

Court No. - 50

Case :- WRIT - B No. - 1354 of 2019

Petitioner :- Ati-Ullah And 2 Others

Respondent :- Board Of Revenue U.P. And 16 Others

Counsel for Petitioner :- Sameer Khan,Vindhya Vashini
Prasad Rai

Counsel for Respondent :- Adil Jamal,Anil Kumar
Rai,Arvind Srivastava Iii,C.S.C.,Himadari Batra,Kunal
Shah,Mahesh Narain Singh,Rahul Jain,Syed Fahim
Ahmed,Vishnu Singh

Hon'ble Chandra Kumar Rai,J.

Order on Application No.5 of 2019

1. The instant application has been filed on behalf of respondent No.4 for initiating proceeding under Section 340 of Criminal Procedure Code, against the petitioner Nos.1 and 2.

2. Considering the entire facts and circumstances of the case, no case for initiating the proceeding under Section 340 of Criminal Procedure Code is made out against the petitioner Nos.1 and 2. The instant application is accordingly rejected.

Order on Writ Petition

1.Heard Mr. Sameer Khan, learned counsel for the petitioners, Mr. Arvind Srivastava Iii & Mr. Rahul Jain, learned counsel for respondent No.10 and learned Standing counsel for the State-respondents.

2. Brief facts of the case are that dispute relates to khasara No.2898 area 1.4370 hectare, Khasara No.2899 area 0.0380 hectare, Khasara No.3380 K area 0.50760 hectare total area 1.55110 hectare situated at village-Dasna, Tehsil and District-Ghaziabad. Petitioners filed a suit under section 229-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as U.P.Z.A. & L.R. Act) impleading Umar Mohd, Asar Mohd and Fazar Mohd as defendant Nos.1, 2 and 3 for declaration of her right in respect to disputed plots. The vendees of defendant Nos.1, 2 and 3 were also impleaded as defendants in the aforementioned suit. During trial of the suit the right of cross examination of the defendants were struck down and suit was ultimately decreed vide judgment and decree dated 25.04.2016. In appeal filed by defendants, the judgment and decree of trial dated 25.04.2016 was set aside and matter was remanded back before trial court to decide the suit afresh after affording opportunity to defendant to cross examine the witnesses. After remand order passed in appeal an application dated 17.09.2018 to substitute the legal heirs of deceased Umar Mohd/defendant No.1 along with application for condonation of delay supported by affidavit was filed before trial court. On behalf of defendants objection was filed to the delay condonation as well as substitution application. Trial Court vide order dated 24.09.2018 allowed the substitution application as well as delay condonation application dated 17.09.2018 on cost of Rs. 500/-. Defendants challenged the order dated 24.09.2018 by way of revision before Board of Revenue which was registered as revision No.2548 of 2018. The

Board of Revenue vide order dated 16.02.2019 allowed the revision, set aside the order dated 24.09.2018, dismissed the suit against defendant NO.1/Umar Mohd and directed the trial court to decide the suit against remaining defendants in accordance with law. Hence this writ petition for following relief:-

"(i) Issue a writ order or direction in the nature of certiorari quashing the order dated 06.02.2019 passed by Board of Revenue at Lucknow in Case No. REV/2548/18 Ghaziabad."

3. This Court entertained the matter on 21.05.2019 and granted interim protection staying the proceeding of Revision No.2548 of 2018.

4. In pursuance of the order of this Court parties have exchanged their pleadings.

5. Learned counsel for the petitioners submitted that in suit under section 229-B of U.P.Z.A. & L.R. Act defendant No.1/ Umar Mohd. expired, accordingly, substitution application along with application for condonation of delay was filed. He submitted that trial court has allowed the substitution application as well as delay condonation application on cost of Rs.500/- vide order dated 24.09.2018. He submitted the order dated 24.09.2018 was challenged by way of revision before Board of Revenue at the instance of the defendants and Board of Revenue vide order dated 06.02.2019 allowed the revision, set aside the order dated 24.09.2018 and abated the suit against the defendant No.1/Umar Mohd. as well as remanded the matter before trial court to decide the matter on merit. He further submitted that Board of Revenue has exceeded his revisional jurisdiction in setting aside the

order dated 24.09.2018 allowing the time barred restoration application on cost of Rs.500/-. He submitted that suit under Section 229-B of U.P.Z.A.& L.R. Act should not be dismissed on the technical grounds. He placed reliance upon the judgment of Hon'ble Apex Court in the case reported in **AIR 1987 S.C. 1353 Collector, Land Acquisition Anantnag and others Vs. Mst. Kantiji and others** in support of his arguments.

