

*law of adverse possession contemplates that there is not only continuity of possession as against the true owner but also that such person had full knowledge that the person in possession was claiming a title and possession hostile to the true owner. If a person comes in possession of the land of another person, he cannot establish his title by adverse possession unless it is further proved by him that the tenure holder had knowledge of such adverse possession."*

21. Even on facts, it is found that entries in subsequent Fasli years i.e. 1368, 1369, 1370, 1371 and 1372 appear to be forged inasmuch as in Khatauni of 1368 Fasli, there is PA-10 mentioned, in which Plot Nos.294 and 295 are mentioned, while in Khataunis of 1369, 1370, 1371 and 1372 Faslis, there is PA-10, wherein Plot Nos.294, 295 and 296 are mentioned, but thumb impression was found in 1370 Fasli without showing name of the noticed person. In 1371 Fasli thumb impression was found on same footage and no thumb impression or signature are found in 1372 Fasli. Thus, no notice of PA-10 in accordance with law was given to the recorded tenure holder before recording the name of opposite party no.2 in Column-9. The rent and canal dues receipts, which are in the name of the petitioners, can not be relied on and, it can not be said that opposite party no.2 was in possession of the land in question as the rent receipts were in the name of the original tenure holder and, as per the original tenure holder, they got lost, for which he had lodged an FIR.

22. In view thereof, I am of the view that the Assistant Director of Consolidation was not correct in setting aside the concurrent findings of fact recorded by the

two authorities below regarding entries of opposite party no.2 and, therefore, the order passed by the Assistant Director of Consolidation is not tenable in law and is liable to be set aside.

23. Writ petition is accordingly **allowed** and the impugned order dated 29.1.1991 passed by the Assistant Director of Consolidation, Faizabad (Now Ayodhya Ji) is hereby set aside. Consequences to follow.

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**(2022)02ILR A259**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 03.02.2022**

**BEFORE**

**THE HON'BLE RAJESH BINDAL, C.J.**  
**THE HON'BLE PRITINKER DIWAKER, J.**

Consolidation No. 6574 of 2016

**Ram Prakash** **...Petitioner**  
**Versus**  
**Deputy Director of Consolidation, Hardoi & Ors.** **...Respondents**

**Counsel for the Petitioner:**  
 Mr. Prabhakar Vardhan Chaudhary,  
 Advocate

**Counsel for the Respondents:**  
 Mr. Manjive Shukla, Addl. Chief Standing  
 Counsel

**(A) Civil Law - Delay Condonation - U.P. Consolidation of Holdings Act, 1953, S. 11, S. 53B - Limitation Act, 1963, S. 5 - Delay in filing Appeal - If an appeal is filed beyond the time limit, party is entitled to seek condonation of delay in filing appeal - an application has to be filed specifying the grounds on which delay in filing the appeal is sought to be condoned - firstly delay condonation application has to be considered - It is only after that the**

**application is allowed, the appeal can be entertained and heard on merits - Before that the appeal cannot be taken up and considered on merits – However both can be taken up & heard on the same day - there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay**

**Reference Answered.** (E-5)

**List of cases cited :-**

1. Dev Narain Singh Vs Dy. Director of Consolidation, Sultanpur & ors Consolidation No. 604 of 2014 dt 5.9.2014
2. Girja Shanker & ors Vs Deputy Director of Consolidation & ors. 1996 RD 465
3. Ramesh Chandra Sankla Vs Vikram Cement (2008) 14 SCC 58
4. Bhagwat & ors. Vs Deputy Director of Consolidation & ors. (1990) RD 162,
5. Parbhu & anr. Vs Deputy Director of Consolidation, Ghazipur & ors. (2013) 1 ADJ 554
6. Jais Lal Vs Deputy Director of Consolidation, Jaunpur & anr. (2014) 1 ADJ 248
7. Budh Sagar & ors. Vs Jai Prakash & ors. (2013) 1 ADJ 381

(Delivered by Hon'ble Rajesh Bindal, C.J.)

1. On a reference made by learned Single Judge for consideration of the issue, as extracted below, the matter has been placed before the Division Bench:

"If an order has been challenged before the consolidation authority is barred by the period of limitation as provided under the statute (in the present case before the appellate authority/Settlement Officer Consolidation -1, Hardoi) along with an

application for condonation of delay then in that circumstances whether the application for condonation of delay under Section 5 of the Limitation Act should be decided first or the same can be decided along with merit of the case?"

2. The issue was referred to Larger Bench for the reason that there are two divergent views given by Single Benches of this Court in **Consolidation No. 604 of 2014 (Dev Narain Singh Vs. Dy. Director of Consolidation, Sultanpur & others)** decided on September 5, 2014 and **Girja Shanker and others Vs. Deputy Director of Consolidation and others 1996 RD 465**.

