

(1992) 09 AHC CK 0112

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 2109 of 1985

Sukhdeo and Others

APPELLANT

Vs

Deputy Director of Consolidation
and Others

RESPONDENT

Date of Decision: Sept. 7, 1992

Acts Referred:

- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 48, 9, 9A

Citation: (1993) 1 AWC 100 : (1993) RD 1

Hon'ble Judges: S.R. Misra, J

Bench: Single Bench

Advocate: U.K. Misra and A.K. Misra, for the Appellant; K.B. Garg and Onkar Nath Misra, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.R. Misra, J.

The Petitioners are aggrieved by an order of the Deputy Director of Consolidation dated 12.12.1984, rejecting the application u/s 5 of the Limitation Act filed along with objection u/s 9 of the U.P. Consolidation of Holding Act.

2. Petitioners have filed an objection in respect of plot No. 803/1 area 1.256 links situate in village Mohammadpur Mutallika Sahroj Pargana and Tehsil Ghoshi, District Azangarh refusing objection u/s 9(A) since there was delay. They filed objection along with an affidavit explaining the reasons as to why the objection was not filed and prayed that the objection be heard and decided on merits. No objection or counter affidavit was filed by any one controverting the allegations in the affidavit filed in support of the Petitioners objection. The Consolidation Officer by his order dated 1.2.1980 dismissed the Petitioners objection as barred by time.

Aggrieved by his order dated 1.2.1980 Petitioners filed revision u/s 48 of U.P. Consolidation of Holdings Act and the Deputy Director of Consolidation by his order dated 12.12.1984 dismissed the revision hence this writ petition.

3. I have heard Sri. U.K. Mishra Counsel for the Petitioner and Sri. O.N. Mishra for contesting Respondents. By now it is well settled that Section 5 of the Limitation Act be liberally constituted and the very purpose of incorporating Section 5 is for conferring the jurisdiction of the Courts and authorities to condone the delay in appropriate cases. It is admitted that the disputed plot is a grove and by means of an affidavit Petitioners have tried to explain the delay in not filing the objection u/s 9(A).

No counter affidavit was filed and the view of the Consolidation Officer and the Deputy Director of Consolidation that each day's delay has not been explained is in the teeth of a decision of the Supreme Court wherein Supreme Court has held that if each day's delay is to be explained then why not each hour In a recent decision reported in [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), , Supreme Court has taken view that the legislature having conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963, a liberal approach in such matters be taken and regarding explaining the delay in paragraph 3 Sub-clause 3 reads as under:

Every day's delay roust 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. The approach of the two authorities are in the teeth of the decision of the Supreme Court. A perusal of the Judgments of the Consolidation Authorities shows that they have not applied their mind to the facts and circumstances of the case and have passed the orders in an arbitrary manner Their order are therefore liable to be set aside.

5. In the result the writ petition succeeds and is allowed. The judgments and orders of the Consolidation Authorities are set aside and the Consolidation Officer is directed to pass afresh order in accordance with law and In the light of the observations made above, taking a liberal view of the matter and the fact that no counter affidavit was filed in reply to the affidavit filed by the Petitioners In the matter of condonation of delay, the parties will bear their own cost.