

Ram Gopal Baheti

Vs

Giridharilal Soni and Others

Civil Appeal No. 341 of 1999

(S. B. Majmudar, R. P. Sethi JJ)

25.01.1999

ORDER

1. Leave granted.

2. We have heard learned counsel for the parties finally in this appeal.

3. The short question involved in this appeal is whether the High Court in the impugned judgment was justified in taking a view that because the provision to sub-rule (ii) of Rule 26 of the West Bengal Land Reforms Act, 1965 did not mention the words "prescribed authority", the application for condonation of delay moved by the appellant was not maintainable before that authority. The appeal was preferred against an order passed under Section 51-A(4) of the West Bengal Land Reforms Act, 1955 before the District Land and Land Reforms Officer, Hooghly and an application for condonation of delay was also filed before the said authority and the delay was condoned. However, the contesting respondent in CO No. 2444 of 1995 contended before the High Court that the application for condonation of delay was to be considered only by the Additional District Magistrate and not by the prescribed authority before whom the said appeal could be filed. For coming to that conclusion, learned Judge relied upon Rule 26(ii) of the West Bengal Land Reforms Rules, 1965 which reads as under :

"26. Appeal under sub-section (5) of Section 51-A. - (i) Every appeal under sub-section (5) of section 51-A shall be filed in the form of a memorandum and shall be signed and verified by the appellant in the manner provided in sub-rule (2) and (3) of Rule 15 of Order VI of Schedule 1 to the code of Civil Procedure, 1908 and shall be accompanied by an authenticated copy of the order appealed against.

(ii) Every appeal shall be filed before the prescribed authority appointed under sub-section (5) of Section 51-A within one month from the date of the passing of the order appealed against :

Provided that an appeal may be admitted after the said period of the appellant satisfies the Additional District Magistrate of the District in which the land is situate that he had sufficient reasons for not preferring the appeal within the said period."

4. Now, it is true that the Rule which was referred to by learned Single Judge of the High Court in the impugned judgment clearly mentioned in sub-rule (ii) thereof that every appeal shall be filed before the prescribed authority appointed under sub-section (5) of section 51-A of the Act within one month from the date of the passing of the order appealed against but so far as the proviso is

concerned, it is mentioned that if the appellant satisfies the Additional District Magistrate of the District about the sufficiency of the cause for not preferring the appeal in time, the appeal may be admitted. Relying on the aforesaid wordings of sub-rule (ii) of Rule 26 and the proviso, it was held that even if the prescribed authority appointed under sub-section (5) of Section 51-A of the Act is the District Land and Land Reforms Officer, which is the appellate authority because of the wording of the proviso, it is only the Additional District Magistrate of the District who can consider the application for condonation of delay. At the time of hearing of this appeal, learned counsel for the State of West Bengal, Mr. Tara Chandra Sharma, who has appeared on account of the notice issued by us to the State, brought to our notice the gazette notification dated 15-7-1988 wherein it been clearly mentioned that in sub-rule (ii) of Rule 26, the word "Additional District Magistrate" shall stand substituted by "prescribed authority appointed under sub-section (5) of Section 51-A". This amendment was not brought to the notice of the learned Single of the High Court. In view of this amendment in the Rule, the proviso to sub-rule (ii) of Rule 26 will have to be read by substituting the words "Additional District Magistrate" by the word "prescribed authority appointed under sub-section (5) of Section 51-A". Once that conclusion is reached, the result becomes obvious. There would be no occasion for the Additional District Magistrate to consider the question of condoning the delay in filing the appeal before the prescribed authority. The entire reasoning of the High Court, therefore, would not survive in view of the gazette notification amending the Rule in question. In the result, this appeal is allowed. The objection raised by Respondent 1 before the High Court in the writ petition will stand overruled and CO No. 2444 of 1995 will stand dismissed. As the delay is already condoned by the prescribed authority, he will consider the appeal on merits in accordance with law. We express no opinion on the merits of the controversy between the parties. The averments made in the counter-affidavit on merits of the controversy between the parties of this case are irrelevant for our present purpose. Therefore, we have not permitted learned counsel for the appellant to controvert the same and his submission that he does not agree with the same also does not arise for consideration. No costs.