

(2004) 02 AHC CK 0229**Allahabad High Court****Case No:** C.M.W.P. No. 2690 of 2004

Rajdei

APPELLANT

Vs

Deputy Director of Consolidation
and Others

RESPONDENT

Date of Decision: Feb. 12, 2004**Acts Referred:**

- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 11

Citation: (2004) 5 AWC 4432 : (2004) 96 RD 444**Hon'ble Judges:** S.N. Srivastava, J**Bench:** Single Bench**Advocate:** Ram Niwas Singh and Amarendra Singh, for the Appellant;**Final Decision:** Dismissed**Judgement**

S.N. Srivastava, J.

This is a unique case in which dispute is between husband and wife. Ram Belas opposite party No. 3 was recorded tenure holder. It is said that some compromise was entered into between husband and wife and by an order dated 8.11.1997 passed by Consolidation Officer, application u/s 5 of Indian Limitation Act in filing objection was allowed and name of opposite party No. 3 was directed to be expunged as Bhumidhar and instead, the name of his wife Rajdei, Petitioner was directed to be recorded. From a perusal of the affidavit filed along with application for condonation of delay as well as the grounds of appeal, the allegations of opposite party No. 3 are that out of the wedlock of the Petitioner and Respondent No. 3, no issue was born as she was residing in her Maika (father's house). One Budhi Ram Singh, the real brother of the Petitioner who is an employee in Consolidation department, manoeuvred for time barred objection, the compromise and lastly the order dated 8.11.1997 and subsequently got sale deed executed through Petitioner Rajdei in favour of his sons. Sale deed dated 10.6.2000 was

executed in favour of Jagdish son of Ram Awadh by the opposite party No. 3, who went to Tahsil on 26th May, 2003, in connection with Khatauni where he came to know about mutation in favour of Rajdei. The opposite party No. 3 assailed order dated 8.11.1997 on the basis of compromise on the ground of fraud at the instance of Budhi Ram, real brother of the Petitioner and also denied being party to any such compromise and has alleged to have gained knowledge of the compromise on 27.5.2003 whereupon he filed application on 31st May, 2003. Appeal along with application u/s 5 of the Indian Limitation Act supported with an affidavit is pending. The objection of the Petitioner to the application u/s 5 of Limitation Act is also pending. The Petitioner prayed that question of maintainability of appeal be decided first. By order dated 20th November 2003, the appellate authority directed that the matter may be heard on merits and that the question of maintainability of appeal shall also be decided at the time of disposal of appeal. Revision preferred by the Petitioner was dismissed and parties were directed to appear before the Settlement Officer, Consolidation.

2. The learned Counsel for the Petitioner urged that the question of limitation relates to the question of maintainability of appeal and this should have been decided first before entering into the merits. In connection with this proposition, he relied upon decision of the Apex Court in [Gagandeep Pratishthan Pvt. Ltd. and Others Vs. Mechano and Another](#), and Bhagwat and Ors. v. Dy. Director of Consolidation and Ors. 1990 RD 162. In Gagandeep's case, jurisdiction of the High Court was questioned in making the impugned orders at the threshold without deciding the question of delay in filing the appeal as well as the objections as to the maintainability of the appeal. In that case, the High Court had not still decided the application for condonation of delay and yet it passed the interim order because of urgency and due to impending vacation of the Court it could not finally decide the question. In the ultimate analysis, the Apex Court observed as under:

In view of the peculiar facts of this case without going into the merits of the contentions raised by the counsel for the Appellants, we think it is just and fair that we should not at this point of time interfere with the impugned order though the High Court could have avoided passing such orders in proceedings where the maintainability itself was being seriously questioned. Be that as it may, we at this stage think it appropriate that the High Court should consider the question of condonation of delay and the objection of the Appellants herein regard to maintainability of the appeal first, before proceeding with the appeal any further. We also think it to be just and proper that any further interim orders if necessary, in the appeal before the High Court in regard to the suit property should be made only after deciding the question of delay and maintainability of the appeal and the order already made should be confined to the appointment of a Receiver and filing of his report only meaning thereby that the impugned order be confined to the appointment of receiver for the purpose of filing his report as directed by the Court and nothing beyond that, at this stage.

