

"28. Hon'ble Supreme Court has also held in the case of Sandvic Asia Ltd. (Supra) that such a situation is discriminatory in nature and causes great prejudice to the lacs and lacs of the assessees. In the case of Tata Chemicals Ltd. (Supra) Hon'ble Supreme Court observed that the Government, there being no express statutory provision for payment of interest on the refund of excess amount/ tax collected by the revenue; cannot shrug off its apparent obligation to reimburse the deductors lawful money with accrued interest for the period of undue retention of such monies. The State having received the money without right and having retained and used it, is bound to make the party good, just as an individual would be under the like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. In the case of Hari Chandra (Supra), this Court held in similar circumstances in stamp matter that payment of interest on the money retained by the State Government is necessary when the money is to be returned under the orders of the appellate or the revisional authority. It has not been shown by the respondents that the law laid down in this judgement has been reversed or modified. In this judgement, this Court directed for payment of interest @ 8 per cent per annum from the date of deposit of money till the date of actual payment.

29. In view of the above discussions, a general mandamus is also issued to the State Government and all concerned authorities to pay within three months simple interest @ 8 per cent annum on all amounts of refund of stamp duty etc. under the Act to the concerned person, for the period from the date of deposit till the date of refund.

30. In result, writ petition succeeds and is allowed as indicated above.

31. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary, Principal Secretary Law and Principal Secretary, Tax and Registration for compliance. "

29. In view of aforesaid judgment, a further writ in the nature of Mandamus is issued commanding the opposite parties to ensure payment of 8% per annum simple interest to petitioner on the amount of deposit made by petitioner in pursuance of impugned orders from the date of deposit till the date of refund. Such payment of interest and refund shall be ensured within a period of three months from the date a certified copy of this order is served upon the said authorities.

30. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

(2025) 1 ILRA 525
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.01.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ C No. 22636 of 2024

Surendra Mani	...Petitioner
	Versus
State of U.P. & Ors.	...Respondents

Counsel for the Petitioner:
 Anil Kumar Tiwari

Counsel for the Respondents:
 C.S.C.

A. Land Law – Condonation of delay – Limitation Act, 1963 - Sections 3 & 5 - Uttar Pradesh Land Revenue Act, 1901 - Sections 200 & 201 - Delay in filing an application can be condoned if the sufficient ground exists, in the opinion of the Court, which prevented the party to approach the Court within time, even on an oral prayer made by the party. Not necessarily in every case, a written application has to be insisted upon. (Para 30)

In view of Section 201 of the Act, 1901, an ex-parte order can be recalled on sufficient cause being shown by either the plaintiffs or the defendants for their non-appearance. The provisions of Section 201 are similar to those of Section 5 of the Limitation Act except for the party has to satisfy that there has been failure of justice.

In the present case, the proceedings were decided against respondent Nos. 4 to 6 ex-parte in exercise of powers u/s 200 of the Act, 1901. Section 201 of the Act, 1901 provides that if a plaintiff, within 15 days from the date of order, and if a defendant, within 15 days after the order has been communicated to him, or after any process for enforcing the judgment has been executed or at any earlier period shows good cause for his non-appearance, and satisfies the officer making the order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, revive the case and alter or rescind the order according to the justice of the case. In the present case, the power has been exercised u/s 201 of the Act, 1901. (Para 31)

There is no denial of the facts as St.d by the contesting respondents in their application for restoration and the courts below have committed no illegality in recalling the ex-parte order dated 08.06.2017 and condoning the delay in filing the restoration application. (Para 33, 34)

Writ petition dismissed. (E-4)

Precedent followed:

1. Markland Pvt. Ltd. & ors. Vs St. of Guj., AIR 1989 Guj 44 (Para 13)
2. Patel Purshottamdas Motilal Vs Patel Chhotabhai Motibhai, 1979 (1) GLR 918 (Para 14)
3. Kulsoomun Nissa & ors. Vs Noor Mohammad & ors., AIR 1936 All 666 (Para 15)
4. Shakuntala Devi Vs Banwari Lal & ors., AIR 1977 All 551 (Para 16)
5. Rajiv Lochan Pandey Vs Madan Gopal Sharma & ors., AIR 1989 All 45 (Para 17)
6. Virendra Kumar Singhai Vs Murari Lal Singhal & ors., 1993 AWC 782 All (Para 18)
7. Savitri Devi Vs D.D.C. & ors., 2014 (122) RD 205 (Para 20)
8. Bhagmal & ors. Vs Kunwari Lal & ors., (2010) 12 SCC 159 (Para 21)
9. Dwarika Prasad (D) Thr. LRs. Vs Prithvi Raj Singh, 2024 INSC 1030 decided on 20.12.2024 (Para 22)
10. Firm Kaura Mai Bishan Dass Vs Firma Mathra Dass Atama Ram & ors., AIR 1959 Punj 646 (Para 23)
11. Mehar Singh Vs Dhurender Singh & ors., AIR 1993 P&H 23; (Para 23)
12. Meghraj Vs Jesraj Kasturjee, AIR 1975 Madras 137; (Para 23)
13. Nand Singh Vs ESt. Officer & anr., AIR 1993 Delhi 38; (Para 23)
14. Suresh Kumar & ors. Vs Firm Kurban Hussain Taiyab Ali & ors., AIR 1996 MP 151 (Para 23)
15. Kashinath Mondal Vs St. of W.B., 2007 SCC on-line Calcutta 739 (Para 23)
16. St. of M.P. & anr. Vs Pradeep Kumar & anr., (2000) 7 SCC 372 (Para 28)

17. Jai Pratap Singh & ors. Vs Board of Revenue & ors., 2006 (10) ADJ 196 (Para 32)

Precedent distinguished:

1. Ram Prakash Vs Deputy Director of Consolidation, 2022 (3) ADJ 1 (Para 4)

2. Chander Bhan Vs Bal Mukund & ors., AIR 1972 SC 2125 (Para 4)

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard Sri Anil Kumar Tiwari, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. This writ petition has been filed for the following reliefs:-

“(A). Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 2.6.2023 and 31.1.2024 passed by Court of Naib Tehsildar Sadar in Case No. 9426 of 2020 Deoria as well as order dated 28.2.2024 passed by Court of Commissioner Gorakhpur Region Gorakhpur in Revision No. 926/23, which is annexed as Annexure No. 1, 2 and 3 to this writ petition.

