



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No.10712/2023

1. Sabuddin S/o Late Sh. Allanoor, Resident Of Village Kundera, Tehsil And District Sawaimadhopur, Rajasthan.
2. Abdul Rashid S/o Late Sh. Allanoor, Resident Of Village Kundera, Tehsil And District Sawaimadhopur, Rajasthan.
3. Makbool S/o Late Sh. Allanoor, Resident Of Village Kundera, Tehsil And District Sawaimadhopur, Rajasthan.
4. Gulab W/o Late Sh. Allanoor (Since Decease), Resident Of Village Kundera, Tehsil And District Sawaimadhopur, Rajasthan.

----Petitioners

Versus

Giriraj S/o Kalu, Resident Of Kundera, Tehsil And District Sawaimadhopur, Rajasthan.

----Respondent

For Petitioner(s) : Mr. Vikas Kabra
For Respondent(s) : Mr. Vishram Prajapati

JUSTICE ANOOP KUMAR DHAND

Order

11/09/2025

Reportable

INDEX

(1) Contentions of the petitioner.....	2
(2) Contentions by rival side.....	3
(3) Discussions, Analysis & Findings.....	3
(4) Conclusion & Directions.....	11





The fundamental purpose of prescribing limitation is to bring closure to litigation, thereby ensuring that legal disputes are resolved in a timely manner and that perpetual uncertainty is prevented.

1. By way of filing this writ petition, a challenge has been led to the impugned order dated 21.04.2023 passed by the Board of Revenue (for short, 'the Board'), by which the appeal submitted by the petitioners against the judgment dated 04.11.2010 passed by the Revenue Appellate Authority (for short, 'RAA') has been rejected.

Contentions of the petitioner:

2. Learned counsel for the petitioners submits that the suit filed by the petitioners for correction of entries in the revenue record was decreed by the Court of Sub Divisional Officer (for short, 'SDO') on 29.07.1964. Counsel submits that after a period of 44 years, a time barred appeal was submitted by the respondent against the said judgment before the RAA, without submitting an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal. Counsel submits that this material aspect has not been appreciated by the RAA and without condoning the delay in filing the appeal, the appeal preferred by the respondent has been allowed by the RAA vide judgment dated 04.11.2010, which was assailed by the petitioners by way of filing a second appeal before the Board, but the Board has also overlooked this material aspect of the matter and erred in rejecting the appeal submitted by the petitioners. Counsel submits that unless and until, an application under Section 5 of the Limitation Act is submitted





and the delay in filing the appeal is condoned, the Appellate Authority has no jurisdiction to allow the appeal and subsequently, quash & set-aside the judgment passed by the Sub-ordinate Court. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Mamtaz and Others vs. Gulsuma alias Kulusuma** reported in **2022 (4) SCC 555**. Counsel submits that under these circumstances, interference of this Court is warranted.

Contentions by the rival side:

3. *Per contra*, learned counsel for the respondent opposed the arguments raised by counsel for the petitioners and submitted that an ex-parte decree was passed against the respondent by the Sub Divisional Officer. Counsel submits that land belonging to a person of the Schedule Caste category cannot be sold to a person belonging to the General Caste category, as such sale is hit by Section 42 of the Rajasthan Tenancy Act, 1955. Counsel submits that under these circumstances, the decree passed by the SDO was null and void and the same was rightly quashed and set-aside by the RAA and the same has been rightly upheld by the Board, by rejecting the appeal submitted by the petitioners. Counsel submits that under these circumstances, interference of this Court is not warranted and the writ petition is liable to be rejected.

Discussions, Analysis & Findings:

4. Heard and considered the submissions made at the Bar and perused the material available on the record.





5. This Court is not entering into the controversy as to whether the land in question was rightly sold or not and whether the petitioners were having rightful claim over the subject property or not.

6. The only question which remains for the consideration of this Court is "Whether an Appellate Court can hear and decide a time barred appeal without condoning the delay in filing the same?"

