

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 454 of 2024

Appellant :- Rakesh Kumar Gupta

Respondent :- C/M Sri Ram Dulare Lal Yadav Secy. School Thru. Its Manager
Uday Veer Singh Chandel And 4 Others

Counsel for Appellant :- Pawan Kumar Pandey, Sharad Pathak

Counsel for Respondent :- Dileep Kumar Mishra, C.S.C., V.P. Nag (S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

Order on Civil Misc. Condonation of Delay Application:

1. Heard learned counsel for the parties on application filed under Section 5 of the Limitation Act.
2. The appeal is barred by 48 days.
3. For the reasons indicated in the application supported by the affidavit, the same is allowed.
4. Delay in filing the appeal is condoned.

Order on Appeal:

1. This appeal is directed against order dated 23.05.2024 passed by learned Single Judge in Writ - C No. 2553 of 2024, wherein the writ petition filed by respondent-Society against order dated 19.12.2023 passed by the Deputy Registrar, Firms, Societies and Chits, Lucknow Region, Lucknow has been allowed and the matter has been relegated back to the Deputy Registrar to proceed with the matter afresh after hearing all the stakeholders and providing them opportunity of hearing and has required him to take the decision within a period of three months.
2. The writ petition was filed by the respondents against the order dated 19.12.2023, whereby the Deputy Registrar had, pursuant to judgment dated 02.11.2022 passed in Special Appeal No. 454 of 2022, come to the conclusion that the application made by the respondent for renewal was not supported by evidence and therefore, the same was rejected and based on the documents produced by the

appellant, it was directed to proceed for renewal of the registration of the Society.

3. The learned Single Judge by the order impugned, came to the conclusion that the order dated 19.12.2023 was passed without affording any opportunity of hearing to the respondents herein and consequently, passed the directions as noticed hereinbefore.

4. Learned counsel for the appellant made vehement submissions that the plea of not affording opportunity of hearing was not raised by the respondents in its pleadings before the learned Single Judge and therefore, the issue, which was not raised in the pleadings could not have formed a basis for allowing the writ petition. Submissions were also made that when the Division Bench remanded back the matter to the Deputy Registrar, it was directed for giving one opportunity to the parties and as, admittedly, the respondents had not appeared on the first date before the Deputy Registrar and the order was reserved, no further opportunity can be sought by the respondents. Submissions have also been made that as the order impugned dated 19.12.2023 has required the renewal of the registration of the Society, the challenge made to the said order is against the interest of the Society and therefore, the writ petition was liable to be dismissed. The last submission was made that the respondents had alternative remedy of filing appeal under Section 3A(2A) of the Societies Registration Act, 1860 as applicable to the State of Uttar Pradesh and therefore, the learned Single Judge was not justified in entertaining the writ petition. It was prayed that the appeal be allowed and the order impugned passed by learned Single Judge be set aside.

5. Learned counsel for the respondent supported the order impugned. It was submitted that a bare look on the record would reveal that no opportunity of hearing was afforded to the respondents and therefore, the learned Single Judge was justified in setting aside the order impugned and directed rehearing of the matter, which judgment cannot be faulted and the appeal, therefore, deserves dismissal.

6. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

7. The Division Bench, in Special Appeal No. 454 of 2022 pertaining to the Society, at the instance of the respondents, allowed the special appeal with the following directions:

“For the reasons aforesaid, we allow this special appeal and set aside the order dated 22.09.2022, passed by learned Single Judge in Writ-C No.3524 of 2021. We further direct that the Deputy Registrar will now consider the matter by affording opportunity of making a representation and hearing to the appellant-Rakesh Kumar Gupta, respondent no.3-Udai Veer Singh Chandel and any other person or individual, who may have right to be heard in the matter, in the light of the directions issued by learned Single Judge in his judgment and order dated 23.09.2019, passed in Writ Petition No.507 (M/S) of 2013.

We also provide that now since the elections are said to have been held in the year 2021 as well, it will be open to the parties to raise objections, if any, in respect to the said election as well.

We make it clear that the parties before us will make their representations within a period of fifteen days from today, whereupon the Deputy Registrar shall give one opportunity of hearing to the parties concerned and take decision in the matter in accordance with law and also keeping in view the observations made hereinabove in this judgment. It will be open to the parties to take all the pleas which may be available to them, including the plea relating to the genuineness of the membership as well, before the Deputy Registrar, who shall take a decision in terms of this order expeditiously, say within next two months from the date a certified copy of this order is placed before him.

No order as to the costs.”

(emphasis supplied)

8. Pursuant to the said direction, it appears that the Deputy Registrar issued notice dated 02.01.2023 and fixed the matter for hearing on 17.01.2023 and required the parties to produce material in support of their contentions. On 17.01.2023, though out of four persons, who were issued notices, three were present, the respondent Mr. Uday Veer Singh Chandel was not present and on that day. It is indicated that the hearing was completed and the order was reserved. On 18.01.2023, the respondent filed his written statement before the Deputy Registrar and therefore, on 07.02.2023, the respondent was directed to produce original documents. The respondent sought time on account of illness to produce documents and therefore, by communication dated 14.03.2023, he was required to produce documents within a period of three days. Again prayer was made for more time as the respondent was unwell and was being treated at Medical College, Kanpur. A week’s time was granted on 15.05.2023 and

further one week time was granted on 23.08.2023 and on 03.10.2023, ultimately, the order impugned was passed on 19.12.2023 as noticed hereinbefore.

9. It would be seen from the above that the Deputy Registrar and the appellants have apparently misconstrued the order passed by the Division Bench, wherein the indication made that the Deputy Registrar shall give 'one opportunity of hearing to the parties' has been understood as 'one date of hearing', which is not the purport of the order passed by the Court. The plain meaning of the direction was to provide opportunity and nothing more and therefore, while on 17.01.2023, on the first date, the order was reserved, still when reply was filed on the next date, the same was entertained and opportunity was granted to file documents. Admittedly, at no stage, the respondent was called upon to appear and make submissions in support of the reply dated 18.01.2023, filed by him.

10. Once the reply was filed and time was granted by the Deputy Registrar, despite reserving the order for production of documents, grant of opportunity to make submissions was necessary for the purpose of complying with the requirements of principles of natural justice, which it is apparent that the Authority had failed and therefore, it cannot be said that the learned Single Judge committed any error in passing the order impugned.

11. So far as the plea raised pertaining to the issue having not been raised in the memo of the writ petition is concerned, once based on the undisputed material on record, the aspect was glaringly clear, the fact that plea was not raised cannot be a ground for seeking setting aside of judgment of the learned Single Judge.

12. The plea raised that challenging the order passed is against the interest of the Society has only been noticed to be rejected as the order dated 19.12.2023, specifically rejects the application made by the respondent and has upheld the case of the appellant and therefore, it

cannot be said that the respondent cannot be aggrieved of the order impugned.

13. The plea raised, pertaining to alternative remedy also in the present circumstances, has no substance as violation of the principles of natural justice has always been treated as an exception to the plea of alternative remedy, which has been found by the learned Single Judge and as noticed hereinbefore, rightly so.

14. In view of the above discussions, there is no substance in the appeal, the same is, therefore, dismissed.

Order Date :- 22.8.2024

Mukesh Pal

(Jaspreet Singh, J) (Arun Bhansali, CJ)