



2026:AHC:61116

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 427 of 2026

Ashwani Shukla

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Sanjay Kumar Mishra
Counsel for Respondent(s)	: C.S.C., Prabha Shanker Pandey, Satish Kumar

Court No. - 54

HON'BLE CHANDRA KUMAR RAI, J.

1. Rejoinder affidavit filed on behalf of petitioner is taken on record.
2. Supplementary counter affidavit filed on behalf of respondent nos.4 to 6 is also taken on record.
3. Heard Mr. Sanjay Kumar Mishra, learned counsel for the petitioner, Mr. Prabha Shanker Pandey, learned counsel for respondent nos. 4 to 6 and Mr. Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel for the State-respondents.
4. Brief facts of the case are that the application for recall dated 9.6.2025 has been filed by private respondent nos.4 to 6 along with prayer for condonation of delay to recall the order dated 8.10.2011. In paragraph no.6 of the recall application, it is mentioned that revision which was filed on behalf of respondent nos.4 to 6 against the order dated 8.10.2011, an application to dismiss the revision as not pressed is pending, as such, recall application dated 9.6.2025 should be entertained and allowed. On the application of recall as well as delay condonation dated 9.6.2025, an interim order was passed just after 2 days i.e. 11.6.2025 directing the parties to maintain status quo. Hence this writ petition for the following reliefs:

"a. Issue a writ order or direction in the nature of certiorari to quash the ex-parte impugned order dated 11.06.2025 (Part of Annexure No.8) passed by respondent No.3 to this writ petition.

b. Issue a writ, order or direction in the nature of mandamus commanding and directing to the respondent No.3 to decide the delay condonation application and recall application No. 39/ Recall dated 09.06.2025."

5. This Court entertained the matter on 3.2.2026 and passed the following interim order:

"1. It is submitted that the Consolidation Officer has inherent lack of jurisdiction to pass an ex parte interim order dated 11.06.2025, without affording an opportunity of hearing to the present petitioner, in a highly belated restoration application dated 09.06.2025 assailing the order dated 08.10.2011. Neither notices have been issued to the opposite parties (petitioner herein) nor has the delay condonation application being allowed. It is further submitted that while the revision petition, being Revision No.2238 of 2021-22, is pending consideration before the Deputy Director of Consolidation against the order dated 08.10.2011, granting an ex parte interim order in a highly belated restoration application is not sustainable in the eyes of law. It is lastly submitted that the contesting respondents did not come with the clean hands before consolidation court.

2. Matter requires consideration.

3. Respondents no.1 to 3 are represented through the learned Standing Counsel.

4. Issue notice to respondents no.4 to 6 fixing 31.03.2026 as the date.

5. In the meantime, both the parties shall exchange their respective affidavits, if any.

6. Until further orders of this Court, effect and operation of the order dated 11.06.2025 passed by the Consolidation Officer shall remain stayed. However, it is made clear that pendency of the instant writ petition shall not impede the further proceedings going on in the delay condonation application as well restoration application dated 09.06.2025, filed against the order dated 08.10.2011, and the same shall be decided on its own merits, without being influenced with the order of the day.
"

6. In pursuance of the order of this Court dated 3.2.2026, parties have exchanged their pleadings.

7. Learned counsel for the petitioner submitted that in the time barred

proceeding interim order cannot be granted unless delay in filing the proceeding is condoned and application for restoration is allowed in proper manner. He further submitted that the private respondent has already filed revision against the order dated 8.10.2011, as such, filing of time barred restoration application before Consolidation Officer is abuse of process of law. He further submitted that no opportunity was afforded to petitioner before granting interim order in the time barred proceeding, as such, order dated 11.6.2025 passed by respondent no.3 / Consolidation Officer, Badlapur, Jaunpur should be set aside and necessary direction be issued to respondent no.3 to decide the delay condonation application and recall application dated 9.6.2025 in proper manner.