7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "*interest reipublicae ut sit finis litium*" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal *vis-a-vis* the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Order 41 of the Code of Civil Procedure (for short 'CPC') deals with the provisions of filing appeal against the impugned judgment and decree passed by the Subordinate Court and Order 41 Rule 3-A deals with the provisions of filing





application for condonation of delay, in case the appeal is filed after expiry of the period of limitation. This provision exists as follows:-

“Order 41 Rule 3-A. Application for condonation of delay.—

(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.”

10. Though it is settled legal theorem that Court should adopt a liberal approach in condonation of the delay, but simultaneously it is also true that an objection regarding limitation is not merely a technical objection, but it is a substantial & material objection which determines the jurisdiction of the appellate court to entertain, hear and decide the appeal. If an appeal is filed beyond the prescribed





time, the first question to be decided is as to whether the appeal is within the prescribed period of limitation and if not, whether the application under Section 5 of the Limitation Act, if any filed along with the appeal, should be allowed or not by condoning the delay in preferring the appeal. In this regard, the provision as envisaged in Section 3(1) of the Limitation Act, 1963 carries much significance & importance in this matter, which is as follows :-

"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."

The true construction of sub section (1) of Section 3 is that a suit, appeal or application if time barred shall be dismissed after the prescribed period of limitation, even though limitation has not been pleaded in defence. It is the duty of the court not to proceed with the appeal if it is made beyond the period of limitation prescribed. Though the provision of Section 3 of the Limitation Act is controlled by and subject to the provision of Sections 4 to 24 of the Limitation Act and court has inherent power to condone the delay, but before proceeding with the case without following the first step as mentioned in Order 41 Rule 3A of the CPC, an appellate court cannot rather should not proceed to dispose of the appeal on merits keeping in view the mandatory provision of Section 3 of the Limitation Act, meaning thereby the





question of limitation should be decided before proceeding with the appeal observing the due compliance of Section 3 of the Limitation Act which specifically states that whenever any suit, appeal or application is preferred after the prescribed period of limitation, it has to be rejected invariably unless delay is condoned in accordance with the law even if limitation has not been taken as a defence by any of the authority.

11. It is clear from Sub Rule (1) of Order 41 Rule 3A of the CPC that at the time of presentation of an appeal which is barred by limitation, the appellant is required to file an application that he has sufficient cause for not filing the appeal within the period of limitation. Thereafter, it is incumbent upon the court to decide the application before it proceeds to decide the appeal on merits. In case the court accepts the application, only then it can proceed under Rule 11 or Rule 13 of Order 41 of the CPC. If the application for condoning the delay in filing the appeal is dismissed, the question under Rule 11 and its consideration under Rule 13 does not arise.

12. As a matter of fact, Rule 3A of Order 41 creates a positive bar by disabling a court to pass any order in any appeal filed before it, without taking care to first decide finally the question of limitation in order to determine whether or not the appeal is time barred. The legislature has been so particular that it has debarred the court even from making any order for stay of execution of the decree against which the appeal is proposed to be filed so long as the court does not after hearing under Rule 11 decide about the





consideration of appeal. Thus, it is obvious that the court will have to decide first as to whether the delay should be condoned or not and if the court comes to the conclusion that there exists no sufficient grounds to condone the delay, the appeal shall not be treated to have been admitted and in that case, invariably the appeal cannot be preferred to the higher courts.

13. Hon'ble Apex Court in the case of **State of M.P. and Another vs. Pradeep Kumar and Another** reported in **2000 (7) SCC 372** has held that the object of enacting Rule 3-A in Order 41 CPC is to inform the appellant to file an application for condonation of delay in filing appeal, if the same is time barred. But at the same time, it has been held that deficiency in not filing of condonation application is a curable defect and such application can be filed subsequently. It has been held in para 10, 11, 12 & 19 as under:

