

Court No. - 6

Case :- WRIT - B No. - 1037 of 2023

Petitioner :- Triveni Prasad

Respondent :- Deputy Director Of Consolidation, Shravasti
And Others

Counsel for Petitioner :- Yogesh Singh

Counsel for Respondent :- C.S.C., Ram Prasad Dwivedi

Hon'ble Rajnish Kumar,J.

1. Heard Sri Yogesh Singh learned counsel for the petitioner and Sri R.P. Dwivedi learned counsel for the respondent no.4/caveator. Learned Standing counsel is present on behalf of respondent nos.1 to 3.

2. This petition has been filed challenging the order dated 18.03.2021 passed by the opposite party no.2/Settlement Officer of Consolidation District Shravasti in appeal filed by the respondent no.4 and the order dated 19.10.2023 passed by opposite party no.1/Deputy Director of Consolidation District Shravasti filed in Revision no.0246 of 2023 filed by the petitioner.

3. Learned counsel for the petitioner submits that delayed appeal has been filed by the respondent no.4 before opposite party no.2. The petitioner had preferred an application for deciding the limitation first before deciding the appeal on merit but the application has been rejected by means of the impugned order dated 18.03.2021 on the ground that both would be decided simultaneously. The revision preferred by the petitioner has also been dismissed by means of the order dated 19.10.2023 without considering the grounds raised by the petitioner. Relying on the Division Bench judgment of this Court in the case of ***Ram Prakash vs. Deputy Director of Consolidation, Hardoi*** reported in 2022 AIR CC 2297 (All); 2022 (3) ALJ 524, it is submitted that if the delayed appeal has been filed along with application for condonation of delay, the application for condonation of delay should have been disposed of first and only, thereafter, the appeal can be decided and both cannot be decided together.

4. Per contra, learned counsel for the respondent no.4 submits that the impugned orders have rightly been passed in accordance with law. The revisional authority i.e. opposite party no.1 has also observed that in the final order first the point of

limitation would be decided and thereafter, the appeal on merit. Therefore, there could not have any grievance to the petitioner, even then this petition has been filed only to linger on the proceedings of the appellate court, for which he has already made several attempts by moving transfer application etc., therefore, it is nothing but a misuse of the process of Court. The petition is misconceived and liable to be dismissed.

5. I have considered submissions of learned counsel for the parties and perused the records.

6. As borne out from the pleadings, the respondent no.4 has filed a delayed appeal against the order dated 07.01.2009 passed in Case no.0298 in regard to Gata no.654 and 857 along with an application for condonation of delay. The appeal was filed in the year, 2009, in which the petitioner moved the application on 05.04.2018/31.05.2018 for hearing on the application for condonation of delay first, on which, the objection was raised by the respondent that since the records have already been summoned and are available with the appellate court, therefore, application for delay condonation and the appeal on merit may be heard and decided together.

7. The appellate court dismissed the application and held that both can be decided together by means of the order dated 18.03.2021 and also heard the parties, which is recorded in the order itself, but on the request of the petitioner for further arguments, the case was adjourned for 25.03.2021. Thereafter, it appears that the case was not argued because no further order sheet has been annexed. However, a highly belated revision was filed in the year, 2023 bearing Case no.0246 of 2023, challenging the aforesaid order dated 18.03.2021. The revisional authority, after considering the pleadings and the grounds raised by the petitioner, dismissed the revision by means of the order dated 19.10.2023 on the ground that there is no illegality or error in the impugned order and held there is no bar in considering and deciding the appeal on the point of limitation as well as delay simultaneously. However, it has also been observed that in the final order, first, point of limitation would be decided and thereafter, the case on merit. Being aggrieved by this order, the petitioner has approached this Court challenging the same.

8. A Division Bench of this Court, in the case of ***Ram Prakash vs Deputy Director of Consolidation (supra)***, on a reference made by the learned Single Judge has held that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing, however, it can be on the same day. The question referred in para-1, which has been answered

in para-22 are extracted herein below:-

"1. On a reference made by learned Single Judge for consideration of the issue, as extracted below, the matter has been placed before the Division Bench:

"If an order has been challenged before the consolidation authority is barred by the period of limitation as provided under the statute (in the present case before the appellate authority/Settlement Officer Consolidation -1, Hardoi) along with an application for condonation of delay, then in that circumstances whether the application for condonation of delay under Section 5 of the Limitation Act should be decided first or the same can be decided along with merit of the case?"

22. In view of the aforesaid discussion, we answer the question referred to the Division Bench that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing on merits. However, it can be on the same day and there is no requirement of adjourning the hearing of appeal on merits after acceptance of the application seeking condonation of delay."

9. In view of the above, the application for condonation of delay and the appeal can be decided together. However, the application for condonation of delay is to be decided first and then appeal on merit, if it is being decided together.

10. Thus, this Court is of the view that the impugned orders have rightly been passed in accordance with law by reasoned and speaking orders, which does not call for any interference by this Court. The petition is misconceived and lacks merit.

11. The petition is **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 18.11.2023

Harshita