3. In **Dev Narain Singh's case (supra)** the view expressed by learned Single Judge of this Court was that it is not mandatory for the appellate authority to decide the application for condonation of delay first and then hear the appeal on merits. On the other hand, in **Girja Shanker's case (supra)**, a single Judge of this Court opined that an order passed by appellate authority condoning the delay in filing the appeal is not an interlocutory order, hence, revision under Section 48 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "1953 Act") is maintainable against that order. It was, thus, observed that it is mandatory for the appellate authority to decide the application seeking condonation of delay first and then fix a later date to hear the appeal on merits, so as not to deprive the party aggrieved, if any, of his right to avail the remedy admissible to him against the order passed on the application filed under Section 5 of the Limitation Act, 1963 (hereinafter referred to as "1963 Act").

4. Learned counsel for the petitioner submitted that Section 11 of 1953 Act provides for filing of appeals against the

order passed by Assistant Consolidation Officer or the Consolidation Officer. The period prescribed for filing the appeal is 21 days from the date of the order. Sub-section (2) thereof provides that Settlement Officer (Consolidation) hearing an appeal under Sub-section (1) shall be deemed to be a Court. Section 53-B of the 1953 Act was referred to submit that Section 5 of the 1963 Act is applicable for applications, appeals, revisions and other proceedings under the 1953 Act. Reference is also made to Section 48 of the 1953 Act to submit that the Director Consolidation may call for and examine the records of any case decided or proceedings taken by the subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings.

5. The argument raised by learned counsel for the petitioner is that if any appeal is filed after the period prescribed in Section 11 of the 1953 Act along with an application seeking condonation of delay, the application seeking condonation of delay has to be decided first and, thereafter, the appeal has to be adjourned for hearing on merits. It cannot be simultaneous. If a party is aggrieved by an order passed by appellate authority on an application seeking condonation of delay, he may be able to avail of his remedy during the interregnum period. Such a process has to be followed as no one should be deprived of his right of appeal available to him against an order passed by appellate authority on the application seeking condonation of delay. An order passed by appellate authority under Section 5 of 1963 Act is a final order and cannot be considered to be an interim order, hence, revisable.

6. Learned counsel for the State submitted that a bare reading of the

provisions of the 1953 Act specially Section 11 read with Section 53-B thereof shows that an appeal is to be filed within certain specified time, however, in case, delayed, an application under Section 5 of the 1963 Act can be filed seeking condonation of delay. There is no quarrel with the proposition of law that an application seeking condonation of delay in any proceedings has to be decided first and it is only thereafter that the main appeal can be heard. Prior to that it is not an appeal in the eyes of law. If any such application is filed the same has to be decided first and in case the delay is condoned, there is no bar on the appellate authority to take up and decide the appeal on merits on the same day. An order passed by appellate authority on an application filed under Section 5 of 1963 Act cannot be said to be revisable as such. Keeping in view the nature of proceedings, it may be final order if considered in the light of the fact that the application for condonation of delay if rejected, the appeal will also go. However, in case only the application is allowed and appeal is heard on merits, order cannot be said to be final as far as the proceedings of the case are concerned. He further submitted that in the proceedings under the 1953 Act, there is no need even to file a separate application seeking condonation of delay as even prayer can be made in the memo of appeal seeking condonation of delay.

7. He further submitted that there is limited application of the C.P.C. in the proceedings under the Act. He also referred to a judgment of Supreme Court in **Ramesh Chandra Sankla Vs. Vikram Cement (2008) 14 SCC 58**, observing that Court should decide all the issues and not merely a preliminary one. This procedure will check the delay in the course of justice.

8. Heard learned counsels for the parties and perused the paper book.

### **SCHEME OF THE ACT:**

9. For appreciating the issues referred by the learned Single Judge for consideration by Larger Bench, it would be appropriate to refer the relevant provisions of the 1953 Act:

**"11. Appeals.-** (1) Any party to the proceedings under Section 9-A, aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that section, may, within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall, after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any Court of law.

(2) The Settlement Officer, Consolidation, hearing an appeal under sub-section (1) shall be deemed to be a Court of competent jurisdiction, anything to the contrary contained in any law for the time being in force notwithstanding.

x x x x

**48. Revision and reference.-** (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

x x x x

**53-B. Limitation.-** The provisions of Section 5 of the Limitation Act, 1963, shall apply to the applications, appeals, revisions and other proceedings under this Act or the rules made thereunder."

10. A perusal of Section 11 of 1953 Act shows that any party to the proceedings under Section 9-A thereof, if aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer may prefer an appeal before the Settlement Officer, Consolidation within 21 days of the date of the order. Any decision given by the Settlement Officer, Consolidation in appeal is final and cannot be questioned in any Court of law.

11. The Settlement Officer, Consolidation while hearing the appeal is deemed to be Court of competent jurisdiction. Section 53-B of the 1953 Act provides that provision of Section 5 of 1963 Act shall apply to the applications, appeals, revisions and other proceedings under the Act or the rules made thereunder. Meaning thereby, if an appeal is filed beyond the period of 21 days, as provided under Section 11 of 1953 Act, aggrieved party can move an application seeking condonation of delay under Section 5 of 1963 Act.

