

HIGH COURT OF JUDICATURE AT ALLAHABAD

(Lucknow)

CONSOLIDATION No. - 6574 of 2016

Pronounced on: February 03, 2022

Ram Prakash ...Petitioner

Through:- Mr. Prabhakar Vardhan Chaudhary, Advocate

v/s

Deputy Director of Consolidation, Hardoi and others

...Respondents

Through:- Mr. Manjive Shukla, Additional Chief
Standing Counsel

**Coram: HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE PRITINKER DIWAKER, JUDGE**

ORDER

RAJESH BINDAL, C.J.

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?"

2. The issue was referred to Larger Bench for the reason that there are two divergent views given by Single Benches of this Court in **Consolidation No. 604 of 2014 (Dev Narain Singh Vs. Dy. Director of Consolidation, Sultanpur & others)** decided on September 5, 2014 and **Girja Shanker and others Vs. Deputy Director of Consolidation and others 1996 RD 465**.

3. In **Dev Narain Singh's case (supra)** the view expressed by learned Single Judge of this Court was that it is not mandatory for the appellate authority to decide the application for condonation of delay first and then hear the appeal on merits. On the other hand, in **Girja Shanker's case (supra)**, a single Judge of this Court opined that an order passed by appellate authority condoning the delay in filing the appeal is not an interlocutory order, hence, revision under Section 48 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "1953 Act") is maintainable against that order. It was, thus, observed that it is mandatory for the appellate authority to decide the application seeking condonation of delay first and then fix a later date to hear the appeal on merits, so as not to deprive the party aggrieved, if any, of his right to avail the remedy admissible to him against the order passed on the application filed under Section 5 of the Limitation Act, 1963 (hereinafter referred to as "1963 Act").

4. Learned counsel for the petitioner submitted that Section 11 of 1953 Act provides for filing of appeals against the order passed by Assistant Consolidation Officer or the Consolidation Officer. The period prescribed for filing the appeal is 21 days from the date of the order. Sub-section (2) thereof provides that Settlement Officer (Consolidation) hearing an appeal under Sub-section (1) shall be

deemed to be a Court. Section 53-B of the 1953 Act was referred to submit that Section 5 of the 1963 Act is applicable for applications, appeals, revisions and other proceedings under the 1953 Act. Reference is also made to Section 48 of the 1953 Act to submit that the Director Consolidation may call for and examine the records of any case decided or proceedings taken by the subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings.

5. The argument raised by learned counsel for the petitioner is that if any appeal is filed after the period prescribed in Section 11 of the 1953 Act along with an application seeking condonation of delay, the application seeking condonation of delay has to be decided first and, thereafter, the appeal has to be adjourned for hearing on merits. It cannot be simultaneous. If a party is aggrieved by an order passed by appellate authority on an application seeking condonation of delay, he may be able to avail of his remedy during the interregnum period. Such a process has to be followed as no one should be deprived of his right of appeal available to him against an order passed by appellate authority on the application seeking condonation of delay. An order passed by appellate authority under Section 5 of 1963 Act is a final order and cannot be considered to be an interim order, hence, revisable.

6. Learned counsel for the State submitted that a bare reading of the provisions of the 1953 Act specially Section 11 read with Section 53-B thereof shows that an appeal is to be filed within certain specified time, however, in case, delayed, an application under Section 5 of the 1963 Act can be filed seeking condonation of delay. There is no quarrel with the proposition of law that an application seeking condonation of delay in any proceedings has to be decided first and it is only thereafter that the main appeal can be heard. Prior

to that it is not an appeal in the eyes of law. If any such application is filed the same has to be decided first and in case the delay is condoned, there is no bar on the appellate authority to take up and decide the appeal on merits on the same day. An order passed by appellate authority on an application filed under Section 5 of 1963 Act cannot be said to be revisable as such. Keeping in view the nature of proceedings, it may be final order if considered in the light of the fact that the application for condonation of delay if rejected, the appeal will also go. However, in case only the application is allowed and appeal is heard on merits, order cannot be said to be final as far as the proceedings of the case are concerned. He further submitted that in the proceedings under the 1953 Act, there is no need even to file a separate application seeking condonation of delay as even prayer can be made in the memo of appeal seeking condonation of delay.

7. He further submitted that there is limited application of the C.P.C. in the proceedings under the Act. He also referred to a judgment of Supreme Court in **Ramesh Chandra Sankla Vs. Vikram Cement (2008) 14 SCC 58**, observing that Court should decide all the issues and not merely a preliminary one. This procedure will check the delay in the course of justice.

8. Heard learned counsels for the parties and perused the paper book.

SCHEME OF THE ACT:

9. For appreciating the issues referred by the learned Single Judge for consideration by Larger Bench, it would be appropriate to refer the relevant provisions of the 1953 Act:

“11. Appeals.- (1) Any party to the proceedings under Section 9-A, aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under

that section, may, within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall, after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any Court of law.

