

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- WP(C) No. 1363/2024
CM No. 3406/2024

Hem Raj, Aged 74 years
Son of Late Jagan Nath,
R/o Village Pangara
Tehsil & District Udhampur.

.....Petitioner(s)

Through: Mr. Ankesh Chandel, Advocate.

Vs

1. Union Territory of J&K Through Secretary to Government, Revenue Department, Civil Secretariat, Jammu/Srinagar.
2. Additional Deputy Commissioner with Powers of Commissioner Agrarian Reforms, Udhampur.
3. Assistant Commissioner, Revenue (Collector First Class), Udhampur.
4. Rajan, Wife of Late Chuni Lal, R/o Pangara Jagir, Tehsil & District Udhampur.
5. Ramesh Chander, Son of Nath, R/o Saroop, Tehsil & District Udhampur.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG for R- 1 to 3.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

(07.06.2024)

1. Heard.

2. The petitioner herein, joined by six other persons, came to petition the respondent No. 3-Assistant Commissioner, Revenue (Collector First Class), Udhampur initiating proceedings in terms of section 19 read with section 27 of the Agrarian Reforms Act, 1976 for seeking restoration of possession of land measuring 13.1 kanals comprising khasra No. 194, 5.6 kanals comprising khasra No. 201 and 2.9 kanals in khasra No. 202, total measuring 20.16 kanals situated in village Pangara Jagir, tehsil and district Udhampur alleged to be forcibly occupied by three persons namely, Rajan, Ramesh Chander, Dharmu.

3. The application so filed by the petitioner, along with said six other persons, came to be disposed of by the respondent No. 3-Assistant Commissioner, Revenue (Collector First Class), Udhampur, after a long pendency lasting more than 13 years, by virtue of an order dated 07.02.2023 thereby directing the restoration of possession of said 20.16 kanals of land in the aforesaid khasra numbers and corresponding correction of the girdhawari (cultivation) entries. The Tehsildar, Udhampur came to be directed for implementation of the directions given in order dated 07.02.2023 in letter and spirit and also authorizing the Tehsildar, Udhampur to take the assistance of Police for the purpose of eviction of the said three persons from the land in reference.

4. Aggrieved of said order dated 07.02.2023, two of the said three persons, namely, Smt. Rajan and Sh. Ramesh Chander, the respondents No. 4 & 5 herein, came forward to maintain an appeal under section 21 the Agrarian Reforms Act, 1976 before the Commissioner Agrarian Reforms, Udhampur, powers of which being vested with the Additional Deputy Commissioner, Udhampur.

5. The institution of the said appeal has admittedly taken place beyond period of limitation of 60 days as prescribed under section 22 of the Agrarian Reforms Act, 1976.

6. The appellate authority of the Additional Deputy Commissioner (with Powers of Commissioner Agrarian Reforms), Udhampur came forward with an order dated 22.03.2024 thereby ordering stay of operation of the impugned order

dated 07.02.2023 and also directing a status-quo to be maintained on spot by the parties till next date of hearing i.e. 23.04.2024 which date has now gone by.

7. The petitioner herein feeling aggrieved of the indulgence so given by the Additional Deputy Commissioner (with Powers of Commissioner Agrarian Reforms), Udhampur on its appellate side jurisdiction in a matter, which is time barred without first dealing with the condonation of delay application filed in the case, has come rushing to this Court with the present petition under the article 226 of the Constitution of India to assail the order dated 22.03.2024 so passed by the Additional Deputy Commissioner (with Powers of Commissioner Agrarian Reforms), Udhampur.

8. Taking judicial notice of fact that there is a lack of clarity obtaining at the end of quasi judicial/statutory authorities exercising appellate jurisdiction when it comes to matter of handling and dealing with at the very first stage of coming of time barred appeals accompanied with the applications for condonation of delay and also for interim directions, this Court takes this case to be an opportunity to refresh the position of law so as to obviate the multiplicity of litigation which comes out from scenario like the present one in the case.

9. Section 22 of the Agrarian Reforms Act, 1976, while providing a period of limitation of 60 days for an institution of an appeal under section 21, also provides for application of the Limitation Act, 1963 meaning thereby that with respect to an appeal under section 21 of the Agrarian Reforms Act, 1976, if filed after 60 days prescribed period of limitation under section 22(1), the mandate envisaged under section 3 of the Limitation Act, 1963 comes into

instant play with respect to the exercise of jurisdiction on the part of the appellate authority.

10. Section 3 of the Limitation Act, 1963 reads as under:

“3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,—

(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.”

