

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Revision No. 2456/2016/TA/Jaipur Nola Vs. Kishanlal	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
09.5.2016	<p style="text-align: center;"><u>S.B.</u></p> <p style="text-align: center;">Shri Satish Chand Kaushik, Member</p> <p><u>Present:</u></p> <p>Shri Satish Pareek : counsel for the petitioner. Shri Shanker Lal Chaudhary: counsel for non-petitioner no.1. - - -</p> <p>This revision petition has been preferred under section 230 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") against the Order of Revenue Appellate Authority, Jaipur dated 21.01.2016 by which he held that "At this stage of the case being satisfied prima-facie with the facts submitted by the learned counsel for the appellants in the interest of justice, the operation of the order of learned lower court dated 20.10.2015 is hereby stayed and the respondent no.1 is hereby being bound that he shall not interfere in the use and occupation of the land bearing khasra no.145 measuring 55 bigha 19 biswa to the extent of 40/1119 part of the land belonging to applicants. That ex-parte injunction was issued." Being aggrieved with that order, this revision has been preferred before this court.</p> <p>Notice of the revision has been issued to the respondents. Heard the arguments of learned counsel for the parties and perused the record.</p> <p>Learned counsel for the petitioner argued that in this matter, petitioner Nola moved a suit for partition along with an application under section 212 of the Rajasthan Tenancy Act read with Order 39 Rule 1 & 2 and Section 151 of the Code of Civil Procedure (in short to be called "the Code"). In that matter, the learned A.C.M.-I, Jaipur passed an ad interim injunction order ex-parte by which he has directed the respondents that they have to maintain the status quo of the land as well as of the record of the land bearing</p>	

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	<p>khasra no.145 measuring 55 bigha 19 biswa and notices were issued of the suit as well as of interim injunction application to the defendants therein. After notice, defendant-non-applicants no.1 to 3 appeared before learned A.C.M.-I, Jaipur. The vakalatnama was filed and thereafter an application under Order 7 Rule 10 read with section 151 of "the Code" was moved by defendants no.1 to 3 and the matter was fixed for reply and arguments. After hearing, the learned A.C.M.-I, Jaipur has dismissed the application of Order 7 Rule 10 read with section 151 of "the Code" of defendants and matter was fixed for filing of written statement. These proceedings were going on. In the meanwhile, the defendants moved an appeal before the learned Revenue Appellate Authority, Jaipur and in that appeal, the learned R.A.A. passed the impugned ex-parte order dated 21.01.2016.</p> <p>The main contention of the learned counsel of the petitioner is that so far the order of learned A.C.M. was not yet finalised, no appeal can be entertained by the R.A.A. because the injunction order dated 20.10.2015 against which the appeal was preferred was an interlocutory order and as such the learned trial court has made great illegality and passed the order in gross negligence of the legal process. As well as it is also mentioned that the appeal was time barred because vide that appeal, the order dated 20.10.2015 was challenged but the appeal was filed on 19.1.2016. The respondents filed an application under section 5 Limitation Act as well. The learned lower court has to decide first the question of limitation and therefore required to proceed with the appeal and interim injunction application. As is required by the pronouncement of the Hon'ble High Court of Rajasthan in the matter of Chela Ram Vs. Manak reported in</p>	

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	<p>RRD 1998 (HC) page 349, it was held that where the party has been negligent and was working under the instructions of the advocate, the delay cannot be condoned. The learned advocate argued that if appeal is not maintainable then it can be treated revision and is liable to be entertained. The application of condonation of delay is to be decided, thereafter, only court can go into merit of the matter. In the matter of Chandrabhan Vs. Nanga 2011-12 (Supp.) RRT 359, this Board specifically mentioned that no order can be passed without deciding the application under section 5 of Limitation Act. Provisions of Order 41 Rule 3A are mandatory. As such, the Order was set aside and the appellate court was directed to first decide the question of limitation. The learned counsel also argued that this Board in the matter of Jagdish Prasad Vs. Bhopal Ram 2014(1) RRT 409 (Full Bench) decided, with reference to granting of ex-parte order under section 212 of the Tenancy Act, as under :</p> <p style="padding-left: 40px;">"Such other orders passed under Rule 1, 2, 2A, 4A and 10 of Order 39 of the Code are appealable but the ad-interim ex-parte orders passed under Rules 3 and 3A of Order 39 of the Code are certainly not appealable as per provisions of Section 104 read with Order 43 Rule 1 (r) of the Code", but if the court fails to comply with the provisions of Order 39 Rule 3A of the Code, then aggrieved party has no option but to avail remedy of appeal. The learned counsel also referred the judgment of the Hon'ble Supreme Court in the case of Surendra Pal Singh Vs. Board of Revenue for Rajasthan AIR 1994 SC page 1439 in which by reversing the judgment of the Board of Revenue, Rajasthan, the Hon'ble Apex Court held that the Board under provisions of section 221 of the Act is equipped with powers even to set aside the judicial decision of the subordinate</p>	

