W/R

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Revision/TA/ 1373/2008/Jaipur**

1. Chiranjeelal
2. Nandkishore
   S/o late Shri Mangilal Caste Raigar r/o Raigaron Ka Mohalla, Village Rainwal Manjhi, Tehsil Phagi, Dist. Jaipur.

**---------- petitioners**

**Versus**

1. Kalyan Sahai s/o Sukkharam Caste Raigar r/o of Raigaron ka Bada Mohalla, in front of Anaaj Mandi, Sanganer, Dist. Jaipur.
2. Tehsildar, Phagi, Dist. Jaipur

**------- Non-petitioners**

**Single Bench**
**Shri Moolchand Meena, Member**

**Present:-**
Mr. Chandrashekhar, Counsel for the petitioner.
Mr. Brahmkumar, Counsel for the non-petitioner absented, hence ex-parte.

**Decision**

Dated:- 11-11-2013

This revision under section 230 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been filed by the applicant aggrieved by order dated 01-02-2008 passed by the Revenue Appellate Authority, Jaipur (First Appellate Court), whereby the First Appellate Court has set aside decree and decision dated 25-11-2004 passed by the Sub-Divisional Officer, Phagi.

2- Brief facts of the case leading to this revision are that petitioner No.1 filed a suit under the Act of 1955 for declaration, correction of entries and permanent injunction against the n-petitioner No.2 and the State Government in the

Court of the Sub Divisional Officer, Phagi (Trial Court). The Trial Court decreed the suit on compromise vide order dated 25-11-2004. The non-petitioner No.1 preferred an appeal under section 96 of the Civil Procedure Code, 1908 before the Revenue Appellate Authority, Jaipur (the First Appellate Court) against the order dated 25-11-2004 along-with an application under section 5 of the Limitation Act. An application under Order 1 Rule 10 of the Civil Procedure Code, 1908 was also filed as the non-petitioner No.1/appellant was not party to the suit in the Trial Court. The First Appellate Court, vide its order dated 01-02-2008 partially accepted the appeal. The decree dated 25-11-2004 was set aside and the case was remanded to the Sub Divisional Officer, Phagi with directions that after affording proper opportunity to be heard to both the parties, the case be decided afresh on merits. The present revision petition has been filed against this order dated 01-02-2008 of the First Appellate Court.

3- Since, neither the non-petitioner nor his counsel was present in the court at the time of arguments on 11-10-2013, at Jaipur in the circuit bench, the learned counsel for the petitioners was heard *ex-parte*.

4- Repeating the facts mentioned in the revision petition, the learned counsel for the petitioner has argued that the non-petitioner/appellant had filed appeal under section 96 of the Civil Procedure Code, 1908 against the decree dated 25-11-2004 passed by the Trial Court in a revenue suit under Tenancy Act, 1955, which was not maintainable because appeal against a decree passed by revenue trial court under the Tenancy Act is maintainable only under section 223 of the said Act. An application under section 96 of the Code of 1908 was meant only for granting permission to appeal. But the First Appellate Court, unlawfully treated this application as an appeal and the decree of the trial court was set aside. It has also been argued by the learned counsel that non-petitioner/appellant had moved an application under section 5 of the Indian Limitation Act, 1963 for condoning the delay and also an application under Order 1 Rule 10 of the Civil Procedure Code, 1908 for impleading him as a party to the

case. But the First Appellate Court has not decided both the applications and the appeal was allowed, whereas there was no appeal. So the decision dated 01-02-2008 suffers from serious legal irregularities and deserves to be set aside invoking powers under section 221 of the Act of 1955. The learned counsel has relied on the Board's decision reported as 2011 (1) RRT 421 in support of his argument that point of limitation should have been decided first as provided under Order 41 Rule 3-A of the Code of 1908.

5- I have gone through the record of the case available in the file and have given a thoughtful consideration to the contentions made by the learned counsel for the petitioners.

6- This revision petition and arguments of the learned counsel for the petitioner are based mainly on two points:-

(1) that there was no appeal under section 223 of the Act of 1955 before the Revenue Appellate Authority. It was only an application under section 96 of the Civil Procedure Code, 1908 for granting a permission for filing the appeal. But the Revenue Appellate Authority, wrongly treated this application as an appeal and the decree dated 24-11-2004 passed by the trial court was set aside wrongly.

(2) that the non-petitioner/appellant before the Revenue Appellate Authority had submitted an application under section 5 of the Limitation Act, but the learned Revenue Appellate Authority did not decide the question of limitation.

7- As regards the objection for not filing an appeal under section 223 of the Act of 1955, and filing only an application under section 96 of the Code of 1908, I deem it proper to reproduce here both the section, which are as follows:-

**Section 233 of Rajasthan Tenancy Act, 1955:**

***"223. Appeals from Original Decree.-*** *An appeal shall lie from an original decree-*

*(1) to the Collector if such decree is passed by a Tehsildar, and*
*(2) to the (Revenue Appellate Authority)`if such decree is passed by an Assistant Collector, a Sub Divisional Officer or a Collector."*

**Section 96 of the Civil Procedure Code, 1908:**

*"96. Appeal from original decrees.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court*

*(2) An appeal may lie from an original decree passed ex parte.*

*(3) No appeal shall lie from a decree passed by the Court with the consent of parties.*

*(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees."*

From mere perusal of above two sections it is clear that Section 223 of the Act of 1955 contains substantial legal provisions regarding appeals from original decrees under the Act of 1955. Section 96 of the Code of 1908 also provides for appeal from original decrees in civil matters. Section 208 of the Tenancy Act, 1955 provides as under:-