“(B). Issue a writ, order or direction in the nature of Mandamus commanding the respondent and directing them (respondent No. 3) to direct the parties for maintain status quo on the spot, during the pendancy of the case.”

3. Brief facts of the case are that a dispute arose as to succession of one Janaki Devi, widow of Hari Nandan. Smt. Janaki Devi executed a Will dated 29.10.1993 in favour of the petitioner. The predecessor in interest of respondent Nos. 4 to 6 claimed

the property in dispute on the basis of Will executed by Hari Nandan, husband of Janaki Devi. In this regard, Mutation Case No. 427 of 1994 was filed by the predecessor in interest of respondent Nos. 4 to 6. The aforementioned case was dismissed in default by order dated 08.06.2017 passed by Naib Tehsildar, Tehsil- Sadar, District Deoria-respondent No. 3. During the pendency of the aforesaid mutation case Damadi- predecessor in interest of respondent Nos. 4 to 6 died and respondent Nos. 4 to 6 were substituted in his place. Respondent Nos. 4 to 6 moved an application dated 26.02.2020 before respondent No. 3 for recalling the order dated 08.06.2017 passed by respondent No. 3 dismissing the case in default. Copy of the application is annexed as Annexure No. 7 to the writ petition. The petitioner filed his objections on 03.03.2022 to the restoration/ recall application filed by respondent Nos. 4 to 6 pleading inter alia that the said application is not maintainable as there was no application filed by respondent Nos. 4 to 6 under Section 5 of the Limitation Act for condonation of delay in filing the restoration application. The objections filed by the petitioner are annexed as Annexure No. 8 to the writ petition. Respondent No. 3 vide its order dated 02.06.2023 after considering the objections filed by the petitioner, condoned the delay in filing the restoration application. Copy of the order dated 02.06.2023 is annexed as Annexure No. 1 to the writ petition. Against the order dated 02.06.2023, the petitioner filed a revision before the Commissioner, Gorakhpur Region, Gorakhpur-respondent No. 2 which has been dismissed by order dated 28.02.2024. Copy of the order has been annexed as Annexure No. 3 to the writ petition. In the meantime, restoration application filed by respondent Nos. 4 to 6

was also allowed by order dated 31.01.2024. Copy of the order dated 31.01.2024 is annexed as Annexure No. 2 to the writ petition. Hence the present writ petition.

4. Counsel for the petitioner contended that there was no separate application filed by the petitioner under Section 5 of the Limitation Act for condoning the delay in filing the restoration application for recalling the order dated 08.06.2017 and therefore, respondent No. 3 has erroneously condoned the delay in filing the application after considering the objections of the petitioner and the said order is without jurisdiction, in view of Section 3 of the Limitation Act. It has been further contended by counsel for the petitioner that under the U.P. Land Revenue Act, 1901 (hereinafter referred as “ the Act, 1901”), there is no provision by which the provisions of Limitation Act were made applicable to the proceedings under the Act, 1901 and therefore, also the delay could not have been condoned by respondent No. 3. Admittedly, the proceedings were under the provisions of the Act, 1901. In support of his submissions learned counsel for the petitioner relied upon the judgment of the Division Bench of this Court in case of **Ram Prakash Vs. Deputy Director of Consolidation, Hardoi and others**; reported in **2022 (3) ADJ 1** and also the judgment of the Hon’ble Supreme Court in case **Chander Bhan Vs. Bal Mukund and anothers**; reported in **AIR 1972 SC 2125**.

5. *Per contra*, learned Standing Counsel submitted that Section 5 of the Limitation Act gives power to the court to condone the delay, if any, and extend the limitation. There is no requirement of filing a separate application for condoning the

delay and the same can even be condoned on an oral prayer made by a party. It has also been contended by learned Standing Counsel that even assuming that provisions of Limitation Act are not applicable to the proceedings under the Act, 1901, since the order dated 08.06.2017 was an ex-parte order, the same could have been recalled under Section 201 of the Act, 1901.

6. Before considering the rival submissions, it would be appropriate to look into the relevant provisions of law.

7. Section 3 of the Limitation Act provides bar of limitation. Section 3 of the Limitation Act, 1963 is quoted 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.”

