

A.F.R.

Neutral Citation No. - 2025:AHC:123012

Court No. - 35

Case :- WRIT - C No. - 22221 of 2025

Petitioner :- Dina Nath Singh And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Nikhil Kumar, Vagish Yadav

Counsel for Respondent :- C.S.C., Rakesh Singh

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Heard, Sri Nikhil Kumar, learned counsel for the petitioners, Sri Nandlal Maurya, learned standing counsel appearing on behalf of the respondent nos. 1 to 4 and Sri Rakesh Singh, learned counsel appearing for the respondent no. 5.

2. The core dispute involved in the present writ petition is purely legal one that as to whether the appellate Court, without advertng to the question of Limitation as prescribed under section 24(4) of the U.P. Revenue Code, 2006, could have admitted and allowed the time-barred appeal vide order dated 26.04.2023 and the impugned order dated 17.05.2025 respectively. This Court with the consent of the learned counsels representing their respective parties; proceeds to decide the present writ petition finally at the stage of admission itself, without inviting counter affidavit.

3. By means of the present writ petition, the petitioners have assailed the order dated 17.05.2025 passed by the learned Additional Commissioner, Judicial (Second), Varanasi Division, Varanasi (respondent no.3) in Case No. 771 of 2023 (Upendra Nath Singh versus Dina Singh & others), under Section 24(4) of the U.P. Revenue Code, 2006.

4. The epitome of the facts, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the material available before this Court is that the petitioner's father filed an Application dated 01.09.2017 under Section 20/24 of the U.P. Revenue Code, 2006, before the Deputy Collector (respondent No.4) for demarcation of boundaries of land having Araj No. 950, Mauja Khajurgaon, Pargana Pachotar, Tehsil Kasimabad, District Ghazipur (hereinafter referred to as the land in question). The said application was registered as Case No. T201814291102291 of 2017. The Deputy Collector (respondent No.4), vide order dated 01.09.2017 directed the Revenue Inspector to inspect and measure the land in question and submit a report of the same.

5. Aggrieved by the said order dated 01.09.2017 passed by the Deputy Collector (respondent No.4), one Suresh Singh (brother of Respondent No. 5) moved a recall application dated 05.06.2018, inter-alia raising the ground that the said order dated 01.09.2017 was passed *ex-parte* without issuing any notice to him.

6. However, in compliance of the order dated 01.09.2017 passed by the respondent No.4 in Case No. T201814291102291 of 2017, the Revenue Inspector submitted a report dated 12.06.2018 before the Deputy Collector, Kasimabad, Ghazipur (respondent no. 4), inter-alia, detailing the measurement of the land in question and requesting therein for necessary action.

7. Subsequently, vide order dated 11.12.2018 passed by the Deputy Collector (respondent no.4), the aforesaid recall application dated 05.06.2018 came to be dismissed. Shortly thereafter, the petitioners' father died on 19.12.2019, and the petitioners were substituted as legal heirs.

8. Thereafter, the Deputy Collector (respondent no.4) on the basis of the Revenue Inspector's report dated 12.06.2018, passed the order dated 08.06.2022 whereby the said report was confirmed and direction was issued to the concerned Tehsildar, regarding the demarcation of the land in question. The said order dated 08.06.2022 was executed by the *Tehsildar* and the *Lekhpal*, on 26.03.2023.

9. Challenging the aforesaid order dated 08.06.2022, respondent no.5 preferred an appeal on 12.04.2023 under Section 24(4) of the U.P. Revenue Code, 2006, which was registered as Case No. 771 of 2023 before the learned Additional Commissioner (respondent no.3).

10. Learned Additional Commissioner (respondent no.3) admitted the said appeal vide order 26.04.2023 and issued notice on the appeal and summoned the lower court record.

11. The respondent no.5 also preferred an application seeking interim relief, before the learned Additional Commissioner (respondent no.3), inter-alia, praying for an order directing the parties to maintain 'status quo' on the disputed land and thereupon the learned Additional Commissioner (respondent no.3) vide order dated 01.06.2023 passed an interim order directing the parties to maintain 'status quo'.