3. In the aforesated case, the High Court by the impugned orders, appointed a Receiver to ascertain the availability of 1040 sq. ft. of floor space in the building in question and also restrained the Appellants from changing the status quo existing on the date of the impugned order in regard to the said area and in view of the interim order passed therein, it would appear, the Apex Court made the direction to decide the question of maintainability of the appeal before the High Court before proceeding further in the peculiar facts of that case and without going into the merits of the contentions. The another decision in Bhagat and Ors. (supra), is also unavailing to the Petitioner inasmuch as this decision does not forbid passing of composite order on the question of maintainability at the time of hearing on merit. It would appear that it was not a decision in an appeal u/s 11 of the U.P. Consolidation of Holdings Act, which should be construed to be laying down any ratio of binding nature in appeal under the U.P. Consolidation of Holdings Act. In the above conspectus, the decisions cited by the learned Counsel for the Petitioner to enforce his contentions are unavailing to the Petitioner and cannot be imported for application to the facts of the present case for the reason that in the said decision, the Apex Court passed order in an appeal under CPC where Order XLI, Rule 3, CPC contemplates final decision of the application u/s 5 of the Indian Limitation Act before the Court proceeds to deal with the appeal on merit. In connection with this proposition, it is noteworthy that U.P. Consolidation of Holdings Act does not envisage any such provision as contemplated under Order XLI, Rule 3A, CPC. Besides, U.P. Consolidation of Holdings Act is a self contained and provisions of the CPC cannot ordinarily be taken aid of in a dispute under the U.P. Consolidation of Holdings Act excepting the established principles which the Court can employ for doing justice between the parties. Besides, the disputes under the U.P. Consolidation of Holdings Act is a State created litigation in order to accomplish the objects sought to be achieved under the Consolidation proceedings and by this reckoning, technicalities of the nature which may be fraught with the consequence of multiplying litigation or delaying delivery of justice to the people cannot be allowed to override expeditious disposal particularly in relation to question involved in appeal/revision before S.O.C./D.D.C.

4. In connection with the question involved in this petition, I may advert to the decision rendered in Laxmi Kant v. State of U.P. and Ors., by a single Judge of this Court is a decision in point. The Petitioner in the aforesated decision also challenged the order of Settlement Officer, Consolidation canvassing that the authority having not condoned the delay in filing the appeal, had no jurisdiction to decide the appeal on merits. The learned Judge held the view that the Consolidation Authority had committed no error in deciding both questions of condonation of delay as well as on merit and in converging to this view, he also received reinforcement from earlier decisions, firstly the decision in Abdul Karim Vs. Deputy Director of Consolidation and Others, and Smt. Radha Devi Vs. State of U.P. and Others, in which ration of decision rendered in Munaki Devi was considered in all

its ramifications. In Abdul Karim's case (supra), it was observed by the Court that "In the event, appellate authority finds that the appeal is barred by time and there is no proper explanation, then there may not be any question of adjudication on merits and therefore, there appears to be no harm if the appellate authority is permitted to hear the arguments on both aspects together, i.e., the question of limitation as well as merits. The aforesaid exercise will save the time of the Court as well as of both parties. The appellate authority can only proceed on merits when the delay in filing appeal is condoned and thus in the event, the judgment of the appellate authority goes against the Petitioner on both issues, i.e., on merits and the limitation, it will be open for him to challenge the same before the revisional authority on both counts." The view aforesated is a sound view and there is no valid reason for differing from the view as held in the decisions aforesated. Even otherwise, it has not been pointed out how adjudication on the question of delay at the time of hearing on merits would prejudicially affect the Petitioner or would operate to the detriment of the Petitioner nor would it lead to any harm or proliferation/multiplicity of litigation.

5. Yet another aspect drawing attention of the Court is whether the order thereby declining the request to hear the appeal first on the question of maintainability by reason of being time barred, pertained purely to procedure of the Court and whether it was fraught with the consequence of prejudicing the interest of the Petitioner? From a bare perusal of the impugned order, it is eloquent that it has the trapping of an interlocutory order inasmuch as the order does not decide any point to the prejudice of the Petitioner nor is it fraught with the consequence of harming the Petitioner or resulting in serious prejudices. It merely postpones the hearing on the question of maintainability of the appeal to the final hearing of the appeal on merit. By all reckoning, to hear first on the question of maintainability of appeal or to postpone the hearing to final hearing of the appeal on merits is purely a question relating to the procedure of Court. Hon. Apex Court, was also seized of such question in a matter relating to Contempt of Courts Act in Barada Kanta Mishra Vs. Orissa High Court, . In this case, the Appellant had challenged the order made under Contempt of Courts Act, 1971 and the Supreme Court dismissed the criminal appeal observing as under:

It is an interlocutory order pertaining purely to the procedure of the Court. All that the order in question says is that all the points arising in the case including the one of maintainability of the proceedings would be heard together and it rejected Mr. B. Mishra's prayer for hearing the case piecemeal, that is, first with regard to the question of maintainability. Accordingly, we dismiss the appeal.

6. After scanning the decisions aforesated, I revert to the facts of the case once again. Considering the facts and circumstances that the allegations for setting aside an order passed by the Consolidation Officer based on a compromise and the grounds for condonation of delay in application as well as in appeal are one and the same and also that the Petitioner has denied signatures on the compromise and has

stated 27.5.2003 as the date of knowledge, i.e., immediately before filing of appeal along-with application of condonation of delay, I am of the view that the order passed by the Settlement Officer, Consolidation directing the case to be disposed of finally and the question of maintainability to be considered at the final hearing stage, it does not suffer from error of law.

7. In the conspectus of the above discussion, it thus follows that the authorities were well within their competence to postpone the hearing on question of maintainability due to appeal by time barred to be taken together at the time of final disposal of the matter on merits. In the ultimate analysis, I am inclined to dismiss the petition in limine.

8. As a result of foregoing discussion, the petition fails and is accordingly dismissed in limine.