6. Mr. Arvind Srivastava Iii and Mr. Rahul Jain, learned counsel for respondent No.10 submitted that in time barred substitution application an objection was filed on behalf of the defendant before the trial court as such trial court should pass reasoned order for condonation of delay/ refusal for the condonation of delay. They further submitted that proper order has not been passed in the delay condonation matter and substitution application has been allowed by passing cryptic order. They submitted that Board of Revenue has rightly exercised the revisional jurisdiction in abating the suit against the defendant No.1 only and directed the trial court to proceed with the suit in accordance with law. They further placed reliance upon the judgment of Hon'ble Apex Court reported in **2010 (8) SCC 685 Balwant Singh vs. Jagdish Singh and others** in support of his argument. They submitted that no interference is required against the impugned order passed by Board of Revenue and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the fact that suit under Section 229-B of U.P.Z.A. & L.R. Act filed by petitioners is pending before trial court and during pendency of the suit one of the defendant has died accordingly, application for substitution along with application for condonation of delay was filed, which was allowed by trial court on cost of Rs.500/-but in revisional exercise of jurisdiction order dated 24.09.2018 allowing the substitution application has been set aside and suit proceeding has been abated against the defendant No.1 as well as trial court was directed to decide the suit in accordance with law.

9. It is material to mention that in suit for declaration filed under section 229-B of U.P.Z.A.& L.R. Act at the instance of the petitioners, the substitution application along with prayer for condonation of delay in respect to deceased defendant No.1 has been allowed by trial court on cost of Rs.500/-, but revisional court has set aside the order and dismissed the suit proceeding against the defendant no.1, which is not proper exercise of jurisdiction by Board of Revenue in the revisoin arising out of Suit under Section 229-B of U.P.Z.A.&L.R. Act.

10. The Hon'ble Apex Court in Case of **Collector, Land Acquisition Anantnag (supra)** has taken liberal view in delay condonation matter. Paragraph No.3 of the judgment rendered in **Collector, Land Acquisition Anantnag (Supra)** will be relevant for perusal which is as under:-

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of

matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by

resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

11. Hon'ble Apex Court in the subsequent case of **Balwant Singh (Supra)** has refused to condone the delay of 778 days in filing the substitution application.

12. So far as suit under section 229 -B of U.P.Z.A & L.R is concerned, the suit under section-229-B of U.P.Z.A & L.R Act is suit of special character.

13. In the instant matter suit at one stage was decreed on merit but in appeal the judgement & decree of trial Court was set aside & matter was remanded back before trial Court to decide the suit afresh permitting the defendants to cross-examine the witnesses as such allowing the delay condonation & Substitution application in respect to deceased defendant No-1 with cost of Rs 500/- was correct exercise of jurisdiction by trial Court. The revisional Court should not interfere with discretion exercised by trial Court in condoning the delay of 3 years 4 months in filling the substitution application of deceased defendant No.1.

14. There can be no strait jacket formula for allowing /refusing the delay condonation matter rather the same depend upon the facts & circumstances of the case but the endeavour should be that matter should be decided on merit subject to explanation furnished for condonation of delay by the party concern.

15. Considering the entire facts and circumstances of the case, impugned revisional order dated 06.02.2019 passed by respondent No.1/Board of Revenue Lucknow is liable to be set aside and same is hereby set aside.

16. **The writ petition is allowed.** The order of trial court dated 24.09.2018 is maintained and trial court is directed to decide the suit proceeding after affording proper opportunity of hearing to the parties expeditiously preferably within a period of **six months** from the date of production of certified copy of this order before him.

17. No order as to costs.

Order Date :- 6.3.2025

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