8. Section 5 of the Limitation Act provides for extension of prescribed period in certain cases and the same is quoted as under:-

“5. Extension of prescribed period in certain cases.—*Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High

Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

9. Section 200 of U.P. Land Revenue Act, 1901 provides for hearing in absence of party. Section 200 of the Act, 1901 is quoted as under:-

“200. Hearing in absence of party. - *Whenever any party to such proceeding neglects to attend on the day specified in the summons or on any day to which the case may have been postponed, the Court may dismiss the case for default or may hear and determine it ex parte.”*

10. Section 201 of U.P. Land Revenue Act, 1901 provides for re-hearing on proof of good cause for non-appearance and the same is quoted as under:-

“201. No appeal from orders passed ex parte or by default. - *No appeal shall lie from an order passed under Section 200 ex parte or by default.*

Re-hearing on proof of good cause for non-appearance. - *But in all such cases, if the party against whom judgment has been given appears either in person or by agent (if a plaintiff, within fifteen days from the date of such order, and if a defendant, within fifteen days after such order has been communicated to him, or after any process for enforcing the judgment has been executed or at any earlier period), and shows good cause for his non-appearance, and satisfies the officer making the order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, revive the case and alter or rescind the order according to the justice of the case:*

Order not to be altered without summons to adverse party. - *Provided that no such order shall be reversed or altered without previously summoning the party in whose favour judgment has been given to appear and be heard in support of it.”*

11. Section 5 of Limitation Act provides that an appeal or an application may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Section 5 in fact has been incorporated to save those innocent litigants who either under misapprehension or miscalculation, under bona fide belief or because of the inevitable circumstances could not bring the proceedings before the Court within limitation. It is the power which is given to the Court to condone delay and extend the limitation. It is for the Court to satisfy itself that the sufficient cause exists or not to condone the delay. If the Court on the facts presented before it comes to the conclusion that the delay deserves to be condoned then the Court is duty bound to save the party from unnecessary sufferance's and would permit the appellant to go into the arena of their legal rights of the matter after removing the hurdle of limitation.

12. The question whether Section 3 of Indian Limitation Act would control and govern the powers given to the Court under Section 5 of Limitation Act would not be of importance. Section 3 merely provides that if the proceedings are not instituted within limitation, the same are liable to be dismissed even if the limitation has not been set up as a defence. But Section 5 gives the powers to the Court to extend the period of limitation if there is a sufficient cause for not drawing the proceedings well

within limitation. In fact Section 5 is in nature of proviso to Section 3 and would dilute the rigour of Section 3.

13. In case of **Markland Pvt. Ltd. and Ors. Vs. State of Gujarat**; reported in **AIR 1989 Guj 44**, the Gujarat High Court held that Section 5 of the Limitation Act only requires the appellant or the applicant to satisfy the court that he had sufficient cause for not preferring the appeal or filing the revision within the prescribed period. This section does not require that there should be a written application for condonation of delay. Paragraph No. 9 of the judgment in case of Markland Pvt. Ltd. and Ors. Vs. State of Gujarat (supra) is quoted as under:-

“9. The learned counsel for the petitioners submitted that the revision application as provided under S. 9 of the Act is required to be filed within a period of sixty days from the date of the order under challenge. In this case the revision application is filed after a period of about ten months from the prescribed date of limitation. As submitted by the learned counsel for the petitioners the Tribunal may condone the delay, but in the instant case there was no application for condonation of delay. Hence, in absence of application for condonation of delay, the delay could not have been condoned the contention is misconceived. There is no dispute with regard to the fact that provisions of section 5 of the Limitation Act do apply to these proceedings. Section 5 of the Limitation Act only requires the appellant or the applicant to satisfy the Court that he had sufficient cause for not preferring the appeal or making the revision application within such period. The section does not require that There should be a written application for

condonation of delay. In fact this is the view which has been taken by this Court in the case of Naran Anneppa Shethi v. Jayantilal Chenille Shah, MANU/GJ/0067/1987: AIR 1987 Guj 205 and in the case of Patel Purshottamdas Motilal v. Patel Chhotabhai Motibhai, (1979) 20 GLR 918. Therefore, the contention that the Tribunal ought not to have condoned the delay in absence of written application for condonation of delay has no merit and the same is required to be rejected.”

14. In case of **Patel Purshottamdas Motilal v. Patel Chhotabhai Motibhai**, reported in **1979 (1) GLR 918**, in paragraph No. 6, the Gujarat High Court has held as under:-

“6. It has been argued by Mr. Majmudar that no application for condoning delay was made by the plaintiff. Ordinarily, a party who wants to avail himself of the benefit of Section 5 of the Limitation Act makes an application setting out grounds which, in his opinion, constitute 'sufficient cause' and praying for condonation of delay and for admitting to hearing an appeal or application which is otherwise time barred. In the instant case, the plaintiff did not make such an application. Was that omission on the part of the plaintiff fatal to his case? In our opinion, though an application for condoning delay is ordinarily necessary, it is not a mandatory requirement of law. In a given case, even on an oral application, the Court has got the jurisdiction to condone delay if the facts and circumstances of the case so warrant. In the instant case, several orders which the -learned trial Judge made granting time to the plaintiff to file his objections themselves constituted a 'sufficient cause' and, therefore, it could not be said that the oral application made by

the plaintiff to take his objections on record which otherwise appeared to be time-barred was not maintainable or suffered from a fatal omission to state the 'sufficient cause'. The learned trial Judge was, therefore, in error in dismissing the plaintiff's application in limine on the ground that it was barred by time. He ought to have admitted it to file and heard it on merits and decided it."