12. As the aforesaid appeal having Case No. 771 of 2023 was pending since April 2023 and the interim order dated 01.06.2023 was also continuing for almost two years, the petitioner filed a writ petition, being Writ-C No. 7874 of 2025, before this Court, inter alia, praying for the following relief:

"(a) issue a writ, order or direction in the nature of certiorari calling for the record of the case and quash the Order dated 01.06.2023 and 26.04.2023 respectively passed by the respondent no.3 in case no. 771 of 2023 (Computerized case No.

C202314000000771) (Upendra Nath Singh Vs. Dina Sing and others) under section 24(4) of U.P. Revenue Code, 2006, pending before the respondent no.3 (Annexure-1 & 2 to this Writ Petition).

(b) issue a writ, order or direction in the nature of mandamus commanding the respondent no.3 to decide the case no. 771 of 2023 (Computerized case No. C202314000000771) (Upendra Nath Singh Vs. Dina Sing and others) under section 24(4) of U.P. Revenue Code, 2006 in a time bound manner preferably within a period of one month.

13. This Court, vide order dated 19.03.2025 disposed of the aforesaid petition having Writ- C No. 7874 of 2025 (Dina Nath Singh versus State of U.P. and others). For ready reference, the operative part of the same is extracted herein below:

"4. Since, the appeal is pending and the interim order has been granted by the appellate court, the petitioner has remedy of filing application for vacation of interim relief.

5. In view of the above, I am not inclined to interfere in the matter.

6. Accordingly, the writ petition stands disposed of with liberty to the petitioner to approach the appellate court for redressal of his grievance by moving an application for vacation of interim order.

7. In case, the petitioner moves an application for vacation of interim order, before appropriate authority, the same shall be decided preferably within a period of twelve weeks from the date of production of a certified copy of this order after ensuring service upon all the opposite parties and giving opportunity of hearing to the parties concerned.

8. It is also expected that respondent No. 3 shall consider and decide the aforementioned appeal, in accordance with law, expeditiously, preferably within a period of next six months from the date of production of a certified copy of this order after ensuring service upon all the opposite parties and giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment."

14. The Appellate Court / learned Additional Commissioner, Judicial (Second), Varanasi Division, Varanasi (respondent no.3) finally decided the Case No. 771 of 2023 (Upendra Nath Singh versus Dina Singh & others) vide judgement and order dated

17.05.2025, by allowing the fifth respondent's Appeal under Section 24(4) of the U.P. Revenue Code, 2006.

15. Being aggrieved by the aforesaid judgement and order dated 17.05.2025 passed by learned Additional Commissioner (respondent no.3), the petitioners have preferred the instant writ petition inter-alia raising several grounds.

16. The petitioner's argument majorly revolved around pointing out how the learned Additional Commissioner (respondent no.3) erred in deciding the time-barred appeal on merit by allowing the same without condoning the delay in filing the said appeal.

17. The contention of Sri Nikhil Kumar learned counsel appearing for the petitioners is that the impugned order dated 17.05.2025 being without jurisdiction is illegal as the learned Additional Commissioner (respondent no.3) allowed a time-barred appeal ignoring the legal issue of Limitation. He submits that Section 24(4) of the U.P. Revenue Code, 2006 clearly prescribes the limitation period of 30 days for filing of an appeal while, in the present case, the fifth respondent herein, filed the appeal on 12.04.2023 against the order dated 08.06.2022, i.e., with a delay of over ten months but the learned Appellate Court by completely ignoring the petitioners' objections in that regard, proceeded to decide the Appeal on merits.

18. It is further submitted on behalf of the petitioners that the learned Additional Commissioner (respondent no.3) in utter disregard to the settled law on the subject, not only admitted the said time-barred appeal vide order 26.04.2023 but also granted interim relief on the application moved by the fifth respondent, vide order dated 01.06.2023.

