under section 5 of the Consolidation Act is to ensure impediment-free adjudication of claims to land before the authorities under the Consolidation Act without being obstructed by proceedings in civil courts or without being hampered by decisions of the civil / revenue courts in the course of consolidation of holdings.

24. It would be apt to say that object behind the provision of abatement as provided under section 5(2) of the Consolidation Act is to avoid conflict consequent upon rival jurisdictions. The legislature provided

that the proceedings involving the claims to land put in consolidation should be exclusively examined by the authorities under the Consolidation Act and all rival jurisdictions would be closed. Simultaneously it was necessary to deal with the pending proceedings and that is why the provision for abatement of such proceedings has been incorporated.

25. It would not be out of place to mention here that section 49 of the Consolidation Act ousts the jurisdiction of the Courts of law including the Civil or Revenue from entertaining any suit or proceeding with respect to rights in such land or with respect to any other matter for which a proceeding could or ought to have been taken under the Consolidation Act. Thus, upon publication of notification under section 4(2) of the Consolidation Act the jurisdiction of the Court or authority, which are otherwise competent to entertain and adjudicate the aforesaid suit or proceeding, become barred. It is a well-settled legal proposition that a statute ousting the jurisdiction of a court must be strictly construed as has been observed by the Hon'ble Supreme Court in the case of **Abdul Wahid Khan** versus **Bhawani and others**, reported in **AIR 1966 SC 1718**.

26. However, the dispute in the instant case is to be seen from a different perspective. What is to be determined by this Court is that whether the proceeding on the application under Order IX Rule 13 of

the Civil Procedure Code, falls within the meaning of pending proceeding as specified under section 5(2) of the Consolidation Act.

27. In order to deal the aforesaid issue, it is necessary to firstly, go through the provisions as provided under Order IX Rule 13 Civil Procedure Code. For a ready reference, the same is quoted hereinbelow,

“13. Setting aside decree ex parte against defendant. — In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim]

[Explanation.-Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]”

28. The aforesaid provision under Order IX Rule 13 of the Civil Procedure Code, deals with a situation where the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing and a decree was passed *ex parte*; the Court by which the said decree was passed, shall make an order setting aside the said decree as against him and shall appoint a day for proceeding with the suit.

29. Further, the Order IX Rule 13 of the Civil Procedure Code provides that in any case in which a decree is passed *ex parte* against a defendant,

he may apply to the Court by which the decree was passed, for an order to set it aside. From a bare perusal of the said provision, it is apparent that once an application under Order IX Rule 13 of the Civil Procedure Code (herein referred to as Restoration application), is allowed, the *ex parte* decree is set aside and deemed as wiped off the record, the suit is restored to its original position and number.

30. In the case of **Shiv Shanker Singh** versus **Sonia** reported in (1957) 27 AWR 189, this Court held that in adjudicating a Restoration application under Order IX Rule 13 of the Civil Procedure Code, the Courts must confine its findings to the extent that the decree sought to be set aside is passed *ex parte* and there was sufficient cause for the non-appearance of the defendant, when the suit was called for hearings. For ready reference, an excerpt of Paragraph 5 is extracted hereinbelow,

“5. The essential condition to which a court has to focus its attention before passing an order under Order IX Rule 13 is that the summons has not been duly served or that the Defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing...”

31. The Hon’ble Division Bench of this Court in the case of **Kunwar Bahadur Singh** versus **Shiv Shankar** reported in AIR 1950 All 327 while carving out a distinction between an application for review and an application for restoration, explained the aim which is sought to be achieved by a restoration application under Order IX Rule 13 Civil Procedure Code. For convenience, paragraph 30 of the same is extracted hereinbelow,

“30. There seems to be no force in this contention, for an application for review, in its very essence, is quite different from an application for restoration. The one aims at a reconsideration of the judgment already pronounced and seeks to establish that it is erroneous, while the other seeks that that judgment be entirely ignored from consideration and set aside, whether it be right or wrong. The one concerns itself with the merits of the decision, while the other concerns itself with the sufficiency of service upon the applicant and the sufficiency or otherwise of the cause, preventing him from being present.”

32. In the case of **Ghanashyam Mohapatra and others** versus **Suryamani Swaim** reported in **AIR 1964 Orissa 205**, the Hon’ble Division Bench of the High of Orissa, held that a restoration application under Order IX Rule of the Civil Procedure Code, however, does not come within the purview of review as provided under Order XLVII of the Civil Procedure Code. An application for restoration of a suit within the meaning of Order IX Rule 13 is not such an application where the Court is called upon to reconsider the merits of the judgment. While considering such an application, the Court has to satisfy itself as to whether the party was prevented by any sufficient cause from appearing when the suit was called on for hearing. In no sense, an application for restoration moved under Order IX Rule 13 of the Civil Procedure Code can be said to be on the same footing as an application for review where the whole judgment has to be examined on merits.