12. Section 48 of 1953 Act provides that Director Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order, passed by such authority. The aforesaid power can be exercised with reference to any order except an interlocutory order. Such a power can also be exercised by Director Consolidation on a reference made by any authority subordinate to him.

#### **EARLIER JUDGMENTS:**

13. In **Girja Shanker's case (supra)**, which in the opinion of learned counsel for the petitioner lays down correct law, a Single Bench of this Court opined that an order passed by appellate authority condoning the delay in filing the appeal is not an interlocutory order, hence, revision under Section 48 is maintainable against that order.

14. In **Bhagwat and others Vs. Deputy Director of Consolidation and others (1990) RD 162**, a Single Bench of this Court opined that an order deciding an application seeking condonation of delay cannot be said to be interlocutory and revision against that order was maintainable. An application for condonation of delay has to be decided first by the appellate authority and in case allowed, the appeal may be decided on merits on a subsequent date.

15. In **Parbhu and another Vs. Deputy Director of Consolidation, Ghazipur and others (2013) 1 ADJ 554**, the issue under consideration was, as to whether revisional authority without

condoning the delay could hear the revision on merits. The opinion expressed by the Court was that the order passed by revisional authority deciding the revision petition on merits without condoning the delay was erroneous. Direction was issued for deciding the application for condonation of delay first and thereafter the revision petition was to be taken up for hearing.

16. In **Jais Lal Vs. Deputy Director of Consolidation, Jaunpur and another (2014) 1 ADJ 248**, a Single Judge of this Court had opined that the appellate authority has to decide the question of limitation first either by condoning the delay or refusing to condone the same. In case, the delay is condoned, the matter can be decided on merits but not prior to one month from the date the order is passed for condonation of delay. It is for the reason that the aggrieved party should have opportunity to question that order before the higher forum.

17. In **Budh Sagar and others Vs. Jai Prakash and others (2013) 1 ADJ 381**, a Single Bench of this Court opined that the appellate authority is to pass the order on the application seeking condonation of delay first and thereafter proceed to hear the case on merits.

18. In **Dev Narain Singh's case (supra)**, a Single Bench of this Court opined that it is not mandatory for the appellate authority to decide the application for condonation of delay first and then hear the appeal on merits. An application for condonation of delay can be considered along with main appeal at the time of final argument.

#### **DISCUSSIONS:**

19. We are not going into the issue as to whether an order passed by appellate authority on an application seeking condonation of delay is an interim order or final as the same has not been referred for consideration by the Division Bench. Different situations may arise in an appeal filed along with application seeking condonation of delay. Firstly, the application for seeking condonation of delay may be dismissed. As a consequence thereof, the appeal will also fail. Another situation may be that application seeking condonation of delay is allowed and thereafter the appeal may either be accepted or rejected.

20. If any statute provides certain period for filing of appeal, an appeal filed beyond the time limit will certainly be not entertained. If the provisions of 1963 Act are applicable and party is entitled to seek condonation of delay in filing appeal, an application has to be filed specifying the grounds on which delay in filing the appeal is sought to be condoned. It is only after that the application is allowed, the appeal can be entertained and heard on merits. Before that the appeal cannot be taken up and considered on merits.

21. As far as the issue regarding hearing of the application seeking condonation of delay and the appeal simultaneously is concerned, in our view, firstly the application has to be considered. Only thereafter, the appeal can be considered on merits but there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay. Both can be taken up on the same day. However, the appeal has to be heard on merits only after the application seeking condonation of delay has been accepted.

22. In view of the aforesaid discussion, we answer the question referred to the Division Bench that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing on merits. However, it can be on the same day and there is no requirement of adjourning the hearing of appeal on merits after acceptance of the application seeking condonation of delay.

23. Let the matter be listed before learned Single Judge as per roster for further proceedings in the case.

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(2022)02ILR A264

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: LUCKNOW 08.02.2022**

**BEFORE**

**THE HON'BLE MRS. SANGEETA CHANDRA, J.**

Matters Under Article 227 No. 269 of 2022

<b>Lakshmi Kant Shukla</b>	<b>...Petitioner</b>
<b>Versus</b>	
<b>Ram Niranjana</b>	<b>...Respondent</b>

**Counsel for the Petitioner:**  
Pankaj Gupta

**Counsel for the Respondents:**  
Ghaus Beg, Anurag Shukla

**A. Code of Civil Procedure, 1908 – Order VI Rule 17 - Amendment application. When cannot be allowed.-** A proviso has been inserted in Order VI Rule 17 C.P.C. which says that “no application for amendment shall be allowed after trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial”. In *Vidyabai & ors. v Padma Latha & anr.* AIR 2009 SC 1433 it has been observed that the said proviso is couched in mandatory form and the court’s jurisdiction to allow an application for amendment is taken away unless the conditions