

,तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
01.04.2019	<p style="text-align: center;">Appeal /TA/3659/2005/Bhilwara</p> <p style="text-align: center;">D.B. Shri Manoj Kumar Nag, Member Shri Rajinder Kumar, Member</p> <p>Argued by:- Shri P.S. Dashora, Advocate for the Appellant. Smt. Poonam Mathur, Add. Govt. Advocate for the Respondent no. 1. Shri Madanlal Gurjar, Adv. for the Respondent no. 2 &3</p> <p style="text-align: center;"><u>J U D G M E N T</u></p> <p>1. This second appeal has been preferred against the judgment and decree dated 20.04.2005 passed by the learned Revenue Appellate Authority, Bhilwara in appeal no. 273/04.</p> <p>2. We have heard the learned counsels.</p> <p>3. It is revealed from the record 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 5 months and still the learned first appellate court decided the appeal on its merits without first deciding the delay condonation application. In this way, a material illegality was committed by the first appellate court in deciding the appeal. 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 has been left undecided, therefore, the matter is required to be remitted back to the learned first appellate court for 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 & ors Vs. Smt. Usha</p>	

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	<p style="text-align: center;">Appeal /TA/3659/2005/Bhilwara</p> <p>Sahini & ors.'</p> <p>4. Resultantly, the appeal in hand is accepted and the judgment and decree dated 20.04.2005 of the learned first appellate court is set aside. The appeal is remitted back to the learned Settlement Officer cum RAA, Bhilwara 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 appeal on its merits and not otherwise.</p> <p style="text-align: center;">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. The trial court shall decide the suit within a period of 09 months from today.</p> <p style="text-align: center;">Announced. File be consigned.</p> <p style="text-align: center;">(Rajinder Kumar) Member</p> <p style="text-align: center;">(Manoj Kumar Nag) Member</p>	