

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 18th OF JULY, 2024

MISC. PETITION No. 425 of 2024

(MOOLCHAND S/O LATE SHRI VARDICHAND JI PATIDAR

Vs

DECEASED KHEMRAJ THROUGH LEGAL HEIR RADHESHYAM AND OTHERS)

Appearance:

(SHRI YOGESH KUMAR GUPTA – ADVOCATE FOR THE PETITIONER)

(SHRI R.R. TRIVEDI – ADVOCATE FOR RESPONDENT NO.1)

***(SHRI AMIT RAVAL – GOVERNMENT ADVOCATE FOR RESPONDENTS NO.2
& 3)***

ORDER

Both the parties heard.

1. Petitioner has preferred this petition under Article 227 of the Constitution of India being aggrieved by the impugned order dated 22.12.2023 passed by the Collector, District Neemuch in case No.1/Revision/2023-2024, whereby order dated 9.5.2023 passed by the SDO (Revenue), Neemuch in case No.265/Appeal/2022-23 has been upheld and the application under Section 5 of the Limitation Act has been allowed.

2. Brief facts of the case are that in the year 2006 respondent No.1 filed an application under Section 131 of the M.P. Land Revenue Code, 1959 (in short “MPLRC”) before the Tehsildar, Neemuch claiming to be owner of the agricultural land bearing Survey No.670 & 678 situated at village Malikheda. After conducting enquiry Tehsildar has dismissed

his application vide order dated 18.3.2016 and after lapse of 7 years in February 2023 respondent No.1 preferred an appeal under Section 44 of the MPLRC before the SDO, Neemuch along with an application under Section 5 of the Limitation Act, which has been allowed by the SDO, Neemuch. Then petitioner preferred appeal before the Collector, Neemuch. The same has been dismissed. Being aggrieved by the same, petitioner has preferred this miscellaneous petition.

3. Learned counsel for the petitioner contended that the impugned order passed by both the courts below are arbitrary, perverse and against the law and facts. Revision has been filed before the SDO (Revenue) after lapse of 7 years and in the application under Section 5 of the Limitation Act no proper reason has been assigned and both the courts below without considering that no specific reason for huge delay has been explained, allowed the application without passing any specific and speaking order, therefore, the same deserves to be dismissed. Hence, he prays that the impugned orders passed by both the courts below be set aside.

4. Per contra, learned counsel for the respondent opposes the prayer and prays for its rejection by supporting the impugned order passed by the below authorities.

5. From perusal of the impugned order, it appears that the respondent No.1 has preferred the appeal before the SDO (Revenue), Neemuch after lapse of about 7 years. The coordinate Bench of this Court in the case of **State of M.P. Vs. Smt. Kalpana reported in 1983**

MPWN 220 has held that if each date of delay not explained, then condonation should be refused.

6. Learned counsel for the respondent No.1 submits that the order passed by the Tehsildar was not a speaking order. There was so many ambiguity in the order. Respondent No.1 was busy in other revenue proceedings. Thereafter he has filed the revision before the SDO (Revenue). All these reasons assigned by the respondent does not appear to be bonafide. Vide order dated 9.5.2023 SDO (Revenue), Neemuch has allowed the application unde Section 5 of the Limitation Act only assigning this reason - “प्रकरण धारा-5 पर आदेश हेतु नियत है। प्रकरण में उभयपक्ष की ओर से धारा 5 पर तर्क श्रवण उपरांत प्रकरण का निराकरण गुण-दोष के आधार पर किया जाना नयायोचित होने से प्रकरण में धारा 5 का आवेदन स्वीकार किया जाता है।”

7. Therefore, it is crystal clear that the SDO (Revenue) has not considered the application and not considered the contention raised by counsel for the petitioner. Therefore, the order passed by the SDO (Revenue), Neemuch cannot be considered as a speaking order, but this aspect was not considered by the Collector, Neemuch while passing the impugned order. Therefore, the orders passed by both the courts below not appears to be proper.

8. The Hon'ble Apex Court in the case of **Basawaraj and Another Vs. Special Land Acquisition Officer reported in (2013) 14 SCC 81** has held as under:-

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with

all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

9. In view of the law laid down by the Hon'ble Apex Court and from perusal of the application for condonation of delay, it appears that it is the duty of the respondent to explain the reasons for day-to-day delay in not filing the appeal within time, but the respondent has failed to prove the huge delay of 7 years. The reason assigned by the respondent does not appear to be bonafide, but the same has not been considered by the appellate court as well as the revisional court. Therefore, both the impugned orders are against the law and facts and deserve to be set aside.

10. Therefore, this petition is allowed and the impugned orders dated 22.12.2023 & 9.5.2023 are hereby set aside.

C.C. as per rules.

(ANIL VERMA)
JUDGE

