

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**CM No. 2647/2022 in
RFA No. 20/2022
CM No. 2648/2022**

Reserved On: 11th of December, 2023
Pronounced On: 22nd of December, 2023.

1. **Union Territory of J&K through**
Chief Secretary, Civil Secretariat,
Jammu/ Srinagar.
2. Commissioner/ Secretary,
Power Development Department,
Civil Secretariat, Jammu/ Srinagar.
3. Chief Engineer,
Power Development Department,
Srinagar.
4. Superintending Engineer,
Civil, Maintenance Circle, Sopore.
5. Executive Engineer,
Civil Maintenance Division, Sumbal.
6. Assistant Executive Engineer,
Civil Maintenance, Sub Division,
Tangmarg.

... Applicants/Appellants

Through: -

Mr Alla-ud-Din Ganai, AAG with
Ms Shaila Shameem, Assisting Counsel

V/s

Mukhti

W/O Gh. Rasool Rather
R/O Khanpora, Tehsil Tangmarg,
Baramulla

... Respondent

Through: -

Mr N. H. Shah, Senior Advocate with
Ms Suwaiba, Advocate.

CORAM:**HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE
(JUDGMENT)**

01. Through the medium of this Order, it is proposed to dispose of an application for condonation of delay moved by the Applicants/Appellants in filing the appeal against the Judgment dated 17th of September, 2019 passed by the Court of learned 1st Additional District Judge, Baramulla in a Civil Original Suit titled '**Mukhti v. State of J&K and Ors.**', whereby the Plaintiff was held entitled to receive a lumpsum amount of Rs.5.00 lacs as compensation from the Defendants/ Applicants herein, along with interest @ 9 percent per annum from the date of filing of the Suit till its realization, for electrocution of her husband, namely, Ghulam Ahmad Rather, due to negligence of the Defendants.

02. Since, the appeal was not filed within time, the aforesaid application for condonation of delay has been filed, asserting therein that the delay was caused as the Applicants had to collect the record from various subordinate offices, obtain legal advice from the Department of Law, Justice & Parliamentary Affairs, examine the matter and consider the question of filing of an appeal at various levels which led to consumption of time.

03. It has been further pleaded that the Law Department considered the matter on its merits and decided to challenge the Judgment impugned passed by the learned trial Court and, as such, sanction was accorded for filing the appeal vide No. Law-lit1/421/2021-10 dated 3rd of January, 2022, whereafter the Counsel took up the matter with the Applicants for providing relevant record along with certified copy of the Judgment, so that the appeal is drafted and filed before this Court; that after receiving the relevant records, the Counsel took some days for drafting and filing of the appeal; that the Hon'ble Apex Court has also extended the period of limitation on various proceedings, including the appeals, as such, the instant appeal also falls within the ambit of the concession granted by

the Hon'ble Supreme Court because of the lockdown in view of the outbreak of COVID-19 Pandemic; that the delay has not been caused in filing of the appeal deliberately, wilfully and intentionally. It has been finally prayed that the delay, if any, in filing the appeal, be condoned having regard to the strong case, sure to succeed on merits.

04. Pursuant to notice having been issued, the Non-Applicant/ Respondent has filed her Objections to this application, wherein it has been asserted that the appeal against the Judgment dated 17th of September, 2019 passed by the learned trial Court has been filed beyond the prescribed period of limitation; that the application is completely misconceived and deserves to be rejected outrightly, for the reason that the same does not disclose any cause, much less a 'sufficient cause' as provided in Section 5 of the Limitation Act; that the Applicants have not indicated in the application as to when they had actually gained the knowledge of the passing of the impugned Judgment; that the Applicants were represented by a Counsel before the Court below and, therefore, were in know of the proceedings, including the passing of the impugned Judgment, as such, they are not entitled to seek condonation of delay on the assumption of sufficient cause; that the application has been moved in a very casual and cryptic manner, wherein the Applicants have not even reflected as to when they got the knowledge of the passing of the impugned Judgment, when they applied for the certified copy of the same, when they approached the Counsel for drafting the appeal, etc. Finally, it has been prayed that the application be rejected, as it has not disclosed any sufficient cause, so as to entitle the Applicants to seek condonation of delay for consideration of their appeal.

