

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/TA/5839/2002/Nagaur.

Ramdev s/o Sh. Beenjaram, Caste Mali, r/o Degana Station,
Tehsil Degana, Distt. Nagaur.

.....Appellant.

VERSUS

1. Dhannaram s/o Sh. Beenjaram.
2. Bhanwarlal s/o Sh. Nanuram.
3. Kanbu
4. Anda, ss/o Nanuram Minors through mother and natural guardian Imarti wd/o Nanuram.
5. Imarti wd/o Nanuram
6. Lalchand s/o Nanu, Caste Mali, rs/o Degana, Tehsil Degana, Distt. Nagaur.
7. Tehsildar Degana.

.....Respondents.

D.B.

**Shri Rajinder Kumar, Member
Shri Mohan Lal Nehra, Member**

Argued by:-

Shri G.S. Lakhawat, counsel for the Appellant.

No one was present on behalf of respondents.

JUDGMENT

Date: 16-07-2018

Per Shri Rajinder Kumar, Member

1. This appeal is preferred under section 225 of the Rajasthan Tenancy Act, 1955 against the composite order of learned Revenue Appellate Authority, Nagaur, whereby application for condonation of delay filed by appellant under section 5 of the Limitation Act, 1963 was allowed and application for restoration of appeal filed by him under Order 41 Rule 19 CPC was rejected.
2. This appeal was preferred against eight respondents. On 9-04-2013, an application was submitted by counsel for the appellant

that name of respondent Nathu has been inadvertently mentioned in the memo of appeal. Therefore, on the request of learned counsel his name was deleted.

3. This appeal was admitted by this Board vide order dated 19-12-2002 in the presence of both the parties. On 12-07-2018, the appeal was placed before us for final arguments. However, none appeared on that date on behalf of the respondents. Therefore, arguments of learned counsel for the appellant were heard.
4. Shri G.S. Lakhawat, Advocate has argued that both the applications filed under section 5, Limitation Act, 1963 and Order 41 Rule 19 CPC were based on same facts. The learned first appellate court, however, allowed one application for condonation of delay and rejected the other application for restoration of appeal, which was dismissed in default of appearance of appellant and his counsel. Therefore, the impugned order is not sustainable. After having allowed the application under section 5, Limitation Act, 1963, the only course available with the learned appellate court was to re-admit the file of first appeal to its original number and pass the order on merits after hearing the respective counsels for the parties. Therefore, a request has been made to allow this appeal and to direct the learned Revenue Appellate Authority, Nagaur to decide the appeal on its own merits.
5. We have given our anxious consideration to the above submissions and perused the record carefully.
6. It is borne out from the record that the appellant preferred an appeal before learned Revenue Appellate Authority, Nagaur against the judgment and decree of trial court of Assistant Collector, Degana. The said appeal [No. 9/99] was dismissed-in-default of appearance of the appellant and his counsel on 29-03-

2000 by the learned first appellate court. The appellant, after a lapse of period of around two years, submitted two separate applications in the first appellate court. As stated earlier, in both the applications almost similar facts were mentioned by the appellant. It was mentioned therein that the original counsel for the appellant had left practice and he did not inform the appellant about this fact and thus, on 29-03-2000, the said appeal was dismissed-in-default. The learned first appellate court felt satisfied with the 'cause' of non-appearance mentioned in the application under section 5, Limitation Act and thus, condoned the delay whereas rejected the application for restoration of appeal. It appears that the first appellate court, while doing so, exceeded its jurisdiction and considered the merits of the appeal into consideration. As the appellant was successful in convincing the appellate court that there was 'sufficient cause' for non-appearance, the proper course available for the court was to re-admit the appeal to its original number, re-hear the parties and pass judgment in appeal on its merits. In nutshell, merits of the appeal were not germane while considering the restoration application. The impugned order, therefore, is not sustainable.

7. In view of above, the appeal is allowed. The impugned order of learned R.A.A, Nagaur to the extent of rejecting the application for restoration of appeal is set-aside. The learned R.A.A, Nagaur is directed to restore the first appeal no. 9/99 to its original number and decide the same on merits after giving reasonable opportunity of hearing to both the parties.

Pronounced.

(Mohan Lal Nehra)
Member

(Rajinder Kumar)
Member