19. It is asserted by the learned counsel on behalf of the petitioners that the consideration on the issue of statutory limitation is a legal mandate and the adjudication on prayer for condonation of delay is

not a mere formality, the same requires a specific order after notice to the opposite party. In the absence of an order for condonation of delay in a time-barred appeal the same is not at all maintainable.

20. It has also been argued by the learned counsel for the petitioner that the learned appellate court has failed to consider that in the proceeding arising out of the provisions of the U.P. Revenue Code, 2006, Gram Panchayat being a necessary party, has not been made party in the appeal filed by the fifth respondent and as such the same was liable to be dismissed as not maintainable. He submitted that Section 73 of the U.P. Revenue Code, 2006 would be attracted in the present case.

21. Sri. Nand Lal Maurya, learned Standing Counsel appearing on behalf of the State-respondents, to defend the impugned order dated 17.05.2025 succinctly submitted that the Additional Commissioner (respondent no.3) decided the said appeal perfectly in compliance of Order dated 19.03.2025 passed by this Court in Writ-C No. 7874 of 2025 (*supra*), wherein the learned Additional Commissioner (respondent no.3) was directed to consider and decide the same in accordance with law, expeditiously, preferably within a period of next six months from the date of production of a certified copy of the order after ensuring service upon all the opposite parties and giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment.

22. Further, he raised objection regarding the entertainability of the present Writ Petition. His contention is that the petitioners' failure to pursue the remedy available under section 210 of the U.P. Revenue Code, 2006 bars them from invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. He pressed that in the presence of an existing efficacious alternative remedy, the present writ petition is premature.

23. Sri Rakesh Singh, learned counsel appearing for the fifth respondent, canvassed the following three arguments:

Firstly, that the present writ petition is not maintainable in view of the availability of a statutory remedy of revision under Section 210 of the U.P. Revenue Code, 2006. To support his contention, he relied upon the judgement passed by the co-ordinate bench of this court in the case of **Jhinka Devi versus State of U.P. & 4 Others**, (Writ-C No. 25616 of 2021), decided on 12.05.2022, reported in **(2022) 156 RD 233**, wherein this Court held that an order passed by the learned Commissioner under Section 24(4) is subject to revision under Section 210 of the U.P. Revenue Code, 2006.

Secondly, that the appellant / respondent no.5 herein, not only narrated the genuine and acceptable cause for delay in the memo of appeal itself and also filed separate application dated 12.04.2023 duly supported by an affidavit seeking condonation of delay in filing the appeal. He submitted that the learned Additional Commissioner (respondent no.3) after taking into consideration all the pleas and objections raised by the contesting parties, decided the appeal by a well-considered and detailed judgement dated 17.05.2023. The argument advanced by the learned counsel for the fifth respondent is that the Section 5 of the Limitation Act, 1963 requires explanation of the cause, for not preferring the appeal or the application within period of limitation prescribed under the Act. Explanation of delay can be given in memorandum of the appeal even the delay can be condoned on oral prayer. The substantial justice deserves to be preferred as against the technical considerations. He further contended that even if the order in appeal has been passed ignoring delay condonation application the delay shall be deemed to be condoned. He urged that the instant writ petition be dismissed accordingly. In support of his contention, he

placed reliance upon the judgement passed by the co-ordinate Bench of this Court in the case of **Indrajeet Singh versus Deputy Director of Consolidation & others**, reported in (2014) 123 RD 254.

Thirdly, confuting the assertion made by the learned counsel for the petitioner that non impleadment of Gram Panchayat as party in the appeal filed by the fifth respondent rendered the same not-maintainable, the learned counsel for the respondent submitted that since Gram Panchayat was not party in proceeding initiated on behalf of the petitioner, before the court of first instance under section 24 of the U.P. Revenue Code, 2006, as such, the said objection at this stage, at least on behalf of the petitioners is unsustainable.

