

,तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज <b>Appeal /TA/2291/2005/Nagaur</b>	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
01.04.2019	<p style="text-align: center;"><b>D.B.</b> <b>Shri Manoj Kumar Nag, Member</b> <b>Shri Rajinder Kumar, Member</b></p> <p><b>Present:-</b> Shri S.P. Singh, Advocate for the Appellant. Shri Raghvendra Singh, Adv. for the Respondent no. 1. Shri Sahdev Chaudhary, Adv. for the Respondent no. 2/1 to 2/9. Smt. Poonam Mathur, Add. Govt. Adv. for the Respondent no. 3.</p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <ol style="list-style-type: none"> <li>1. This second appeal has been preferred against the judgment and decree dated 15.04.2005 passed by the learned Revenue Appellate Authority, Nagaur in appeal no. 7/05.</li> <li>2. We have heard the learned counsels.</li> <li>3. It is an admitted position that the first appeal filed by the respondent no. 1 against the trial court's judgment and decree was barred by a period of almost 4 years and still the learned first appellate court decided the appeal on its merits without first deciding the delay condonation application. In addition to it, the application filed by the respondent no. 1 under Order 41 Rule 27 CPC was also not decided by the learned first appellate court. In this material illegality were committed by the first appellate court in deciding the appeal on its merits.</li> <li>4. It is settled law that in every suit, appeal or application, if limitation is prescribed then the question of limitation is to be considered first even if the dispute is not raised in that regard. As stated earlier, as the application under section 5 of the Indian Limitation Act, 1963 and Order</li> </ol>	

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	<p>41 Rule 27 CPC were left undecided, therefore, the matter is required to be remitted back to the learned first appellate court for first deciding the delay condonation application before proceeding in the appeal any further. In this regard, reliance is placed on 1998 DNJ (Rajasthan) 767 'State of Rajasthan &amp; ors Vs. Smt. Usha Sahini &amp; ors' and AIR 2002 SC 204 'Gangandeeep Pratishtan Vs. Mechano and anr.'</p> <p>5. Resultantly, the appeal in hand is accepted and the judgment and decree dated 15.04.2005 of the learned first appellate court is set aside. The matter is remanded to the learned RAA, Nagaur with a direction to re-admit the same to its original number and to first decide the delay condonation application and if it is satisfied about the cause shown by the respondent no. 1 regarding delay condonation, only then it would get jurisdiction to decide the application under Order 41 Rule 27 CPC and the appeal on its merits and not otherwise.</p> <p>The parties shall appear in the court below on 4.06.2019. The learned first appellate court shall not be influenced by any of the aforesaid observations in deciding the delay condonation application.</p> <p>Announced. File be consigned.</p> <p style="text-align: center;"> <b>(Rajinder Kumar)</b> Member         <span style="margin-left: 100px;"><b>(Manoj Kumar Nag)</b> Member</span> </p>	