15. This Court in case of **Kulsoomun Nissa and Ors. Vs. Noor Mohammad and Ors.**; reported in **AIR 1936 All 666**, held as under:-

"The first ground on which the appeal has been dismissed by the lower appellate Court is that the plaintiffs had not made any formal application for an extension of time under Section 5, Limitation Act, and that, therefore, their appeal against Hakim Shyam Sundar Lal was beyond time. In our opinion the Court below has erred in exercising its discretion in this matter. The reason why Hakim Shyam Sundar Lal's name was omitted from the names of the respondents obviously was that his name did not find a place in the decree. He was impleaded later on within 30 days of the substitution of his name. We think that the lower Court should have allowed the defendant to get round the technical objection of the absence of a formal application for extension of time." (Paragraph No. 1)

16. In case of **Shakuntala Devi Vs. Banwari Lal and Ors.**, reported in **AIR 1977 All 551**, this Court has taken a view that formal application under Section 5 of the Limitation Act is not necessary to enable the Court to decide whether delay deserves to be condoned or not. Paragraph No. 5 of the judgment in case of Shakuntala

Devi Vs. Banwari Lal and Ors. (supra) is quoted as under:-

"5. Learned counsel appearing on behalf of the applicant further contended that merely because the application dated 18th March, 1964 praying for setting aside the abatement did not contain a formal prayer for condoning the delay did not bear the court from treating it as an application under Section 5, Limitation Act and from taking into account the relevant material on record for the purpose of deciding as to whether the applicant had sufficient cause for condonation of delay in making the application for substitution and for applying for setting aside the abatement of the appeal. In support of the contention that a formal application under Section 5 of the Limitation Act is not necessary to enable the court to decide whether delay deserves to be condoned or not learned counsel appearing on behalf of the applicant has relied on the decision of the Punjab High Court in Firm Kaura Mal Bishan Das v. Firm Mathra Dass Atma Ram, Ahmedabad MANU/PH/0205/1959 wherein it was held (at p. 646)--

"Merely because there was no written application filed by the appellant is hardly a sufficient ground for refusing him the relief, if he is otherwise entitled to it. Procedure is meant for advancing and not for obstructing the cause of justice; and if the entire material is on the record, it cannot promote the ends of justice, if that material is ignored and the relief refused to the appellant, merely because he had not claimed it by means of a formal application in writing or that a formal affidavit was not filed. The language of Section 5 also does not provide that an application in writing must be filed before relief under the said provision can be granted."

In the above-mentioned decision, reliance was placed on the Division Bench decision of this Court in Mt. Kulsoomun Nissa v. Noor Mohammad MANU/UP/0237/1936 :AIR 1936 All 666. The submission made is supported by two decisions cited above and must consequently prevail.”

17. In case of **Rajiv Lochan Pandey Vs. Madan Gopal Sharma and Ors;** reported in **AIR 1989 All 45**, this Court held that for condonation of delay, not in all cases, it is always necessary to move an application under Section 5 of the Limitation Act. Paragraph No. 26 of the judgment in case of Rajiv Lochan Pandey Vs. Madan Gopal Sharma(supra) is quoted as under:-

“26. Sri S. S. Tyagi urged that since the petitioner had knowledge, and there was no application for condonation of delay, therefore, the trial Court did not commit any mistake in rejecting the application under Order IX, Rule 13 of the Code. The petitioner had stated clearly in the affidavit, whether that was relied or not that he did not have the knowledge of the date of hearing of the suit and if that is ultimately found established. the application filed by him under Order IX, Rule 13 of the Code could not be held to be time barred. Similarly, for condonation of delay, not in all the cases, it is always necessary to move an application under Section 5 of the Limitation Act. But if from the affidavit of a particular case, the delay is found explained fully, the Court has ample power to condone the same.”

18. In case of **Virendra Kumar Singhai Vs. Murari Lal Singhal and Ors;** reported in **1993 AWC 782 All**, this Court in Paragraph No. 5 has held as under:-

“5. So far as the first submission of the learned counsel for the applicant is concerned, I have perused the application dated 29-1-1990 and the supporting affidavit filed be the Plaintiff-opposite party for substituting the widow and the two daughters of the deceased defendant. The Plaintiff had given reasons for not filing the application within the statutory period. It has been stated in paragraph 7 of the affidavit that the courts were closed from 28-7-1989 to 10-12-1989 due to lawyers strike and since the Plaintiff was not aware of the addresses of the daughters of the deceased Defendant prior to 27-1-1920 the application could not be filed before 29-1-1990 which was the date fixed in the case after the strike was over. In paragraph 8 of the affidavit it was prayed that the delay in filing the application deserved to be condoned. It is apparent, therefore, that the prayer for condoning the delay was there in the application for substitution filed on 29-1-90, I am of the view that in the facts and circumstances of the case no separate application under Section 5 of the Limitation Act was required.....”

19. In the present case also in the restoration application, which is annexed as Annexure No. 7 to the writ application, in paragraph No. 5, the respondents have claimed benefit of Section 5 of the Limitation Act.

20. Again in case of **Savitri Devi Vs. D.D.C. and others;** reported in **2014 (122) RD 205**, this Court was of the view that the delay can be condoned on oral request made by a party. Paragraph No. 5 of the judgment in case of Savitri Devi Vs. D.D.C. and others (supra) is quoted as under:-

“5. So far as the arguments of the counsel for the petitioner that the delay has

been wrongly condoned is concerned, in this respect it is stated that the Settlement Officer, Consolidation in his order dated 6.9.2010 has specifically condoned the delay. The delay could be condoned even on the oral request as held by the Supreme Court in L/Naik Mahabir Singh Vs. Chief of Army Staff, (Suppl.) SCC 89. In the circumstances that respondent No. 3 had not been issued any notice and she did not enter into the compromise before the Assistant Consolidation Officer, the order being ex parte, the delay has rightly been condoned. In any case it is not expected from the Court having supervisory jurisdiction to interfere with the discretion of the Court below in condoning the delay."