33. This Court in the case of **Tulsipat Ram** versus **Nayab Singh** reported in **AIR 1958 All 565** held that an order refusing to set aside an *ex parte* decree is not a review of the judgment within the meaning of Article 182(3) of the Limitation Act.

34. Therefore, it is the settled legal position that a Restoration application within the meaning of Order IX Rule 13 of the Civil Procedure Code, is not an application where the Court is called upon to reconsider the merits of the judgement and decree. The scope of the said Restoration proceeding is limited to the extent that while entertaining such an application under Order IX Rule 13 of the Civil Procedure Code, the Court is concerned only with the limited question that the decree sought to be set aside is passed *ex parte* and there was sufficient cause for the non-appearance of the defendant when the suit was called for hearings at that stage and it should not in any case consider the merits of the judgment in question. Further, the application for Restoration should not be misconstrued as an application for review as its very essence is quite different from an application for restoration. The former aims at reconsideration of the judgment already pronounced while the latter seeks that the judgment be entirely ignored from consideration and to be set it aside, whether it is right or wrong.

35. The next question for consideration in the instant case is that the term “*proceeding*” as occurred in Section 5(2) of the Consolidation Act, will or will not include within its meaning, a ‘*Restoration proceeding*’.

36. To understand the nature of the ‘*proceedings*’ within the meaning of Section 5(2) of the Consolidation Act, it should be borne in mind that, it is the settled legal proposition that the words of the statute should normally be given their ordinary meaning bearing in mind the context. If

the words of the statutes are precise and unambiguous, then, it is necessary to expound those words in that natural and ordinary sense. The words themselves alone, in such case, best declare the intention of the legislature.

37. The language of section 5(2) of the Consolidation Act is very categorical. It explicitly provides that every proceeding for the correction of records and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stands abated, upon the publication of the notification under sub-section (2) of Section 4 of the Consolidation Act.

38. The aforesaid Section 5(2) encompasses only the proceeding for the correction of records and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Consolidation Act. The explanation appended to said section further clarifies the ambit of the term ‘proceedings’ as intended by the legislature, for the purposes of sub-section (2), by specifically excluding the proceedings under the Uttar

Pradesh Imposition of Ceiling on Land Holdings Act, 1960 or an uncontested proceeding under Sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

39. The provision of Restoration under Order IX Rule 13 of the Civil Procedure Code, exclusively deals with the setting aside of an *ex parte* decree; without touching the merits of the judgment in question. In exercise of its power under Order IX Rule 13 of the Civil Procedure Code, the Court setting aside decree or rejecting the Restoration application for setting aside the decree cannot go into the merits in respect to the substantive claims of the parties and any adjudication of such claims can be done only after the restoration application is allowed.

40. The Restoration proceeding under Order IX Rule 13 of the Code of Civil Procedure does not by itself involve in declaration of rights or interest of the parties in land, as such, the same does not come within the teeth of Section 5 (2) of the Consolidation Act.

41. Now, in so far as the judgment passed by the the Hon'ble Supreme Court in the case of **Mool Chand** (*Supra*) which has been placed before this Court by the petitioner is concerned, the same is diametrically on a different issue, that whether a notification under Section 4 of the Act, published after the preliminary decree in a partition suit is passed, will or will not abate the entire suit as per Section 5(2) of the Act. Even if the *orbiter dicta* of the aforesaid judgment are considered for the instant case, it does not help the petitioner's case as the Hon'ble Apex Court in

the said case has made it abundantly clear that only proceedings that relates to declaration of right or interest in the land lying in the consolidation area are abated under Section 5(2) of the Act.

42. As far as the Full Bench judgment of this Court in the case of **Sakal Singh versus Smt. Devi** (*Supra*) which has been placed before this Court by the respondent no.2 is concerned, the issue in the said case was related to the abatement of a review application, wherein this Court held that merely admitting and allowing a review application against the order of the appellate court does not revive the suit and therefore, a review application pending before the court will not abate the suit under Section 5(2) of the Act.

43. After considering all that has been narrated hereinabove, it can be safely said that Section 5(2) of the Act being exhaustive, will apply only to proceedings specified therein, and none other. It cannot be stretched to bring within its ambit the proceedings which the legislature did not intend to abate on the onset of consolidation operations. Unless the suit or proceeding fall within the bracket of correction of the record or declaration of rights or interest in the land lying in the area, the jurisdiction of the Courts, which are otherwise competent to decide the same cannot be excluded or ousted.

