

**(2016) 10 AHC CK 0108**

**ALLAHABAD HIGH COURT**

**Case No:** Civil Misc. Writ Petition No. 50200 of 2016.

Shiv Bali and Others - Petitioners  
@HASH The Deputy Director of  
Consolidation, Banda and Others

APPELLANT

Vs

RESPONDENT

---

**Date of Decision:** Oct. 20, 2016

**Acts Referred:**

- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 3

**Citation:** (2016) 11 ADJ 246 : (2016) 6 ALLJ 799 : (2016) 6 AllWC 5861 : (2017) 121 ALR 735 :  
(2017) 1 CivCC 788 : (2017) 134 RD 37 : (2016) 2 RJ 1702

**Hon'ble Judges:** Manoj Kumar Gupta, J.

**Bench:** Single Bench

**Advocate:** Ramendra Asthana, Advocate, for the Petitioners; C.S.C, for the Respondents

**Final Decision:** Dismissed

---

### **Judgement**

**Manoj Kumar Gupta, J.** - Heard counsel for the petitioners and learned standing counsel on behalf of respondent Nos. 1 & 2.

2. Assistant Settlement Officer (Consolidation) allowed Appeal No. 452/30 by order dated 28 July 1995 on the basis of a compromise allegedly entered into between the parties. The third respondent, one of the parties to the appeal, filed an application on 1 September 2015 for recall of the order dated 28 July 1995 along with an application under section 5 of the Limitation Act for condoning the delay. The petitioners opposed the application by filing objections alleging that the restoration application is barred by limitation. On the same date on which objections were filed by the petitioners to restoration application, they filed a separate application praying that their plea regarding maintainability of the restoration application as well as their objections against section 5 application be decided before taking up the

restoration application on merits. The Settlement Officer (Consolidation) by impugned order dated 17 August 2016 fixed 30 August 2016 as the date for disposal of section 5 application as well as for consideration of the plea of the petitioners regarding non-maintainability of the restoration application. Aggrieved thereby, the petitioners preferred a revision before the Deputy Director of Consolidation contending that the Settlement Officer (Consolidation) had adopted an illegal procedure in posting section 5 application for being decided along with restoration application. It was contended that section 5 application is required to be decided before the restoration application. The Deputy Director of Consolidation dismissed the revision by impugned order dated 29 September 2016. Aggrieved, the petitioners have approached this Court by way of instant writ petition.

3. Learned counsel for the petitioners has placed reliance on a decision of this Court in **Jais Lal v. Deputy Director of Consolidation, Jaunpur and others, 2014 (1) ADJ 248** in contending that the appellate authority had erred in posting both the applications for disposal on the same date. It is submitted that there has to be a time gap between the disposal of the application under section 5 of the Limitation Act and the restoration application.

4. The Revisional Authority while dismissing the revision has examined the aforesaid plea of the petitioners by taking into consideration the grounds on which the restoration application has been filed. It noted that the restoration application has been filed on the ground that he was not served with any summons and the alleged compromise on the basis of which the appeal was decided does not bear his signatures; the order was procured from the Appellate Authority by playing fraud upon it. The Revisional Authority has held that such stand taken in the restoration application is bound to be taken into consideration while considering the question relating to condonation of delay. Consequently, the Revisional Authority did not find any illegality in the order of the Settlement Officer (Consolidation) whereby the prayer for condonation of delay as well for setting aside the order was directed to be taken up for consideration on the same date.

5. In *Jais Lal v. The Deputy Director of Consolidation (supra)*, this Court accepted the submission that the application seeking condonation of delay as well as the restoration application can be decided simultaneously, but held that the main matter i.e. the appeal/revision/suit cannot be decided unless the delay is condoned. Relevant observation made in this regard in paragraph 5 of the judgment on which much reliance has been placed by the learned counsel for the petitioners is as under :-

"Learned Standing Counsel may be right in his submissions that both the things can be done simultaneously, but one thing is settled that unless the delay is condoned, the appeal/revision/suit will not be competent and the same cannot be decided on merit. Therefore, even if the Deputy Director of Consolidation is proceeding to decide both the things simultaneously, he is directed to decide the question of

limitation first either by condoning the delay or by refusing to condone the delay. In the event of condonation of delay, he may decide the matter on merit, but not prior to one month from the date the order passed on the application filed under section 5 of the Limitation Act for the reason that an order condoning or refusing to condone the delay would confer a right upon an aggrieved party to challenge the same before higher court."

6. The entire argument of the learned counsel for the petitioners thus proceeds on a complete misunderstanding of the observations made by this Court in the above judgment. It is no-where held in the said judgment that the delay condonation application and the restoration application could not be considered simultaneously. On the contrary, the Court has accepted the contention of the learned Standing Counsel that both the applications can be decided simultaneously. The Court has only held that in the event of an order being passed on delay condonation application and the restoration application, the main matter on merits should not be decided on the same date so as to enable the party aggrieved to challenge the order before a higher Court.

7. This Court is in complete agreement with the view of the Revisional Authority that having regard to the nature of plea taken by the contesting respondent in seeking recall of the order, it is but necessary that both the applications are decided simultaneously. Thus, Court has no doubt in its mind that even if the delay is condoned and the application seeking recall is allowed, the appellate authority will not proceed to decide the appeal on merits on the same date but will fix another date for such purpose.

8. The petition thus lacks merit and is dismissed.