

Sahkari Ganna Vikas Samiti Ltd.

Vs

Mahabir Sugar Mills (P) Ltd.

Civil Appeal No. 1750 of 1981

(Syed M. Fazal Ali, A.P. Sen JJ)

20.07.1981

JUDGMENT

1. Special leave granted.

2. We have heard counsel for the parties. The only ground on which the High Court reversed the judgment of the Commissioner entertaining the appeal was that Section 5 of the Limitation Act was not applicable. The High Court itself found that so far as the Commissioner of the Division is concerned he was undoubtedly a revenue court but it held that as the matter arose out of U.P. Sugar-cane (Regulation of Supplies and Purchase) Act, 1953, the Commissioner was exercising appellat jurisdiction as an authority under the said Act and was therefore persona designata. There is no doubt that the Cane Commissioner is highest authority under the Act and if the intention of the legislature was that appeal should lie to special tribunal, then it would have clearly provided that the appeal should lie to the Cane Commissioner and not to the Division Commissioner. This fact which does not appear to have been noticed by the High Court clearly shows that the Division Commissioner was made an appellate court not as persona designate but was acting as a revenue court. If this is the position, it is obvious that Section 5 of the Limitation Act applied and hence the Division Commissioner has ample power under Section 5 of the Limitation Act to condone the delay. We, therefore, allow this appeal, set aside the judgment of the High Court and remit the case to the Division Commissioner for hearing the appeal on merits. The appeal is disposed of accordingly with no order as to costs.

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