

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

**&**

**HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI**

**WRIT APPEAL NO. 1058 of 2023**

**SMT. KAMINI**

**Vs**

**SMT. DEEPA & ORS.**

**Appearance:**

Shri Siddharth Sharma - Advocate for appellant.

None for the respondents No.1 to 4.

None for the respondents No.7 and 8.

Shri K.K. Prajapati – Govt. Advocate for respondent No.9/State.

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| Reserved on  | : | 22/04/2025 |
| Delivered on | : | 02/05/2025 |

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**ORDER**

***Per: Justice Milind Ramesh Phadke***

The present intra-Court appeal, under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 has been filed by the appellant assailing the order dated 20.06.2023 passed by learned Single Judge in M.P. No.2464 of 2022; whereby, while allowing the petition the order dated 12.05.2022 passed by Additional Commissioner, Gwalior Division in Second Appeal No.641/2016-17 was set-aside and that of the order dated 22.07.2017 passed by SDO in First Appeal No.38/2013-14 was upheld.

2. The main ground for assailing the order passed by learned

Single Judge is that though the first appeal preferred before SDO by present respondents No.1 to 4 was barred by limitation, without there being any application under Section 5 of Limitation Act supported by an affidavit, the delay was condoned and while hearing the appeal on merits it was allowed and the order of mutation passed by Tehsildar dated 22.05.2012 whereby name of husband of present appellant was mutated in revenue records on the basis of Will was set-aside and though this fact was appreciated by learned Additional Commissioner and therefore, quashed the order passed by SDO in first appeal, but learned Single Judge ignoring the aforesaid aspect had allowed the petition and set-aside the order passed by learned Additional Commissioner which is *per se* illegal.

3. Apart from the aforesaid argument, no other arguments were raised before this Court.

4. None for the respondents No.1 to 4 even after service of notices through publication.

5. None for even respondents No.5 to 8.

6. Shri K.K. Prajapati, learned Government Advocate for respondent No.9/State submitted that no illegality has been committed by learned Single Judge in allowing the appeal as it is settled law that the Will related dispute can only be discussed by the Civil Court and not by the Revenue Courts and as the mutation of the name of husband of present appellant was on the basis of a disputed Will, learned Single Judge had rightly quashed the order of Additional Commissioner and restored the order of SDO.

7. Heard counsel for the parties and perused the record.

8. Though the aforesaid ground of limitation was not raised before the writ Court and therefore, was not addressed upon but

looking to the legality of the issue, this Court deems it appropriate to address upon the said aspect before considering the rival submissions.

9. Section 3 of the Limitation Act provides bar of limitation.

Section 3 is quoted as under:-

**"3. Bar of limitation.--** (1) *Subject to the provisions contained in Section 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.*"

10. 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."*

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 some 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 should 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 the 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 Gujrat**; 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. For reference Paragraph No. 9 of the judgment in case of **Markland Pvt. Ltd. And Ors. Vs. State of Gujrat (supra)** is quoted as under:-

*"9. The learned counsel for the petitioners submitted that the revision application as provided under Section 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 another decision reported in **AIR 1936 All 666 (Kulsoomun Nissa and Ors. Vs. Noor Mohammad and Ors.)**, the Allahabad High Court has 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."*

15. The Hon'ble Supreme Court in a very recent judgment **Dwarika Prasad (D) Thr. LRs. Vs. Prithvi Raj Singh; reported in 2024 SCC Online SC 3828** relied upon the judgment of Supreme

Court in case **Bhagmal and others vs. Kunwar Lal and others** reported in **2010 (12) SCC 159** 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."*

16. Similar view has been taken by this Court in **Suresh Kumar and others Vs. Firm Kurban Hussain Taiyab Ali and others** reported in **AIR 1996 MP 151**.

17. In view of the law laid down by Hon'ble Supreme Court, this Court and various other High Courts, this Court finds 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 from 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.

18. Thus, the argument advanced by learned counsel for the appellant has no force.

19. As no other ground has been raised by learned counsel for the appellant, this Court finds that learned Single Judge had rightly set-aside the order passed by Additional Commissioner whereby it was held that Sub-Divisional Officer was not right in condoning the delay in absence of any formal application under Section 5 of the Limitation Act, thus, it is held that no illegality or perversity has been committed by learned writ court in allowing the writ petition and holding that the question of disputed Will can only be addressed by Civil Court and not by Revenue Court.

20. Consequently, the present writ appeal fails and is hereby **dismissed.**

**(MILIND RAMESH PHADKE)**  
**JUDGE**

**(RAJENDRA KUMAR VANI)**  
**JUDGE**