21. The Hon'ble Supreme Court in case of **Bhagmal and others Vs. Kunwar Lal and others**; reported in (2010) 12 SCC 159, after considering the facts of the case held that High Court should not have been taken a hyper-technical view that no separate application was filed under Section 5 of the Limitation Act and it should not have set aside the order passed by the appellate court. Paragraph Nos. 10, 11, 12 and 13 of the judgment in case of Bhagmal and others Vs. Kunwar Lal and others (supra) are quoted as under:-

"10. This well considered order of the appellate Court came to be interfered with by the High Court solely on the ground that there was no application for condonation of delay made by the appellant-defendants before the trial court in support of their application under Order 9 Rule 13 CPC. The High Court observed that the appellate court had not recorded any finding on the question as to whether the filing of the application under Section 5 of the Limitation Act was necessary or not

and went on to decide the application on merits and, therefore, it had exceeded its jurisdiction. The High Court also commented on the fact that the ex-parte decree was decided on 19-4-1985, while the application for setting aside the ex parte decree was filed on 8-7-1988 and that no application for condonation of delay under Section 5 of the Limitation Act was filed. Relying on Article 123 of the Limitation Act, the High Court took the view that the application ought to have been filed within 30 days from the date of passing of the decree and since it was not so filed, at least a condonation of delay application should have been made under Section 5 of the Limitation Act and, therefore, in the absence of prayer for condonation of delay, the appellate court could not have allowed the application under Order 9 Rule 13.

11. In our opinion, the High Court was not justified in taking a hypertechnical view. We have seen all the orders. It is quite clear from the trial court's order that the trial court entertained the application on merits. The trial court undoubtedly has referred to the reply of the respondents to the effect that the application for setting aside the ex-parte decree was beyond the limitation. However, the view taken by the trial court was based more on the merits. In fact, it went on to record the finding that there was no compromise and the theory of compromise and delay on account of that was not acceptable. The trial court has more or the less based its findings regarding delay on the basis of the order sheets. That was not right as the order sheets nowhere bore the signatures of the parties. They were mechanically written mentioning "parties as before". Therefore, the trial court did not throw the application under Order 9 Rule 13 merely on the basis

of the fact that no application for condonation of delay was made. It went on to consider the delay aspect as well as the merits and even allowed the parties to lead evidence.

12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellants-defendants had clearly pleaded that they did not earlier come to the Court on account of the fact that they did not know about the order passed by the Court proceeding ex-parte and also the ex-parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making the Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate Court on merits and the appellate Court was absolutely right in coming to the conclusion that appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex-parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice.....”

22. Very recently, the Hon’ble Supreme Court in case of **Dwarika Prasad (D) Thr. LRs. Vs. Prithvi Raj Singh**; reported in **2024 INSC 1030** decided on 20.12.2024 relied upon the judgment of Supreme Court in case Bhagmal and others Vs. Kunwar Lal and others (supra) and held in paragraph No. 12 as under:-

“12. From the above cases, it is clear that there was no need to file a separate application for condonation of delay in the present case as well. The High Court has erred in taking a hyper technical view and concluding that there was violation of mandatory provision of law. Endorsing such a view would effectively mean ignoring the purpose of judicial procedure. The procedure cannot stand in the way of achieving just and fair outcome. In the present case, the Appellant acted bona fide and diligently. His conduct does not violate any rule of law.”

23. Similar view has been taken by learned Judges of Punjab and Haryana High Court, Madras High Court, Delhi High Court, Madhya Pradesh High Court and Calcutta High Court in cases of **Firm Kaura Mai Bishan Dass Vs. Firma Mathra Dass Atama Ram and others** reported in **AIR 1959 Punj 646**; **Mehar Singh Vs. Dhurender Singh and others** reported in **AIR 1993 P&H 23**; **Meghraj Vs. Jesraj Kasturjee** reported in **AIR 1975 Madras 137**; **Nand Singh Vs. Estate Officer and another** reported in **AIR 1993 Delhi 38**; **Suresh Kumar and others Vs. Firm Kurban Hussain Taiyab Ali and others** reported in **AIR 1996 MP 151** and **Kashinath Mondal Vs. State of West Bengal** reported in **2007 SCC on-line Calcutta 739**.

24. In view of the law laid down by Hon’ble Supreme Court, this Court and

various other High Courts, I am also of the opinion that for condonation of delay under Section 5 of the Limitation Act, a formal application would not be required, if the facts presented before the court satisfies the judicial consciousness of the Court that the applicant before it was prevented for sufficient cause in bringing the proceedings well within limitation. In case, instead of moving a formal application for condonation of delay, averments has been made by a party relating to sufficient cause for not initiating the proceedings well within time in the application or memo of appeal or revision supported by an affidavit with a prayer made therein for condonation of delay will not be fatal for want of separate application for condonation of delay. If the Court is of the opinion that in absence of formal application, the delay cannot be condoned then, it is always the duty of the Court to give an opportunity to the appellant before it to move an application explaining the cause for delay and seek condonation under Section 5 of the Limitation Act. The applicant must get proper opportunity to explain the circumstances which prevented it from drawing proceedings well within time. In this view, I am also supported by judgment of Madras High Court in case of, **Meghraj Vs. Jesraj Kasturjee (supra)** where the learned Singh Judge of that Court has observed in paragraph No. 4 of the judgment as under:-

“4.....The consensus, therefore, appears to be this. If under explainable circumstances an appeal or an application is filed in court, but without a formal application or a written application for excusing the delay in the presentation of the same, then the court should circumvent technicality and afford a reasonable opportunity to the aggrieved party to mend

matters. Otherwise, it would lead to miscarriage of justice.”