8. On the other hand, learned counsel appearing for respondent nos.4 to 6 submitted that no interference is required against the interim order granted during pendency of restoration / recall application as well as delay condonation application. He further submitted that the petitioner should contest the proceeding of recall / restoration application / delay condonation application before Consolidation Officer rather writ petition before this Court. He further submitted that since petitioner was changing the nature of the plot in question, as such, interim order was very much required, accordingly, Consolidation Officer has directed the parties to maintain status quo. He further submitted that so far as the filing of revision is concerned the application to dismiss the revision as not press has been filed on behalf of respondent nos.4 to 6, as such, recall application has been filed stating that the application for withdrawal has been filed before Deputy Director of Consolidation, as such, there is no illegality in entertaining the recall application/ delay condonation application.

9. I have considered the argument advanced by learned counsel for the parties and perused the records.

10. There is no dispute about the fact that the time barred restoration application filed by respondent nos.4 to 6 is pending before respondent no.3/ Consolidation Officer and interim order has been granted without granting benefit of Section 5 of Limitation Act as well as without allowing the recall application.

11. The law is well settled that in time barred proceeding the interim order should not be granted unless delay in filing the time barred proceeding is condoned in proper manner and restoration application is allowed.

12. In the instant matter, restoration / recall application filed by respondent nos.4 to 6 is highly time barred, as such, there was no occasion to grant interim order.

13. Division Bench of this Court in the case reported in **2022 (155) R.D.309, Ram Prakash Vs. Deputy Director of Consolidation and Others** has laid down the principle for deciding the time barred appeal which will be applicable for deciding the time barred proceeding also. Paragraph Nos. 19, 20, 21, 22 and 23 of the judgment rendered in **Ram Prakash (Supra)** will be relevant, which are as follows:-

"19. We are not going into the issue as to whether an order passed by appellate authority on an application seeking condonation of delay is an interim order or final as the same has not been referred for consideration by the Division Bench. Different situations may arise in an appeal filed along with application seeking condonation of delay. Firstly, the application for seeking condonation of delay may be dismissed. As a consequence thereof, the appeal will also fail. Another situation may be that application seeking condonation of delay is allowed and thereafter the appeal may either be accepted or rejected.

20. If any statute provides certain period for filing of appeal, an appeal filed beyond the time limit will certainly be not entertained. If the provisions of 1963 Act are applicable and party is entitled to seek condonation of delay in filing appeal, an application has to be filed specifying the grounds on which delay in filing the appeal is sought to be condoned. It is only after that the application is allowed, the appeal can be entertained and heard on merits. Before that the appeal cannot be taken up and considered on merits.

21. As far as the issue regarding hearing of the application seeking condonation of delay and the appeal simultaneously is concerned, in our view, firstly the application has to be considered. Only thereafter, the appeal can be considered on merits but there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay. Both can be taken up on the same day. However, the appeal has to be heard on merits only

after the application seeking condonation of delay has been accepted.

22. In view of the aforesaid discussion, we answer the question referred to the Division Bench that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing on merits. However, it can be on the same day and there is no requirement of adjourning the hearing of appeal on merits after acceptance of the application seeking condonation of delay.

23. Let the matter be listed before learned Single Judge as per roster for further proceedings in the case."

14. Considering the entire facts and circumstances of the case, the impugned order dated 11.6.2025 passed by respondent no.3 / Consolidation Officer granting interim protection in the time barred restoration proceeding is hereby set aside.

15. The writ petition stands **allowed**. Respondent no.3 / Consolidation Officer is directed to decide the delay condonation matter first considering the objection of the petitioner as well as affording opportunity of hearing to petitioner on the delay condonation matter. After disposal of the delay condonation matter, restoration / recall application will be considered in proper manner. The question of grant of interim order will arise after disposal of delay condonation application and restoration application. Respondent nos.4 to 6 are also directed to get the revision dismissed as not pressed and place the copy of the order of Deputy Director of Consolidation before Consolidation Officer so that Consolidation Officer can proceed in the matter in accordance with law. It is further directed that both the parties will appear before respondent no.3/ Consolidation Officer on 6.4.2026 along with certified copy of this order.

(Chandra Kumar Rai,J.)

March 24, 2026

Rameez