44. It is beyond any doubt that mere pendency of a Restoration application moved under Order IX Rule 13 does not revive the Suit until the said application is allowed.

45. Thus, Restoration proceeding under Order IX Rule 13 of the Civil Procedure Code for setting aside of *ex parte* decree does not attract abatement as provided under section 5(2) of the Consolidation Act, as the same is collateral and incidental to the suit and not an extension or in continuation of the suit, because the suit had already culminated into a decree.

46. This conclusion also finds support from the decision of this Court in the case of **Ram Naval** versus **Board of Revenue, U.P., Allahabad and others** reported in **2006 (9) ADJ 441** wherein it has been held that restoration application, or an appeal or revision arising out of an order rejecting or allowing restoration application does not abate under section 5(2) of the Consolidation Act. Further, in the case of **Ram Nath** versus **Additional Commisioner (Administrative) Varanasi** reported in **2015 (1) RJ 412**, this Court has elaborated that the proceedings upon the restoration application would not abate on account of consolidation proceedings having intervened and the restoration application or any proceedings arising out of it will have to be adjudicated on the basis of materials placed on record for adjudication of the matter.

47. In the instant case, as a Restoration application dated 31.05.2015 filed under Order IX Rule 13 of the Civil Procedure Code moved by the respondent no. 2 for the reasons as discussed above, does not abate under Section 5(2) of the Consolidation Act, therefore, the Board of Revenue (respondent no.1) has rightly remanded the matter to the Sub

Divisional Officer, Mehdawal with the direction to decide the Restoration Application on its' own merits.

48. In so far as the dispute regarding the date of the commencement of the consolidation operation in respect of the village in question is concerned, since in the present case, this Court has already decided that the Restoration proceeding under Order IX Rule 13 of the Civil Procedure Code does not attract abatement under Section 5 (2) of the Consolidation Act as such this Court, at this stage, does not find any cogent reason to enter into the factual controversy of the date of the commencement of consolidation proceeding and is, therefore, restricting its finding to the legal aspects as discussed in the preceding paragraphs.

49. Further, in so far as the contention of the learned counsel for the petitioner that the respondents have simultaneously filed Objection dated 20.05.2016 under Section 9A (2) of the Consolidation Act before the Consolidation Officer, Sant Kabir Nagar, and as such he has no locus to defend the restoration proceeding in question is concerned, this Court finds that in the present set of circumstances of this case, when this Court has held that the restoration proceeding has not been abated and moreover, the consolidation operations have already been completed vide Notification No. G-78/2023-24/section-52(1) dated 21.06.2023 under Section 52 of the Consolidation Act as has been stated in the affidavit dated 19.10.2023 filed by the Settlement Officer of

Consolidation, Sant Kabir Nagar, then there remains no reason for this Court to ponder upon the aforesaid argument of the petitioner.

50. Finally, coming to the impugned Order dated 27.06.2023 passed by the learned Board of Revenue (respondent no.1) whereby the Order dated 25.04.2018 passed by the learned Sub Divisional Officer, Mehdawal has been set aside, holding it to be legally erroneous and remanding the matter to the learned Court of Sub Divisional Officer, Mehdawal with the direction to firstly decide the Restoration Application and thereafter to consider the question of abatement; is concerned, the same needs interference by this Court to the extent that the reason assigned therein to uphold the competence of the Court of Sub Divisional Officer, to decide the Restoration, is irrelevant. As has been held by this Court in the preceding paragraphs that the Restoration proceeding under Order IX Rule 13 of the Civil Procedure Code, does not deal with declaration or adjudication of rights or interests of parties over a land lying in the area nor for the correction of records and as such the same do not come within the teeth of Section 5 (2) of the Consolidation Act and does not stand abated, irrespective that the Restoration proceeding under Order IX Rule 13 of the Civil Procedure Code was pending or not when the consolidation operation started.

51. In view of the above discussions, no interference is required in the impugned Order dated 27.06.2023 passed by the learned Board of Revenue (respondent no.1), to the extent whereby the matter has been

remanded to the Sub Divisional Officer, Mehdawal with the direction to firstly decide the Restoration application and thereafter to consider the issue of abetment of the suit, but this Court does not approve the reasons recorded by the learned Board of Revenue (respondent no.1), while remanding the matter.

52. Accordingly, without advertng on the disputed factual matrix of the case, this writ petition is **disposed of** with the direction to the Sub Divisional Officer concerned to decide the Restoration application dated 30.01.2015 preferred by the respondent no.2 namely Rajendra, afresh on its merit in the light of the observations made by this Court hereinabove; expeditiously and preferably within a period of six months from the date of the receipt of a certified copy of this order.

Order Date :- 26.10.2023
Arif