25. In the present case, from the perusal of the restoration application, it is apparent that a prayer has been made in paragraph No. 5 for condonation of delay and the reasons have been explained in paragraph Nos. 4 and 5 of the aforesaid application and therefore, the contention of learned counsel for the petitioner that respondent No. 3 could not have condoned the delay in absence of a formal application for condoning the delay made by the contesting respondents under Section 5 of the Limitation Act, is misconceived. So far as judgment relied upon by counsel for the petitioner in case of **Ram Prakash Vs. Deputy Director of Consolidation, Hardoi and others (supra)** is concerned, in the said judgment following question was referred to 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?”** The Court was not called upon to consider the question as to whether the delay cannot be condoned unless, there is a formal application moved by the party under Section 5 of the Limitation Act for condoning the delay rather the Court was considering the question as to whether the application moved under Section 5 of the Limitation Act should be considered first and thereafter, the case may be heard on merits or both the things can be done

simultaneously. The Division Bench of this Court answered the questions referred above in paragraph No. 22 of judgement of Ram Prakash Vs. Deputy Director of Consolidation, Hardoi and others (supra), which is quoted as under:-

“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.”

26. In case of **Chander Bhan Vs. Bal Mukund (supra)**, the Lordships of the Supreme Court have not declared the law to the effect that oral prayer regarding condonation of delay under Section 5 of the Limitation Act cannot be entertained by a Court in the absence of a written application. Thus, the case law relied upon by the learned counsel for the petitioner did not support the contention of the petitioner that delay cannot be condoned except for a separate written application moved under Section 5 of the Limitation Act for condoning the same. Section 5 of the Limitation Act do not in other words requires that a written application be moved for condoning the delay on sufficient cause being shown by the applicant.

27. Order 41 Rule 3-A of the Code of Civil Procedure as amended in 1976 provides as under:-

“3A. Application for condonation of delay. (1) When an appeal is presented

after the expiry of the period of limitation specified therefor, 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 for 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.”

28. The Supreme Court in Case of **State of Madhya Pradesh and another Vs. Pradeep Kumar and another**; reported in **(2000) 7 SCC 372** while interpreting the provisions of sub-Rule 1 of Rule 3-A of Order 41 C.P.C. held that filing of memorandum of appeal without application for condonation of delay will not be fatal. Unintentional lapse of a litigant should not result in closing of doors of the Court permanently. The word “shall” in Rule 3-A (1) does not foreclose the chance to rectify a mistake and Court is within jurisdiction in returning the memorandum of appeal to the party concerned as defective. Such party can then cure the defect and present the appeal again. The paragraph Nos. 10, 11, 12, 15, 16, 17, 18, 19 of the judgment in case of State of Madhya Pradesh Vs. Pradeep Kumar (supra) are quoted 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.

15. In *Jagat Dhish Bhargva v. Jawahar Lal Bhargava and Ors.*, AIR (1961) SC 832 this Court while considering the procedure to be followed by the Court on receipt of defectively filed appeals made the following observations :

"It would thus be clear that no hard and fast rule of general applicability can be laid down for dealing with appeals defectively filed under Order 41, Rule 1. Appropriate orders will have to be passed having regard to the circumstances of each case, but the most important step to take in cases of defective presentation of appeals is that they should be carefully scrutinised at the initial stage soon after they are filed and the appellant required to remedy the defects." (AIR para 14)

16. Rule 3-A was inserted in the Code thereafter and hence the question had to be considered afresh. During the early period, following the insertion of Rule 3-A in Order 41 of the Code, some High Courts have taken a very rigid interpretation and non-compliance of it even at the initial stage was held fatal. A learned Single Judge of the Kerala High Court (Khalid, J. as he then was) held the view in *Padmavathi v. Kalu*, AIR (1980) Kerala 173 that "where the petition for condonation of delay in filing of appeal has been filed subsequent to the filing of the appeal the petition is liable to be dismissed." A Single Judge of the Karnataka High Court followed the said decision in *Madhukar Daso Deshpande v. Ananil Nilkantha Deshpande & Ors.*, AIR (1984) Karnataka 40 and held that "in view of the mandatory provision of Order 41 Rule 3-A CPC the application for condonation of delay shall be accompanied with the appeal memo, if the appeal is presented beyond time. There is no occasion for the court to say that the application for condonation of delay might be entertained later and there is no occasion for the appellant to request that such an application should be received even at this stage in the interest of justice."

17. A Division Bench of the Kerala High Court has subsequently overruled the dictum laid down by the Single Judge in the above case, (*vide Maya Devi v. M.K. Krishna Bhattathiri and Anr.*, AIR (1981) Kerala 240). The same fate had fallen on the view adopted by the Single Judge of the Karnataka High Court in *Madhukar's* case when a Division Bench has subsequently overruled it, (*State of Karnataka v. Nagappa*, AIR (1986). *N. Venkatachala and S.A. Hakeem*, JJ (as they then were) dealt with the background of introducing Rule 3-A in Order 41 of the

Code and after discussion held that sub-rule (1) of Rule 3-A is mandatory. However, learned Judges pointed out that sub-rules (2) and (3) have been employed by the legislature for highlighting the purpose of introducing such a new rule. The following passage from the judgment of the Division Bench of the Karnataka High Court can usefully be quoted in this context :

"A combined reading of sub-rules (1) and (2) of Rule 3A makes it manifest that the purpose of requiring the filing of an application for condonation of delay under sub-rule (1) along with a time barred appeal, is mandatory, in the sense that the appellant cannot, without such application being decided, insist upon the Court to hear his time barred appeal. That was the very purpose sought to be achieved by insertion of sub-rules (1) and (2) of Rule 3A becomes clear from the legislative history of new Rule 3 A to which we have already adverted."