24. In rebuttal to the respondent's objection regarding the maintainability of the writ petition, it is submitted on behalf of the petitioner that the learned appellate court, in admitting and deciding on merits a time-barred appeal without first condoning the delay, acted in excess of its jurisdiction, thereby committing a jurisdictional error warranting interference by this Court in exercise of its powers under Article 226 of the Constitution of India. In support of his contention, he placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Godrej Sara Lee Ltd. versus Excise and Taxation Officer-Cum-Assessing Authority & Others** (Civil Appeal No. 5393 of 2010), decided on 01.02.2023, reported in **2023 SCC OnLine SC 95**, wherein the Hon'ble Apex Court observed that the discretionary power of the High Court under Article 226 of the Constitution of India is not ousted merely because of the presence of an alternative remedy, particularly where the controversy is purely legal one and it does not involve disputed questions of fact.

25. On having heard the submissions of the learned counsels of the respective parties and perusal of the materials available on record, this Court finds it necessary to first address the question of entertainability of the present writ petition.

26. The core issue involved in the instant case is as to whether the Appellate Court, without dealing with the issue of Limitation as specifically prescribed under section 24(4) of the U.P. Revenue Code, 2006, could have admitted and decided a time barred appeal on merits without condonation of delay in filing the same.

18. Sub-section 4 of section 24 of the U.P. Revenue Code, 2006 reads as under:

“Any person aggrieved by the order of the Sub-Divisional Officer may prefer an appeal before the Commissioner within 30 days of the date of such order. The order of the Commissioner shall be final.”

27. A co-ordinate Bench of this Court in the case of **Jhinka Devi** (*supra*), has held that by virtue of the amendment to Sub-section (4) of Section 24 through U.P. Act No. 7 of 2019, the finality of an order passed by the Commissioner in appeal, is subject to the revisional powers of the Board of Revenue under Section 210 of the U.P. Revenue Code, 2006. As no second appeal is provided against the order of Commissioner under the said Section 24(4), the Board of Revenue is vested with the power to examine the legality or propriety of the orders passed by the Commissioner. For ready reference, the relevant excerpts of the judgement passed by this Court in the case of Jhinka Devi (*supra*) is reproduced herein below,

“52. By virtue of the amendment made to sub-section (4) of Section 24 in terms of U.P. Act No. 7 of 2019 the finality attached to the order of the Commissioner in appeal, has now been made subject to Section 210. There being no provision under the Code for a second appeal against the order of the Commissioner passed under sub-

section (4) of Section 24, it can be said that against the order of the Commissioner in appeal, no further appeal lies, and therefore the necessary condition for invocation of the powers of the Board under Section 210 for calling the records and exercising revisional powers against the order passed by the Commissioner in appeal under sub-section (4) of Section 24, stands fulfilled.

...

63. It would therefore follow as a necessary consequence that the order passed by the Commissioner in appeal under sub-section (4) of Section 24, which is final in the sense that there is no further appeal thereagainst, would be subject to the revisional powers of the Board to be exercised under Section 210.”

28. It is relevant to note that in a long line of decisions, the Hon’ble Supreme Court has been pleased to hold that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law.

29. The issue of ‘maintainability’ and ‘entertainability’ of a writ petition in the presence of an alternative remedy has been dealt with in detail by the Hon’ble Supreme Court in the case of **Godrej Sara Lee** (*supra*). For a ready reference, Paragraph 4 of the judgment passed by the Hon’ble Apex Court in the said case is reproduced hereinbelow,

“4. ...It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has

not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out such entertainment would not be proper.”

30. The material available before this Court shows that the order dated 08.06.2022 passed by the Deputy Collector (respondent no.4) was challenged by means of an appeal filed on 12.04.2023, under Section 24(4) of the U.P. Revenue Code, 2006; by the respondent no.5 and the same was registered as Case No. 771 of 2023 before the learned Additional Commissioner (respondent no.3).

31. Section 24(4) of the U.P. Revenue Code, 2006 clearly prescribes the limitation period of 30 days for filing of an appeal while, in the present case, the fifth respondent herein, filed the appeal with a

delay of over ten months, but the learned Appellate Court without adverting on the issue of the delay, decided the Appeal on merits.