11. As section 22 (2) of the Agrarian Reforms Act, 1976 provides for full application of the Limitation Act, 1963, as such, section 5 of the Limitation Act, 1963 is also available for the sake of seeking condonation of delay with respect to any appeal or application being preferred after the prescribed period provided a sufficient cause is exhibited by an appellant/applicant for not preferring the appeal or making the application within the prescribed period.

12. Limitation Act, 1963 deals with time frame with respect to actions/remedies of/for a suitor. Section 3 of the Limitation Act, 1963 is a self-starter legal provision with respect to institution of the suit, preference of an appeal or making of application taking place beyond period prescribed for instituting a given civil suit, preferring an appeal or application.

13. Section 3 of the Limitation Act, 1963 does not leave it for a defendant/respondent to come forward and register an objection with respect to an instituted suit, appeal or an application whose maintainability is barred by time. In fact, it is always for a court, be it civil or criminal, and/or authority, be it judicial or quasi judicial, before whom a time barred action/remedy, be it original or an appellate one, is sought to be maintained that the mandate of proscription meant in section 3 of the Limitation Act, 1963 comes into instant play.

14. As section 3 provides for dismissal of a time barred suit/appeal/application, as such, before a time barred suit/appeal/application is to be given a dismissal, such a time barred suit/appeal/application needs to be first submitted/filed only then its dismissal in terms of mandate of section 3 of the Limitation Act, 1963 can take place.

15. Condonation of delay under section 5 of the Limitation Act, 1963 is not provided for a time barred civil suit and, therefore, a time barred civil suit if instituted can suffer dismissal either on the *suo moto* notice by a civil court getting seized of the time barred instituted civil suit or upon appearance of a defendant in such suit objecting to the maintainability of the said suit as being time barred thereby giving rise to an issue to said effect which can be an issue of

law or mixed issue of law and fact, whatever the nature of the said issue be. A civil court is supposed to deal with the said time barred suit in terms of its adjudication only to the extent of its maintainability as to whether it is instituted within the time prescribed or beyond it. If a suit is held to be instituted beyond the prescribed period, then there is no relaxation of time available for such a time barred instituted civil suit and the lis envisaged under such a civil suit comes to an instant end affording no scope for a plaintiff in such like suit to earn any relief whatsoever relatable to the subject matter of the suit. It is to be kept in reference that different suits have different limitation periods coinciding with the accrual of cause of action for the institution of the particular suit and that is why an issue of limitation may or may not be pure issue of law but can be a mixed issue of fact.

16. However, with respect to a time barred appeal/prescribed application, what section 3 of the Limitation Act, 1963 envisages is its dismissal unless by resort to section 5 of the Limitation Act, 1963 condonation of delay in attending the institution of the appeal/application is granted.

17. Now insofar as institution/preference of an appeal or application beyond prescribed period of limitation is concerned section 5 of the Limitation Act, 1963, of course, provides a succor with respect to time barred appeal or application vesting a discretion in a court or authority to condone the delay attending the institution of an appeal/application beyond the period prescribed provided a sufficient cause is shown to account for the delay attending preference of an appeal or an application beyond the period prescription.

18. An appeal is remedy which is given by a particular statute with respect to an adjudication/order made under a given statute by a court or/and authority.

19. Entertainment of an appeal which is preferred within a period of limitation prescribed is not subject to discretion of an appellate authority and its adjudication on merits is meant to take place. However, when the appeal is time barred, then before an appellate forum/authority comes to deal with such a time barred appeal, nothing is meant to be done with respect to operation of an impugned order in appeal without first adjudicating with respect to condonation of delay if sought by the appellant. In case, operation of an impugned order under a time barred appeal is intended to be stayed or held up by an appellant, then unless and until there is an application pleading facts seeking stay of operation of the impugned order pending final disposal of the application for condonation of delay, there is no jurisdiction available with the appellate authority/forum to order stay of operation of impugned order in response to an application, if any, filed by the appellant, in reference to the time barred appeal.

20. It is only by this correct legal approach on the part of an appellate authority/forum that scope for filing of present like writ petition or proceedings before superior courts can be curbed so as to save precious public time getting lost in dealing with unwarranted litigation coming against interim indulgence of and on the part of an appellate authority in doling out stay order in time barred appeal/proceedings whatsoever.

21. In the case of “**Krishnasami Panikondar Vs. Ramasami Chettiar and others**” (1917 AIR Privy Council 179) five judges Bench of the Privy

Council came to put the legal position with respect to consideration of time barred appeal very pithily.