"10. What is the consequence if such an appeal is not accompanied by an application mentioned in sub-rule (1) of Rule 3-A? It must be noted that the Code indicates in the immediately preceding rule that the consequence of not complying with the requirements in Rule 1 would include rejection of the memorandum of appeal. Even so, another option is given to the court by the said rule and that is to return the memorandum of appeal to the appellant for amending it within a specified time or then and there. It is to be noted that there is no such rule prescribing for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for





condoning the delay. If the memorandum of appeal is filed in such appeal without accompanying the application to condone delay the consequence cannot be fatal. The court can regard in such a case that there was no valid presentation of the appeal. In turn, it means that if the appellant subsequently files an application to condone the delay before the appeal is rejected the same should be taken up along with the already filed memorandum of appeal. Only then the court can treat the appeal as lawfully presented. There is nothing wrong if the court returns the memorandum of appeal (which was not accompanied by an application explaining the delay) as defective. Such defect can be cured by the party concerned and present the appeal without further delay.

11. No doubt sub-rule (1) of Rule 3-A has used the word "shall". It was contended that employment of the word "shall" would clearly indicate that the requirement is peremptory in tone. But such peremptoriness does not foreclose a chance for the appellant to rectify the mistake, either on his own or being pointed out by the court. The word "shall" in the context need be interpreted as an obligation cast on the appellant. Why should a more restrictive interpretation be placed on the sub-rule? The Rule cannot be interpreted very harshly and make the non-compliance punitive to an appellant. It can happen that due to some mistake or lapse an appellant may omit to file the application (explaining the delay) along with the appeal.

12. It is true that the pristine maxim *vigilantibus non dormientiobus jura subveniunt*





(law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistakes. As the aphorism "to err is human" is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judiciary permanently closed before him. The effort of the Court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine.

19. The object of enacting Rule 3-A in Order 41 of the Code seems to be two- fold. First is, to inform the appellant himself who filed a time barred appeal that it would not be entertained unless it is accompanied by an application explaining the delay. Second is, to communicate to the respondent a message that it may not be necessary for him to get ready to meet the grounds taken up in the memorandum of appeal because the court has to deal with application for condonation of delay as a condition precedent. Barring the above objects, we cannot find out from the rule that it is intended to operate as unremediably or irredeemably fatal against the appellant if the memorandum is not accompanied by any such application at the first instance. In our view, the deficiency is a curable defect, and if the required application is filed subsequently the appeal can be treated as presented in accordance with the requirement contained in Rule 3-A of Order 41 of the Code."





14. In the instant case, the decree was passed by the SDO on 29.07.1964. This fact is not in dispute that after a delay of 44 years a time-barred appeal was preferred by the respondent before the RAA without submitting an application under Section 5 of the Limitation Act seeking condonation of delay. Without assigning any reason for filing a delayed appeal, straightaway the appeal was preferred before the RAA and the same has been allowed by the RAA vide judgment dated 04.11.2010.

15. It is a settled proposition of law that whenever a time barred appeal is preferred, an application under Section 5 of the Limitation Act is required to be filed along with such time barred appeal, and if no separate application is submitted, then the reasons of delay are required to be discussed in the memo of appeal. This is also a settled proposition of law that unless and until, the delay in filing an appeal is condoned, the appeal cannot be decided on its merits. It appears that both the RAA and the Board has overlooked this material aspect of the matter and the 44 years time barred appeal has been allowed without condonation of delay in filing the appeal. No reasons have been assigned in the impugned judgment about entertaining such belated time barred appeal.

Conclusion & Directions:

16. Under these circumstances, the orders impugned passed by the RAA and the Board are not legally sustainable in the eyes of law and are liable to be and are hereby quashed and set-aside, granting liberty to the respondent to file an application under Section 5 of the Limitation Act. The matter





shall now go back to the RAA for disposal of application to condone the delay in filing the first appeal. If such an application is preferred by the respondent before the RAA, the appeal preferred by the respondent would be restored to its original number and in case, the explanation of delay is found satisfactory by the RAA, then the appeal be decided on merits strictly in accordance with law.

17. With the aforesaid observations/directions, the instant writ petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

18. No order as to costs. The parties are left free to bear their own costs.

(ANOOP KUMAR DHAND),J

KuD/11