

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV
ON THE 24 OF JANUARY, 2024
MISCELLANEOUS PETITION NO.419 OF 2022

BETWEEN:-

**RAMGOPAL MAINA, S/O SHRI MISHRILAL
MAINA, AGED – 42, R/O – VILLAGE BAGOD,
TEHSIL VIDISHA, DISTRICT VIDISHA, MADHYA
PRADESH.**

.....PETITIONER

(BY SHRI D.R. RAHUL – ADVOCATE)

AND

**UDHAM SINGH, S/O SHRI DEEWAN SINGH
MAINA, R/O – VILLAGE BAGOD, TEHSIL
VIDISHA, DISTRICT VIDISHA, MADHYA
PRADESH.**

.....RESPONDENT

***(BY SHRI FAIZ AHMAD QURESHI – ADVOCATE HOLDING BRIEF OF SHRI
AMIT LAHOTI - ADVOCATE)***

Reserved on : 9th of November, 2023

Pronounced on : 24 of January, 2024

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, **Hon'ble Shri Justice Rajendra Kumar-
IV** pronounced the following::*

ORDER

Heard learned counsel for both the parties.

2. Present petition under Article 227 of the Constitution of India has been preferred against the order dated 20/12/2021 passed by Additional Collector, Vidisha in Case No.28/Revision/2021-22, whereby the order dated 27/3/2021 passed by Sub Divisional Officer, Vidisha in Case No.75/Appeal/2020-21, has been set aside and respondent's application filed under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal before the SDO has been allowed by Revisional Court in Revision, directing the SDO to decide the appeal on merit after affording the opportunity of hearing to both parties.

3. Brief history of case, as depicted in revision is that appellant/respondent's father Mishrilal and revisionist are the owner of property and both were equally entitled to half of the share and both of them had their butt stick on the share. Opposite party made changes in partition/Batankan without any notice, about which appellant was never informed.

4. Having heard learned counsel for both the parties and having perused the record, it appears that challenging the partition order dated 12/6/2007 passed by the Tehsildar in Case No.32/A-3/2006-07 appellant/respondent filed Appeal No.75/Appeal/2020-21 before the Sub Divisional Officer on 1/10/2020 alongwith an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal on the ground that no reasonable opportunity of hearing was afforded to him as regards the aforesaid partition proceedings and as such, earlier he was not having any knowledge in respect of the partition order dated 12/6/2007. The Appellate Court, vide order dated 27/3/2021, dismissed the application under Section 5 of the Limitation Act as well as the appeal on the ground of delay. Challenging the order

dated 27/3/2021, respondent filed a Revision No.28/Revision/2021-21 before the Additional Collector, Vidisha and the Additional Collector, Vidisha vide order dated 20/12/2021 set aside the order dated 27/3/2021 passed by the Sub Divisional Officer, Vidisha and allowed the application under Section 5 of the Limitation Act filed by the respondent, directed the Sub Divisional Officer to decide the appeal on merits after affording reasonable opportunity of hearing to both the parties.

5. Considering the facts and circumstances of the case, it appears that valuable right of the respondent is involved in the matter and if the delay is not condoned, an irreparable injury would be caused to him and by allowing the delay caused in filing the appeal, no prejudice has been caused to the petitioner, as by the impugned order the Appellate Court has been directed to decide the appeal, on merits after affording reasonable opportunity of hearing to both the parties. However, looking to the fact that the appeal was filed with a delay of 13 years 3 months and 19 days, the delay so condoned vide the impugned order dated 20/12/2021 would be subject to payment of cost of Rs.7,000/- (Rs. Seven Thousands Only) to be deposited by the respondent before the Sub Divisional Officer, Vidisha within a period of one month from today, which shall be released in favour of the petitioner forthwith.

6. Petition stands **disposed of** in above terms.

(RAJENDRA KUMAR-IV)
JUDGE

Arun*