22. In said case, against a decree dated 08.02.1905 passed by court of the Additional Subordinate Judge, Tanjore, the judgment debtor had preferred an appeal to the Madras High Court and the last date of limitation was 10.07.1905 but the appeal was presented on 12.07.1905 which came to be returned to the appellant/judgment debtor being out of time. The said returned appeal had come to be again presented by the appellant/judgment debtor on 26.07.1905 supported with an affidavit explaining the delay.

23. The condonation of delay application came up for admission before the Single Judge of Madras High Court who, vide an order dated 31.07.1905, came to pass an order in the following terms: “Delay excused in the circumstances and appeal admitted”.

24. The decree holder/respondent upon his appearance in the case contested the application in which delay had been condoned in admitting the appeal. On re-agitation of the decree holder/respondent, the Division Bench of the Madras High Court, in terms of an order dated 07.10.1908, upheld the objection of the appeal being time barred and dismissed it and that is how the matter reached up to the Privy Council wherein a point was taken that when Single Judge had condoned the delay making his order of condonation of delay final, the Division Bench had later on no jurisdiction related with hearing of the appeal to reconsider the question as to whether the delay was condonable.

25. The Privy Council came to take notice of fact that order condoning delay was passed in absence of the decree holder/respondent and without any

notice to him which purportedly meant to deprive him of a valuable right putting in peril the finality of the decision in his favour and precluding him from questioning the propriety of order condoning the delay amounting to denial of justice. Privy Council conceded to the right that the decree holder/respondent was entitled to object to the condonation of delay.

26. The Privy Council came to impress on the courts in India of adopting a procedure which will secure at the stage of admission, the final determination (after due notice to all the parties) of any question of limitation affecting the competence of the appeal. The Privy Council has stated that it is duty of litigant to know the last day on which he can present his appeal and if through delay on his part it becomes necessary for him to ask the Court of exercise in his favour power condoned in section 5 of the Indian Limitation Act, the burden rests on him or adducing distinct proof of the sufficient cause on which he relies.

27. This judgment from the Privy Council highlights the importance of dealing with condonation of delay in more responsive and responsible manner on the parts of the Courts dealing with the adjudications on appellate side.

28. In the case of **“Bogidhola Tea & Trading Co. Ltd. and another Vs. Hira Lal Somani” (2008 AIR SC 911)**, the Hon’ble Supreme Court of India in para-13 by referring to section 3 of the Limitation Act, 1963 has reiterated its mandate that a court would not exercise its jurisdiction for any relief in favour of a party, if the same is filed to be barred by limitation. With reference to a time barred civil suit in which it is found that the suit is barred by limitation a court is held to have no jurisdiction to pass a decree.

29. Parity of the reasoning with respect to a time barred civil suit in the context of section 3, may not in strict sense apply in the matter of time barred appeal as with respect to a time barred civil suit, there is no provision for condonation of delay under section 5 whereas with respect to a time barred appeal, section 5 Limitation Act, 1963 does provide a scope for condonation of delay but nevertheless so long as the delay attending filing of an appeal against an appealable order is not condoned, the jurisdiction of an appellate court/authority to pass any order in relation to the order and the appeal does not kick start.

30. This Court feels that the present case in hand does not warrant indulgence on merits except a disposal with a direction to the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Udhampur to deal with and dispose of the condonation of delay application, if any, filed in the case by the appellants, namely, Rajan and Ramesh Chander (the respondents No. 4 & 5 herein) in their statutory appeal addressed against the order dated 07.02.2023 passed by the Assistant Commissioner Revenue (Collector First Class), Udhampur. Only by first dealing with the said application for condonation of delay on merits, the rest of the matter to be taken up for adjudication in the event the application for condonation of delay gets allowed.

31. It needs no reminder that condonation of delay application to be disposed of by an order bearing reasons by the appellate authority.

32. Needful adjudication be done at the earliest by the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Udhampur

from the date a certified copy of this order is placed on record and preferably by or before 31.07.2024.

33. Certified copy of this order to be served upon the Additional Deputy Commissioner (with Powers of Commissioner Agrarian Reforms), Udhampur by the petitioner so as to set time running for adjudication.

34. Till consideration and disposal of the condonation of delay application, the operation of the order dated 07.02.2023 passed by the Assistant Commissioner (Revenue), Udhampur in case titled “**Hem Raj and others Vs. Rajan and others**” shall remain stayed.

35. Disposed of.

JAMMU
07.06.2024
Shivalee