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	<p>revenue court, if it comes to conclusion that the interest of justice requires exercise of such powers." After discussing all the points, this Board has issued certain guidelines for the subordinate revenue courts. The first guideline given is that every appellate court is duty bound to examine the issue of limitation, if any, in the appeal. If the appeal is time barred, such application can be considered only in the light of the mandatory provisions of Order 41 Rule 3A of the Code. Meaning thereby, no ad interim ex-parte stay order can be passed without hearing the opposite party in time barred appeals. As such, the learned R.A.A. was not authorised to pass that ad interim ex-parte stay order as against which this revision petition has been filed, which is liable to be accepted and the order of the learned Revenue Appellate Authority dated 21.01.2016 passed ex-parte without hearing the parties on the point of limitation, is liable to be rejected.</p> <p>On the other hand, the learned counsel for the non-petitioner argued that when the appeal is still pending, the order is only ex-parte order, no appeal or revision is maintainable against that because it is the established principle that no appeal lie against an interlocutory order and higher court should not interfere with the interlocutory orders.</p> <p>I have given my thoughtful consideration to the rival contentions and scanned the matter carefully.</p> <p>So far the arguments of the learned counsel for the non-petitioner are concerned, this Board is agreed with the arguments advanced that ordinarily no appeal or revision should be entertained against an interlocutory order, but the Hon'ble Apex Court in a number of pronouncements held that if the situation requires, the higher court may entertain</p>	

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	<p>appeal/ revision as the case may be, against the interlocutory order as well. In the matter of Siliguri Municipality Vs. Amlendu Das AIR 1984 SC 653, the Hon'ble Apex Court held that "the main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent call for by the demands of the situation. The courts have therefore to strike a delicate balance after considering the pros and cons of the matter in the larger public interest." The Hon'ble Court held that normally High Court should not interfere in matters of interlocutory order of the court. In the matter of Nagendra Nath Bora Vs. Commissioner of Hills AIR 1958 SC page 398, the Hon'ble Apex Court held that "it is true that this court does not interfere in cases which have not been decided by the High Court, but this case has some extra-ordinary feature which attracted notice of the court when SLP was granted." In the matter of UCO Bank Vs. Bank of India AIR 1981 SC page 1426, the Hon'ble Apex Court held that "the court does not, as matter of rule, interfere with interlocutory orders, save under exceptional circumstances." In AIR 1994 SC 2296 State of Orissa Vs. Vimal Kumar Mohanty, the Hon'ble Apex Court held that "this court will not interfere with interlocutory orders."</p> <p>As discussed above, it is very much clear from the pronouncements of the Hon'ble Apex Court that normally no interference to be made with the interlocutory orders which may cause interference in proper working of the learned lower courts, but if it requires in the interest of justice and for proper management and arrangement of the learned lower courts, then the higher courts may interfere with interlocutory orders as well. In this case also, the order of the learned Revenue Appellate Authority requires interference by this Board because the learned Revenue</p>	

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	<p>Appellate Authority accepted the appeal of the non-petitioners no.1 to 3 without considering the legal prepositions that normally no interference to be made in the ad interim orders of the learned lower courts, till it has been finalised. Admittedly, before the learned A.C.M.-I, Jaipur, the proceedings are pending. The parties are required to file their respective reply and thereafter arguments to be advanced on interim application and final order is yet to be passed. In that circumstances, the learned Revenue Appellate Authority without assigning any reason and without considering the mandatory provisions of Order 41 Rule 3A of the Code, passed the impugned order dated 21.01.2016; and as such, that order is against the established principles of law and, therefore, is liable to be quashed.</p> <p>In the result, the revision petition is accepted and the Order of Revenue Appellate Authority, Jaipur dated 21.01.2016 is hereby set aside. Learned A.C.M.-I, Jaipur is directed to decide the interim application as per provisions of Section 212 of the Rajasthan Tenancy Act, 1955 read with Order 39 of the Code of Civil Procedure.</p> <p>Pronounced.</p> <p style="text-align: center;">(Satish Chand Kaushik) Member</p>	