18. We may also point out that a Division Bench of the Patna High Court has adopted the same view even earlier in *State of Bihar & Ors. v. Ray Chandi Nath Sahay and Ors.*, AIR (1983) Patna 189.

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.”

29. Thus, while interpreting the provisions of sub-Rule 1 of Rule 3-A of Order 41 C.P.C. where the statute required for filing an application for condonation of delay, the Supreme Court has interpreted the same not to be fatal, in case separate application is not filed whereas there is no such provision either under the Act, 1901 or under Section 5 of the Limitation Act requiring for a separate application.

30. In view of case laws discussed above, I am of the view that delay in filing an application can be condoned if the sufficient ground exists, in the opinion of the Court, which prevented the party to approach the Court within time, even on an oral prayer made by the party. Not necessarily in every case, a written application has to be insisted upon.

31. So far as submission of counsel for the petitioner that since there is no provision under the U.P. Land Revenue Act, 1901 making the provisions of Limitation Act applicable to the proceedings taken under the Act, 1901 therefore, the delay cannot be condoned taking aid of Section 5 of the Limitation Act is concerned, argument of the counsel for the petitioner is misconceived as in the present case, the proceedings were decided against respondent Nos. 4 to 6 ex-parte in exercise of powers under Section 200 of the Act, 1901. Section 201 of the Act, 1901 provides that if a plaintiff, within fifteen

days from the date of order, and if a defendant, within fifteen days after the order has been communicated to him, or after any process for enforcing the judgment has been executed or at any earlier period shows good cause for his non-appearance, and satisfies the officer making the order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, revive the case and alter or rescind the order according to the justice of the case. Thus, in view of Section 201 of the Act, 1901, an ex-parte order can be recalled on sufficient cause being shown by either the plaintiffs or the defendants for their non-appearance. The provisions of Section 201 are similar to those of Section 5 of the Limitation Act except for the party has to satisfy that there has been failure of justice. In the present case, the power has been exercised under Section 201 of the Act, 1901.

32. In case of **Jai Pratap Singh and Ors. Vs. Board of Revenue and Ors;** reported in **2006 (10) ADJ 196**, this Court has taken a view that the provisions of Section 5 of the Limitation Act are applicable to the proceedings under the the U.P. Land Revenue Act, 1901. Paragraph Nos. 5, 6, 7 and 8 of the judgment in case of Jai Pratap Singh and Ors. Vs. Board of Reenue and Ors (supra) are quoted as under:-

“5. The contention of Shri Radhey Shyam is that in view of language of Section 214 of the U.P. Land Revenue Act, 1901 the applicability of provisions of Section 5 of the Limitation Act is excluded That provision reads as under:

214. No appeal shall be brought after the expiration of 30 days from the

date of the order complained of, unless otherwise expressly provided in this Act.

6. It is also submitted that the U.P. Land Revenue Act is an exhaustive self-contained code and there being no provision applying Sections 4 to 24 of the Limitation Act these provisions cannot be applied by invoking Section 29(2) of the Limitation Act. In support of his contention he has placed reliance upon the decision of the Apex Court in *Hukumdev Narain Yadav v. Lalit Narain Mishra* MANU/SC/0247/1973 : (1974) 3 SCR 31. The question in that case was whether provisions of Section 5 of the Limitation Act are applicable to an election petition filed under the Representation of the People Act. The Apex Court took the view that even in case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of the provisions of the special law or the nature of the subject matter and scheme of the special law exclude their operation. The Apex Court held that provisions of Section 29(2) of the Limitation Act were not applicable to an election petition filed under the Representation of the People Act. In holding so the Apex Court placed reliance upon Sections 81 and 86 of the Representation of the People Act. Section 81, provides for a period of limitation of 30 days and in case the election petition is not brought in accordance with that Section the consequence is provided under Section 86 of the Act, which requires the High Court to dismiss the petition. In my view the decision of the Supreme Court in *Hukumdev's* case is not applicable to an appeal under the U.P. Land Revenue Act. Section 215 of the U.P. Land Revenue Act provides that no appeal shall lie against an

order admitting an appeal on the grounds specified in Section 5 of the Indian Limitation Act, 1908. It is implicit in this provision that an appeal can be admitted giving the benefit of grounds given in Section 5 of the Limitation Act. If the submission of the counsel for the petitioners is accepted, Section 215 of the U.P. Land Revenue Act, 1901 would be made redundant. Indeed Sri Radhey Shyam contended that the provision of Section 215 of the U.P. Land Revenue Act is redundant in view of deletion of the provisions for second appeal and third appeal for the areas to which U.P. Zamindari Abolition & Land Reforms Act is applicable. Even if that be so the provision would not be redundant as it would apply to other areas. Moreover in this petition we are concerned with a first appeal. It is well settled that an interpretation, which leads to make redundant a provision of the Statute is to be avoided and there is nothing in the U.P. Land Revenue Act, which may compel the court to adopt that interpretation. That apart it does not appear that the U.P. Land Revenue Act is an exhaustive code of the provisions relating to limitation. The only provision relating to limitation in the Act is Section 214, which provides a period of 30 days limitation for an appeal unless otherwise expressly provided in the Act. The Act does not deal with any of the situations covered under Sections 4 to 24 of the Limitation Act. For example if more than 30 days time is spent in obtaining copy of the order against which the appeal is preferred, there shall be no exclusion of the time spent in obtaining copy of the order if recourse to Section 12 of the Limitation Act is excluded. Litigation under the U.P. Land Revenue Act pertains to the rural areas where people are illiterate and have little knowledge of the rules and the laws of limitation and if the view is taken

that Section 5 is not applicable it would cause much hardship. I am not inclined to accept the submission that the scheme of the U.P. Land Revenue Act excludes the application of Section 29(2) of the Indian Limitation Act.

