Sr. No.133

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

(Through virtual mode)

Case:-CM(M) No. 596/2025
CM No.8969/2025
Caveat Nos.3333/2025 & 3323/2025

Mohd. Amin Shah and anr. …Petitioner(s)/Appellant(s)

Through: Mr. Syed Riyaz Hussain, Advocate.

V/s

Mohd. Abdullah Shah and ors. …. Respondent(s)

Through: Mr. Syed Abid Parwaz, Advocate.

CORAM: HON'BLE MR. JUSTICESANJAY DHAR, JUDGE

ORDER
30.12.2025

1. The petitioners have challenged order dated 23rd December 2025 passed by the learned Principal District Judge, Shopian(hereinafter 'the appellate court') whereby, application for condonation of delay in filing the appeal against order dated 25th October 2020 passed by the learned Sub Judge, Shopian has been dismissed and, consequently, the appeal has also been dismissed.

2. Issued notice to the respondents.

3. Mr. Syed Abid Parwaz, who is on Caveat, accepts notice on behalf of the respondents. With his appearance, Caveat(s) shall stand discharged.

4. Heard learned counsel for the parties and peruse the record.

5. It appears that the petitioners (herein after 'the plaintiffs') have filed a suit against the respondents (herein after 'the defendants') before the court of learned Sub Judge, Shopian seeking a declaration that they are entitled to half a portion of the landed estate measuring 40 Kanals 7 marlas situated at village Nazneenpora,Tehsil and District Sophian. A permanent injunction restraining the defendants from interfering in plaintiffs' possession of the land measuring 13

Kanals out of the suit land has also been sought. Besides this,the plaintiffs have also sought partition and separate possession with a direction to the defendants1 and 2 to hand over possession of 7Kanals and 3 ½ marlas of land out of the suit land to the plaintiffs.

6. It appears that during the pendency of the suit, on 19th of March 2013,the learned Trial Court passed an interim order directing the parties to maintain status quo on spot. The said order was made absolute on 25th March 2014, with the consensus of the parties. Thereafter, the defendants 1and 2 filed an application before the Trial Court seeking variation of order dated 25th March 2014 on the ground that there has been change in the circumstances, in as much as the family of the said defendants has increased, as a result of which, they need to construct a residential house upon their share of the suit land, which is under their possession. The said application was disposed of by the learned trial court in terms of impugned order dated 25th October 2024 after inviting objections from the plaintiffs and after hearing the parties. The learned trial Court permitted defendant no.1 to raise construction upon the land which is in his possession subject to furnishing of an undertaking that in case upon disposal of the suit, the plaintiffs are found entitled to the portion of the land on which the construction has been raised, the defendants will give land of equivalent value to the plaintiffs in lieu of it.

7. Against the aforesaid order of the learned Trial Court, the plaintiffs filed an appeal before the learned District Judge, Shopian on 5th March 2025. Along with the appeal, the plaintiffs also filed an application for condonation of delay in filing the appeal as the appeal was filed after a delay of about 100 days. The learned Appellate Court, after hearing the parties, came to the conclusion that plaintiffs/appellants have not explained the delay in filing the appeal and, as such,

their application was dismissed, which resulted in a consequent dismissal of the appeal.

8. The petitioners/plaintiffs have challenged the impugned orders on the grounds that the learned appellate court has failed to consider the reasons that were assigned by plaintiffs for seeking condonation of delay in filing the appeal. It has been further contended that there was no malafide or intentional inaction on the part of the plaintiffs in filing the appeal and, as such, the delay in filing appeal deserved to be condoned. It has been contended that the learned appellate court has taken a hyper-technical and pedantic view of the matter and has failed to adopt a justice oriented approach thereby committing a grave jurisdictional error, which has resulted in failure of justice. It has been further contended that it was not open to learned trial court to vary order passed on 25th March 2014 that was passed with the consensus of the parties as there were no exceptional circumstances that warranted variation of the said order. It has been contended that change of status quo exposes the plaintiffs to grave prejudice and, as such, the impugned order passed by the learned trial court is patently illegal.

9. Before testing legality of the impugned order passed by the learned trial court, it is necessary to determine as to whether the learned appellate court was right in declining to condone the delay in filing the appeal. If the order of the learned Appellate Court is found to be in accordance with law, then there is no need to go into the legality of the order passed by the learned trial court and if it is found that the plaintiffs have succeeded in explaining the delay in filing the appeal, in that case, their application has to be allowed and the appeal is required to be remanded to the learned appellate court for its decision on merits.