32. It is a well-settled proposition of law that the question of limitation is not a mere technicality but pertains to the very jurisdiction of the Court, striking at the root of the appellate authority's competence to entertain the appeal. Unless the delay in filing is condoned, the appeal cannot be said to have come into existence in the eyes of law. In the absence of a validly instituted appeal, the Court lacks jurisdiction to hear and decide a time-barred appeal on merits. Unless delay is condoned in accordance with law, the appeal cannot be treated as having been validly instituted.

33. The Hon'ble Supreme Court in the case of **Whirlpool Corporation versus Registrar of Trade Marks, Mumbai**, reported in (1998) 8 SCC1, has been pleased to carve out the following exceptions on the existence whereof a writ court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute:-

- (i) where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) where there is violation of principles of natural justice;
- (iii) where the order or the proceedings are wholly without jurisdiction; or
- (iv) where the vires of an Act is challenged.

(emphasis supplies by this court)

34. In the light of the law settled by the Hon'ble Supreme Court as discussed in the preceding paragraphs, it emerges that merely because of the availability of the remedy under section 210 of the U.P. Revenue Code, 2006, *ispo facto*, does not oust the writ jurisdiction of this Court to entertain the present writ petition.

35. Now, coming to the predominant dispute involved in the present writ regarding the jurisdiction of the appellate authority to admit, hear and decide a time-barred appeal on merit without condoning the delay in filing the same. The law on the subject is well settled that unless the delay is condoned, the appeal does not come into existence legally, and in such absence, the Court is wholly without jurisdiction to hear or decide the same on merits.

36. In the case of **Esha Bhattacharjee versus Managing Committee of Raghunathpur Nafar Academy**, reported in (2013) 12 SCC 649, the Hon'ble Apex Court has been pleased to observe as under:

"22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

37. The Hon'ble Supreme Court, in the case of **Union of India & another versus Jahangir Byramji Jeejeebhoy(D)**, reported in 2024 SCC OnLine SC 489, has observed that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. That the length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. The Hon'ble Apex

Court has been pleased to hold that while considering the plea for condonation of delay, the court must not start with the merits of the main matter. However, the courts are required to condone delay on the bedrock of the principle that adjudication of a *lis* on merits is seminal to justice dispensation system. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

38. Thus, there is no dispute with regard to the proposition of law that the issue of condonation of delay in the proceeding must be decided at the first instance before delving into the merits of the case. However, if the delay is condoned, there is no bar on the courts to proceed with the case and decide the same on merits on the very day; keeping in view the nature of the proceedings, which may result in a final order. In the same manner, if the prayer for condonation of delay is rejected, the proceeding will automatically fail.

39. It is trite in law that if an appeal filed after the expiry of the limitation period is accompanied by an application for condonation of delay supported by an affidavit stating sufficient cause for delay in filing the said appeal and if the appellate court finds the cause sufficient for condonation of delay, the appellate court must record its reasons to that effect. Without condoning the delay in filing an appeal, the appellate authority lacks jurisdiction to entertain such time-barred appeals. This view finds its support from the judgment passed by this Court in the case of **Balvir Singh versus Vijay Pal & Others**, (Writ-C No. 37564 of 2011), decided on 14.07.2011.

40. Further, in the case of **Anil Kumar Nigam & other versus State of U.P. & another**, (Writ-B No. 4925 of 2024), decided on

31.01.2025, this Court held that unless the delay is condoned, any order passed including orders on interim reliefs, will be manifestly illegal.

41. From a bare reading of Section 24(4) of the U.P. Revenue Code, 2006, it is clear that the appeal must be filed within the stipulated period of 30 days as provided by the statute.

42. In the present case, the fifth respondent preferred an appeal on 12.04.2023 under Section 24(4) of the U.P. Revenue Code, 2006 against the order dated 08.06.2022 passed by the Deputy Collector (respondent No.4), accompanied by a separate application dated 12.04.2023 under section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the appeal. Certified copies of the said application dated 12.04.2023 and its supporting affidavit, filed by learned counsel for the respondent no. 5 before this court is available on record.