7. It was then submitted that the Sub Divisional Officer while deciding an appeal in a mutation case is not a Court but is a Record Officer and for this reason Section 5 of the Limitation Act is not applicable. It is really not necessary to go into this contention because as already noticed it is implicit in Section 215 of the U.P. Land Revenue Act that the benefit of Section 5 of the Limitation Act can be given. However, the contention even therewise does not appear to be correct. An appeal against an order passed in any proceeding under the U.P. Land Revenue Act, unless the order has been made final lies under Section 211 to a court authorized to hear appeals under Section 210. Thus an appeal against an order of mutation also lies under Section 211. The heading of Section 210 of the U.P. Land Revenue Act is "Courts to which appeals lie". Section 211 also provides for a First Appeal to the Court authorized under Section 210. A revenue court has been defined under Section 4(8) of the Act. It includes amongst other authorities Assistant Record Officer, Tehsildar, Assistant Collectors, Additional Collectors and Collector. An Assistant Collector in charge of a sub division is a Sub Divisional Officer. Revenue Courts under the Land Revenue Act have been given power to decide the dispute between the parties. They have also the power to take evidence in view of Section 193 of the U.P. Land Revenue Act. Section 199 of the U.P. Land Revenue Act provides procedure for procuring attendance of witness and reads as follows:

199. Procedure for procuring attendance of witnesses - If in any proceeding of a judicial nature pending before any Revenue Court, either party desires the attendance of witnesses, he shall follow the procedure prescribed by the Order XVI, Rules 2 to 4 of the Code of Civil Procedure, 1908.

8. For all these- reasons given above it appears that the Sub Divisional Officer while deciding an appeal is a court and the contention of the petitioner that Section 5 of the Limitation Act is not applicable to the appeals under the U.P. Land Revenue Act does not appear to be correct."

I am in total agreement with the law laid by this Court in Jai Pratap Singh and Ors. Vs. Board of Revenue and Ors (supra).

33. In the present case, the proceedings were dismissed for non-prosecution in absence of both the parties and the plaintiff-applicants has filed the application for recalling the said order. Both the parties are claiming on the basis of Will executed in their favour. The delay condonation application has already been allowed by the Court by order dated 02.06.2023. In the application filed by the contesting respondents, it has been stated that the case was fixed for evidence of the plaintiff after the disposal of pending transfer application before the Board of Revenue. During this period, the plaintiff-Damadi died on 18.09.2010, the application for substitution was filed by heirs but the same was not taken cognizance by the Court and the dates were fixed in the matter without allowing the substitution application. On 08.06.2017, the case was dismissed for want of prosecution in absence of both the parties and the order was against a dead person. It has also been

stated by the applicants/respondent nos. 4 to 6, they are the sons and heirs of deceased Damadi and as they had gone frequently outside the village in connection with their employment and they have instructed the case to their counsel and during the pendency of the case, the counsel also died. It is further stated that their name was recorded in the revenue records but when the petitioner started creating disturbance, they examined the revenue records and came to know about the order and thereafter, the restoration application was filed and it was also pleaded that delay in filing the application be condoned. In the objections filed by the petitioner only three objections were taken firstly, that restoration application is highly belated, secondly, no application for condonation of delay under Section 5 of Limitation Act has been given by the restoration applicants and thirdly, since the order dated 08.06.2017 has been passed in absence of both the parties, which is apparent from the record, the Court has no jurisdiction to recall the said order. The objections filed by the petitioner are annexed as Annexure No. 8 to the writ petition.

34. There is no denial of the facts as stated by the contesting respondents in their application for restoration and as such in my view, the courts below have committed no illegality in recalling the ex-parte order dated 08.06.2017 and condoning the delay in filing the restoration application.

35. Consequently, the writ petition fails and is dismissed. No order as to costs.

(2025) 1 ILRA 542

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 07.01.2025

BEFORE

THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE ANISH KUMAR GUPTA, J.

Writ C No. 30440 of 2024

Rajveer Singh & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Ajay Mishra, Shri Krishna Mishra

Counsel for the Respondents:

C.S.C., Kaushalendra Nath Singh, Shivam Yadav

A. Civil Law - Constitution of India,1950- Article 226-Land Acquisition Act,1894- Section 28A-Re-determination of Compensation-Maintainability of Application based on High court's award-The petitioners' land was acquired under a notification dated 30.04.1976 by the New Okhla Industrial Development Authority- Compensation was awarded on 15.02.1977, which the petitioners' ancestors accepted without challenging it under section 18 of the Act,1894- Some other land owners whose land was acquired under the same notification, challenged the award-The reference u/s 18 was initially rejected but was later enhanced by the High court, based on this, the petitioners filed an application u/s 28A of the Act,1894 seeking re-determination of their compensation-Held, a landowner who did not seek reference u/s 18 of the Land Acquisition Act, 1894, can apply for re-determination of compensation u/s 28A based on an award passed by the High Court in a First Appeal, provided the application is filed within prescribed three month limitation period- The court relied on Banwari Vs Haryana State Industrial & Infrastructure Development Corp. Ltd where the Apex Court ruled that if the reference court denies enhancement but the High Court grants it on appeal, similarly placed landowners can file for re-determination u/s 28A-Hence, the rejection order dated