(2) The Settlement Officer, Consolidation, hearing an appeal under sub-section (1) shall be deemed to be a Court of competent jurisdiction, anything to the contrary contained in any law for the time being in force notwithstanding.

X X X X

48. Revision and reference.- (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any

case or proceedings to the Director of Consolidation for action under sub-section (1).

X X X X

53-B. Limitation.- The provisions of Section 5 of the Limitation Act, 1963, shall apply to the applications, appeals, revisions and other proceedings under this Act or the rules made thereunder.”

10. A perusal of Section 11 of 1953 Act shows that any party to the proceedings under Section 9-A thereof, if aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer may prefer an appeal before the Settlement Officer, Consolidation within 21 days of the date of the order. Any decision given by the Settlement Officer, Consolidation in appeal is final and cannot be questioned in any Court of law.

11. The Settlement Officer, Consolidation while hearing the appeal is deemed to be Court of competent jurisdiction. Section 53-B of the 1953 Act provides that provision of Section 5 of 1963 Act shall apply to the applications, appeals, revisions and other proceedings under the Act or the rules made thereunder. Meaning thereby, if an appeal is filed beyond the period of 21 days, as provided under Section 11 of 1953 Act, aggrieved party can move an application seeking condonation of delay under Section 5 of 1963 Act.

12. Section 48 of 1953 Act provides that Director Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order, passed by such authority. The aforesaid power can be exercised with reference to any order except an interlocutory order. Such a power can also be

exercised by Director Consolidation on a reference made by any authority subordinate to him.

EARLIER JUDGMENTS:

13. In **Girja Shanker's case (supra)**, which in the opinion of learned counsel for the petitioner lays down correct law, a Single Bench of this Court opined that an order passed by appellate authority condoning the delay in filing the appeal is not an interlocutory order, hence, revision under Section 48 is maintainable against that order.

14. In **Bhagwat and others Vs. Deputy Director of Consolidation and others (1990) RD 162**, a Single Bench of this Court opined that an order deciding an application seeking condonation of delay cannot be said to be interlocutory and revision against that order was maintainable. An application for condonation of delay has to be decided first by the appellate authority and in case allowed, the appeal may be decided on merits on a subsequent date.

15. In **Parbhu and another Vs. Deputy Director of Consolidation, Ghazipur and others (2013) 1 ADJ 554**, the issue under consideration was, as to whether revisional authority without condoning the delay could hear the revision on merits. The opinion expressed by the Court was that the order passed by revisional authority deciding the revision petition on merits without condoning the delay was erroneous. Direction was issued for deciding the application for condonation of delay first and thereafter the revision petition was to be taken up for hearing.

16. In **Jais Lal Vs. Deputy Director of Consolidation, Jaunpur and another (2014) 1 ADJ 248**, a Single Judge of this Court had opined that the appellate authority has to decide the question of limitation first either by condoning the delay or refusing to condone the same. In case, the delay is condoned, the matter can be decided on

merits but not prior to one month from the date the order is passed for condonation of delay. It is for the reason that the aggrieved party should have opportunity to question that order before the higher forum.

17. In **Budh Sagar and others Vs. Jai Prakash and others (2013) 1 ADJ 381**, a Single Bench of this Court opined that the appellate authority is to pass the order on the application seeking condonation of delay first and thereafter proceed to hear the case on merits.

18. In **Dev Narain Singh's case (supra)**, a Single Bench of this Court opined that it is not mandatory for the appellate authority to decide the application for condonation of delay first and then hear the appeal on merits. An application for condonation of delay can be considered along with main appeal at the time of final argument.

DISCUSSIONS:

19. We are not going into the issue as to whether an order passed by appellate authority on an application seeking condonation of delay is an interim order or final as the same has not been referred for consideration by the Division Bench. Different situations may arise in an appeal filed along with application seeking condonation of delay. Firstly, the application for seeking condonation of delay may be dismissed. As a consequence thereof, the appeal will also fail. Another situation may be that application seeking condonation of delay is allowed and thereafter the appeal may either be accepted or rejected.

20. If any statute provides certain period for filing of appeal, an appeal filed beyond the time limit will certainly be not entertained. If the provisions of 1963 Act are applicable and party is entitled to seek condonation of delay in filing appeal, an application has to be filed specifying the grounds on which delay in filing the appeal is

sought to be condoned. It is only after that the application is allowed, the appeal can be entertained and heard on merits. Before that the appeal cannot be taken up and considered on merits.

21. As far as the issue regarding hearing of the application seeking condonation of delay and the appeal simultaneously is concerned, in our view, firstly the application has to be considered. Only thereafter, the appeal can be considered on merits but there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay. Both can be taken up on the same day. However, the appeal has to be heard on merits only after the application seeking condonation of delay has been accepted.

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.

23. Let the matter be listed before learned Single Judge as per roster for further proceedings in the case.

Lucknow February 03, 2022 P.Sri.	(Pritinker Diwaker) Judge	(Rajesh Bindal) Chief Justice
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Whether the order is speaking :	Yes/No
Whether the order is reportable:	^v Yes/No