43. The petitioner filed detailed objection dated 26.04.2023 inter-alia raising objection to the maintainability of the appeal on the ground of being barred by Limitation.

44. On the prime issue involved in the present writ petition as to whether, the appellate court could have decided the appeal vide impugned order dated 17.05.2025 on merits without condoning the delay in filing the same is concerned, this court finds that the appeal was admitted without condoning the delay and there is nothing on record to indicate that the prayer made by the fifth respondent / appellant for the condonation of delay in filing the appeal and the objection of the petitioner against the same, has ever been considered by the learned Additional Commissioner (respondent No. 3) throughout the impugned proceeding while entertaining the time barred-appeal, as there is no order regarding condoning the delay. Accordingly, this Court finds substance in the contention

raised by the learned counsel for the petitioner that the appellate authority could not have decided the appeal on merits without condoning the delay. In the absence of an order for condonation of delay in a time-barred appeal the same could not have been entertained.

45. In so far as the contention of the learned counsel for the petitioner regarding the maintainability of the impugned appeal on the ground that the Gram Panchayat was not made party in the appeal by the fifth respondent rendered the same not-maintainable in view of section 73 of the U.P. Revenue Code 2006, is concerned, this Court upon perusal of the said section, finds that the same does not help the petitioner's argument. For ready reference, section 73 of the U.P. Revenue Code, 2006 is reproduced herein below:

*“73. **Representation of Gram Panchayat-** (1) In any suit or other proceedings under this Code, the Gram Panchayat shall be represented-*

(a) in proceeding before the Collector or in a Civil Court, by the District Government Counsel (Revenue); (b) in proceeding before the Commissioner, by the Divisional Government Counsel (Revenue); and (c) in proceeding before the Board or the High Court, by the separate Standing Counsels (Revenue) of Lucknow or Allahabad, as the case may be.

(2) Nothing in this Chapter shall preclude the State Government or the Collector from appointing special Counsel for the conduct of any suit or proceeding to which any Gram Panchayat is party on such terms and conditions as may be prescribed.”

46. Looking to the provision of section 73 of the U.P. Revenue Code, 2006 it is apparent that the same specifies the class of counsels to represent the Gram Panchayat before different forums and not with the issue of necessity of its impleadment in a proceeding.

47. The defence taken by the learned Standing Counsel appearing on behalf of the State-respondents, to defend the impugned order passed by the Additional Commissioner (respondent no.3) and the action of deciding the appeal without adverting to the issue of limitation, he submitted that the learned appellate authority in

compliance of order dated 19.03.2025 passed by the Court in Writ-C No. 7874 of 2025 (*supra*), finally decided the appeal vide the impugned order dated 17.05.2025. He contends that this Court vide order dated 19.03.2025 directed the respondent No. 3 to consider and decide the aforementioned appeal, in accordance with law, expeditiously, preferably within a period of next six months from the date of production of a certified copy of the order after ensuring service upon all the opposite parties and giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties, provided that there is no other legal impediment. He asserts that the impugned order is perfectly legal having been passed under the directions of this court.

48. This Court, after taking into consideration the tenor of the directions issued by the court vide order dated 19.03.2025 passed in Writ-C No. 7874 of 2025, finds that the court consciously directed the third respondent to expeditiously consider and decide the appeal, in accordance with law. It is evident that the Court vide order dated 19.03.2025 did not directed the appellate Court to hear the appeal on merit, ignoring the aforesaid objections raised by the present petitioners more particularly the very legal issue of Limitation from skipping to pass order on the delay condonation application and the objection relating to maintainability of the appeal, before deciding the appeal on merits. At the cost of repetition, it is once again observed that the issue relating to limitation strikes at the root of the jurisdictional competence of the appellate authority. Unless the delay in filing is condoned, the appeal cannot be said to have come into existence in the eyes of law. Passing an order by the appellate court by brushing aside the settled principal of law cannot be taken as an order passed in accordance with law. Accordingly, the aforesaid argument raised by

the learned standing counsel is hereby turned down.

