

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 856 of 2023

Appellant :- Akhilesh Kumar

Respondent :- Union Of India Thru. Its Secy. Ministry Of Rural Development Central Sectt. New Delhi And Others

Counsel for Appellant :- Roshan Kumar, Sudhir Kumar Misra

Counsel for Respondent :- A.S.G.I., C.S.C., Dilip Kumar Pandey

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

(C.M. Application No.1 of 2023 : Application for Condonation of Delay)

1. Heard learned counsel for the appellant, Shri Mahendra Kumar Mishra, learned counsel appearing on behalf of Union of India and learned Standing Counsel for State-respondents.
2. There is delay of 155 days in filing the special appeal. The appeal is accompanied with an application for condonation of delay supported by an affidavit.
3. Learned counsel for the respondents do not have any objection, if delay in filing the instant appeal is condoned and the matter is heard on merits.
4. Cause shown in the affidavit filed in support of application for condonation of delay is satisfactory and in absence of any objection, application for condonation of delay is allowed and delay in filing the special appeal is hereby condoned.

(order on appeal)

5. The *intra-Court* appeal filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 has assailed the judgment/order passed by the writ Court on 10.04.2023 in Writ-A No.7408 of 2022.
6. On a plain reading of the judgment impugned herein this special appeal, it is gathered that the writ Court has passed the

impugned order by turning down the appellant's prayer for adjournment. The matter before the writ Court was fixed after due notice to the learned counsel for the parties. A request of this description in the normal course is liable to be turned down.

7. We had called for the instructions to look into various aspects of the matter giving rise to the recovery of a sum of Rs.1,20,000/- from the appellant-petitioner. Disputed questions of fact are involved. The instructions produced before this Court by learned Standing Counsel reveal several decisions of which the recovery is a consequence. The other decision unless challenged would not affect the recovery.

8. The Government Order dated 06.07.2005 has also fixed the responsibility of verification upon the Gram Vikas Adhikari. All these aspects of the matter, deserves to be considered in an appropriate proceeding.

9. Hearing of an aggrieved person before the Court of law is an essential facet of justice. It is on this premise that our conscious is produced to reopen the proceedings.

10. In the circumstances of the case, we leave it open to the appellant to take up appropriate proceedings before the competent Forum afresh and permit him to withdraw the writ petition as was dismissed by means of the impugned order.

11. The order passed by the learned Single Judge impugned herein, is set aside with the above liberty. The proceedings initiated, if any, shall be decided on its own merit.

12. The special appeal is, accordingly, **disposed of**.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 6.11.2023
Shubhankar