10. Section 5 of the Limitation Act vests power with the court to extend the prescribed period of limitation for filing appeal or application, if the applicant or applicant satisfies the court that he had sufficient cause for not preferring the

appeal or making the application within the prescribed period of limitation. Thus, an appellant or an applicant has to explain the reasons for delay in filing the appeal and the court has to be satisfied by adequacy of the cause shown before condoning the delay. While considering a plea for condonation of delay in filing a proceeding, the court has to take a lenient view and the approach in this regard has to be justice oriented. The courts, generally, prefer to decide a *lis* on its merits than to throw it out on mere technicalities. Thus the interpretation of "sufficient cause" must be liberal aimed at advancing the cause of justice. However, it does not mean that law of limitation has to be given a go-by. Unless an appellant or an applicant satisfies the Court that he was prevented from filing the appeal or application within the prescribed period of limitation for sufficient reasons, the delay cannot be condoned. The length of delay is not material, what is material is whether appellant/ applicant has satisfactorily explained the delay in filing the appeal/ application. Even a single day's delay, which has remained unexplained, can be fatal to the case of an appellant/applicant whereas even if delay of several years is properly explained by an appellant/applicant, the same has to be condoned. It all depends upon the facts and circumstances of each case. The criterion for condoning the delay is sufficiency of reason and not the length of delay.

11. The Supreme Court in the case of ***Basawaraj & Anr.V.Special Land Acquisition Officer, (2013) 14 SCC 81,*** has, while rejecting an application for condonation of delay for lack of sufficient cause, observed as under:

> ***"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such***

> ***an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature."***

12. From the foregoing legal position, it becomes clear that in case a party remains negligent and does not act diligently, there cannot be a justification for condonation of delay and when there is no sufficient cause shown by a litigant that prevented him from approaching the court within time, the delay cannot be condoned.

13. Coming to the facts of the present case if we have a look at the application of the plaintiffs filed before the appellate court under Section 5 of the Limitation Act for condonation of delay, in the said application, the plaintiffs have, after narrating the background of the case, pleaded that they wanted to raise the concrete bund around their land, but their request was avoided by the trial court, which resulted in irreparable loss to them. It is also pleaded that the defendants have misused the order passed by the court in March 2014 and they have employed the services of the Police Department for harassing the plaintiffs. Lastly, it has been pleaded that there is no intentional delay on the part of the plaintiffs in preferring the appeal.

14. From the narration of the facts pleaded by the appellants in their application for condonation of delay in filing the appeal, it is manifest that they have not given any reason, whatsoever, much less a plausible reason for not filing the appeal within the prescribed period of limitation. In the face of such pleadings, the learned appellate court had no option but to reject the application of the plaintiffs. Filing of an application seeking condonation of delay is not an empty formality. A litigant has to explain the facts by giving a brief gist of the

circumstances which prevented him from filing the proceedings within the prescribed period of limitation. Merely stating that there was no intentional delay in filing the proceedings, cannot form a good enough reason for condoning the delay in filing the proceedings.

15. The Supreme Court has, in the case of **Esha Bhattacharjee Vs. Managing Committee of Reghunathpur Nafar Academy & Ors**, *(2013) 12 SCC 649*, summarised the principles as under:-

> ***"21.From the aforesaid authorities the principles that can broadly be culled out are:***
>
> ***i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.***
>
> ***ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.***
>
> ***iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.***
>
> ***iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.***
>
> ***v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.***
>
> ***vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.***
>
> ***vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.***
>
> ***viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.***
>
> ***ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.***
>
> ***x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.***
>
> ***xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.***
>
> ***xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.***

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

16. From the above statement of law, it is clear that an application for condonation of delay must contain the necessary assertions on the basis of which condonation of delay in filing a proceeding is being sought. It is also clear that the issue regarding condonation of delay has not to be treated as non-serious and a routine matter. As already stated, the application for condonation of delay filed by the petitioners/appellants does not contain the necessary facts that would have supported their claim. The application for condonation of delay is cryptic in nature and does not disclose any cause, much less sufficient cause, for condoning the delay.

17. For what has been discussed hereinbefore, I do not find any ground to interfere in the impugned order passed by the learned appellate Court. The petition, therefore, lacks merit and is accordingly dismissed.

(SANJAY DHAR)
JUDGE

Jammu
30.12.2025
Raj Kumar

Whether the order is reportable?: Yes/No.

Raj Kumar
2025.12.31 17:23
I attest to the accuracy and
integrity of this document