(emphasis supplied)

49. Regarding the submission of learned counsel for the fifth respondent, who has placed reliance upon the judgment of the coordinate Bench of this Court in *Indrajeet Singh (supra)*, to contend that even if the order in appeal is passed without considering the application for condonation of delay, the delay shall be deemed to have been condoned, this Court finds that both the legal position and the factual matrix of the case of *Indrajeet Singh (supra)* stand on an entirely different footing from the case at hand.

50. In *Indrajeet Singh (supra)*, the writ petition was directed against the order of the Settlement Officer Consolidation rejecting the petitioner's request for postponement of hearing of the appeal during the pendency of the revision under the U.P. Consolidation of Holdings Act, 1953. In paragraph 10 of the said judgment, it was observed that the U.P. Consolidation of Holdings Act, 1953 does not contemplate the filing of a separate application for condonation of delay in the manner prescribed under Order XLI Rule 3-A of the Code of Civil Procedure, 1908. By contrast, the present writ petition arises from proceedings under the U.P. Revenue Code, 2006. Section 214 of the said Code expressly incorporates the provisions of the Code of Civil Procedure, 1908 and the Limitation Act, 1963 to every suit, application or proceeding, unless specifically excluded by or under the Code of 2006. Thus, the observations made in *Indrajeet Singh (supra)* cannot be pressed into service in the present case. Consequently, the reliance placed on the said decision does not advance the respondent's case.

51. From an overall circumspection of the facts and circumstances as narrated herein above, this court finds it apposite to remand the matter to the appellate authority to decide the issue of limitation after affording opportunity of hearing to the parties. If the delay in

filing the appeal is found to be satisfactorily explained, the appellate authority shall pass a specific order condoning the delay and thereafter proceed to decide the appeal on merits. This course is necessitated as the learned appellate court, despite pendency of the delay condonation application as well as objections to maintainability raised by the petitioners, failed to adjudicate the issue of limitation. It admitted a time-barred appeal, passed interim orders, and even decided the appeal on merits without condoning the delay. Unless delay is condoned, the appeal does not come into legal existence, and the court lacks jurisdiction to hear or decide it on merits. Entertaining and deciding a time-barred appeal without condonation of delay amounts to a jurisdictional error, rendering the impugned order dated 17.05.2025 unsustainable in law.

52. The core question involved in the instant case is thus answered that, without condoning the delay in filing the appeal under Section 24(4) of the Uttar Pradesh Revenue Code, 2006, the learned Appellate Court / Additional Commissioner, Judicial (Second), Varanasi Division, Varanasi (respondent no. 3) had no jurisdiction to decide the said appeal on merits vide the impugned order dated 17.05.2025.

53. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

54. It is clarified that nothing recorded hereinabove shall be construed as an expression on the merits of the case, as the present adjudication has been confined solely to the limited issue arising for determination.

55. Since this Court has not itself decided the application for condonation of delay but has directed the learned Appellate Authority to take a decision on the issue of limitation after hearing the parties, it is provided that in case the appellate authority finds the explanation for delay to be satisfactory, it may condone the delay by passing a specific order in that regard. If the delay is

condoned, the appellate authority shall then proceed to decide the appeal on merits, strictly in accordance with law. The parties shall remain at liberty to raise all pleas and grounds before the said authority.

56. In light of the observations and directions made hereinabove, the present writ petition is **allowed**. The impugned judgment and order dated 17.05.2025 passed by the Additional Commissioner, Judicial (Second), Varanasi Division, Varanasi (respondent no. 3) in Case No. 771 of 2023 (*Upendra Nath Singh versus Dina Singh & others*) under Section 24(4) of the Uttar Pradesh Revenue Code, 2006, is hereby **set aside**. The matter is remitted to the learned Appellate Court to proceed in accordance with law.

57. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

Date :- 25.7.2025
Arif/Abhishek Gupta