***"208. Application of Civil Procedure Code-*** *The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), except:*
*(1) provisions inconsistent with anything in this Act, so far as the inconsistency extends,*
*(2) provisions applicable only to special suits or proceedings outside the scope of this Act, and*
*(3) provisions contained in List I of the Fourth Schedule, shall apply to all suits and proceedings under this Act, subject to the modifications contained in List II of the Fourth Schedule."*

Since provisions of section 223 of the Act of 1955 and Section 96 of the Code of 1908 are not inconsistent to each other, therefore, in view of section 208 of the Tenancy Act, 1955 it is clear that provisions of Section 96 of the Code of 1908, not being inconsistent with anything in the 1955 Act, are applicable to appeals under section 223 of the Act of 1955 also. In my opinion, merely not mentioning of section 223 of

the 1955 Act and mentioning only section 96 of the Code of 1908 in appeal application, in the present case, does not make any difference. It would have not been in the interest of justice for the First Appellate Court in disallowing the appeal only on this technical ground. So I do not find any substance in objection of the learned counsel in this regard, therefore, the objection is rejected.

8- The learned counsel for the petitioner has also argued that section 96 provides only for an application for permission to file an appeal. **This contention is misconceived. The Section 96 of the Code of 1908 contains substantial legal provisions for appeals from original decrees and there is no provision in that section regarding application for permission to appeal. When an appeal is filed in the Court, it is the court to look into the matter and decide whether appellant is an aggrieved party or not, and whether the appellant has any locus to file such appeal or not. Any party to the appeal may bring the fact to the court's notice that the appellant is not an aggrieved party, but even after bringing this fact to the court's notice, if the court has entertained the appeal and has decided to hear and adjudicate it on merits, then nobody has any right to challenge the locus of the appellant on the ground that he has not filed an application for permission, or that such an application filed by the appellant has not been decided in a speaking manner. Therefore, I do not find this objection of the learned counsel tenable.**

9- Now I come to the objection raised by the learned counsel for the petitioner regarding limitation, and provisions of Order 41 Rule 3-A of the Civil Procedure Code, 1908, which is as under:-

> ***"3-A. Application for condonation of delay:***
> *(1) When an appeal is presented after the expiry of the period of limitation specified therefore, 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 hereof 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."*

10- From perusal of provisions of the said Rule 3-A it is clear that any appeal presented after expiry of the period of limitation provided for it, shall be accompanied with an application for condoning the delay which shall be supported by an affidavit explaining the reasons for the delay. Where such an application has been filed, the court shall decide the application first and only thereafter the court, on being satisfied that there was sufficient and reasonable cause for the delay, shall condone the delay and only thereafter will hear the appeal on merits. This is a mandatory provision and there are series of adjudications by Hon'ble High Courts in the Country, and also Hon'ble Supreme Court of India that delayed appeal is competent only after the court has condoned the delay. The single bench of this Board, in 2011 (1) RRT 421, has relied on 2009 DNJ (SC) 141 and 1998 DNJ (Raj) 767 and has held that question of limitation should have been decided first before passing an order on merits. In the present case, the appeal /application under section 96 of the Code of 1908 was delayed. The appellant has also submitted an application under Section 5 the Limitation Act with an affidavit. But the Revenue Appellate Authority, without making any reference to that application, has decided the appeal on merits and has remanded that case to the trial court for re-hearing and deciding afresh.

11- It is a well settled approach of the Hon'ble Apex Court and other Higher Courts of the land that Courts should adopt a liberal view in deciding the question of limitation, if it does not cast any prejudice on the rights of the other party. Law of limitation is meant for expedite the disposal of cases

but it is not for closing the door of justice for the party which is struggling for it. The Hon'ble Supreme Court of India in the case of N. Balakrishanan versus M. Krishnamurthy (AIR 1998 SC 3222) has held that:-

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

12- There is another pronouncement by the Hon'ble Supreme Court of India in this regard, reported as 2002 DNJ (SC) 67, wherein it has been held that if there is an application under section 5 of the Limitation Act, and the court has decided the appeal/case on merits without passing a formal order on that application, then it shall be presumed that the delay has been condoned. It has been held that - *"…. merely because in the order of Trial Court, specifically, there is no reference to petition for condonation of delay, it cannot be said that it did not consider the same."*

13- In view of above cited authorities of the Hon'ble Supreme Court of India, I am of opinion that **while hearing on any objection against the order of a lower court on the question of limitation, the appellate court should keep in mind that condoning the delay, generally, creates better opportunities for the litigants to prosecute their cause, whereas refusing to condone the delay closes the door of**

**justice for one party. Therefore, in case the lower court has allowed the application for condoning the delay, such a constructive order generally should not be interfered with, unless there is some gross illegality on the part of the lower court or some gross prejudice to the rights of the other party has been done. In case the lower court has rejected the application for condoning the delay, the appellate court may examine the justification of such an order.** Since the Revenue Appellate Authority, Jaipur in the present case has entertained the appeal and has remanded the case to the Trial Court for re-hearing and deciding afresh after affording proper opportunity of hearing to the litigants, I find no reason to interfere with such a positive order.

14- Furthermore, I have observed in the case in hand, that the First Appellate Court has entertained and partially accepted an appeal against the order and decree of the Trial Court. Thus decision dated 01-02-2008 passed by the First Appellate Court qualifies to be a decision under section 223 of the Act of 1955 read with section 96 of the Civil Procedure Code, 1908. In my view, such a decision is appealable under provisions of second appeal under the Tenancy Act of 1955. A revision petition against such an appealable decision is not maintainable. For this reason also, the present revision deserves to be dismissed.

15- In view of the foregoing discussions, I am of the considered opinion that the revision in hand is forceless and deserves to be dismissed.

16- Resultantly, this revision petition is hereby dismissed.

Pronounced in the open Court.

(Moolchand Meena)
Member