05. Mr Alla-ud-Din Ganai, the learned Additional Advocate General, appearing on behalf of the Applicants, vehemently argued that the learned trial Court had not taken into account the evidence led by the Applicants, as Defendants, before the trial Court and has completely overlooked the evidence while returning findings on the issues and granting the Suit in favour of the Plaintiff/ Non-Applicant herein, as such, there has

been a complete miscarriage of justice. Therefore, on this count, as per the learned Additional Advocate General, when the Applicants have a strong case in their favour based on merits, the main appeal is required to be heard on merits, instead of not being allowed for the technical issue of condonation of delay. Finally, the learned Additional Advocate General has prayed that the instant application be allowed and the appeal be taken up for being heard on merits.

06. Mr N. H. Shah, the learned Senior learned Counsel, representing the Non-Applicant/ Respondent, however, *ex adverso*, argued that the Applicants, for their own negligence in filing the appeal within time prescribed under law, have leisurely consumed time to file the appeal at their own sweet will, after an inordinate delay. He has further argued that the Applicants have not shown any cause, much less a sufficient one, as provided under Section 5 of the Limitation Act. He also argued that it is settled position of law that sufficient cause is a condition precedent for making an application seeking condonation of delay and that, in case sufficient cause is not shown in the application, the delay in preferring the appeal cannot be condoned. The learned Senior Counsel further argued that the Applicants have failed to point out in their application any sufficient cause as defined under Section 5 of the Limitation Act, whereas they were under an obligation to explain each and every day's delay caused in preferring the appeal beyond the period of limitation. It is also submitted that the Applicants have failed to provide reasonable, satisfactory or even a proper explanation for seeking condonation of delay in filing the appeal. Mr Shah, finally, has prayed that the application be rejected.

07. Heard learned Counsel for the parties and perused the pleadings on record.

08. The Judgment, impugned in the appeal, was passed by the learned trial Court on 17th of September, 2019, whereas the appeal against the same was filed on 12th of April, 2022 and, as per the note of the Registry, there is a delay of 850 days in filing the appeal. Though, the

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Applicants have stated that they had taken time in seeking sanction from the Department of Law, Justice & Parliamentary Affairs to file the appeal and also consumed some time in the process of drafting the appeal after collection of the relevant record from the learned trial Court and the subordinate offices, however, they have not explained as to how they had delayed the matter after obtaining of sanction in this behalf, which was granted on 3rd of January, 2022 by the Department of Law, Justice & Parliamentary Affairs. The Applicants have leisurely filed this appeal simply for the reason that since the Applicants are official functionaries of the State (now UT), they may be permitted to file the appeal after condoning the delay on their asking, for the general reason pleaded that in official matters the decisions are taken at various levels and by different persons, as such, it is a time-consuming process.

09. The Hon'ble Supreme Court in case titled '**Union of India v. Central Tibetan Schools Administration & Ors.**', bearing SLP (Civil) Diary Nos. 19846/2020, decided on 4th of February, 2021, has observed as under:

"We have repeatedly been counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Government and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP (C) Diary No. 9217/2020 decided on 15.10.2010] and the State of Odisha & Ors. v. Sunanda Mahakuda [SLP (C) Diary No. 22605/2020 decided on 11.01.2021].

10. A Division Bench of this Court, also, while following the aforesaid Judgment of the Hon'ble Apex Court, in case titled '**State of Jammu & Kashmir v. Anu Bhogal**', reported as '**2023 (1) SLJ 56**', has clearly held that it is trite that the delay in filing of the appeal, after the statutory period of limitation prescribed, cannot be condoned as a matter of course and that the party seeking condonation of delay was required to satisfy the Court that there was sufficient cause justifying condonation of delay. The learned Division Bench also observed that merely saying that the delay was on account of procedural aspects is not a sufficient cause to condone the delay.

11. Reverting to the facts of the present case in the perspective of the aforesaid settled legal position on the subject, the Applicants have approached this Court by filing the appeal, along with this application for condonation of delay, after an inordinate delay of 850 days, which is a long period of time spanning almost for 2 and ½ years. The Applicants have not taken pains to file this appeal within time.

12. The submission of the learned Counsel for the Applicants that the delay is required to be condoned as there is miscarriage of justice in granting the compensation to the Plaintiff/ Non-Applicant herein for the death of her husband in an electrical accident, as there was no negligence on the part of the Applicants/ Defendants. For this limited purpose, I have perused the impugned Judgment passed by the learned trial Court, whereby just an amount of Rs.5.00 lacs has been granted as lumpsum amount in favour of the Non-Applicant as Plaintiff for the death of her husband, who was stated to be the only earning hand in her family and was aged just about 40 years. The statements of the witnesses examined by the Applicants, as Defendants, do not suggest in any manner that the electrocution had not taken place. The statement of DW-Ghulam Rasool Khan, who was Junior Engineer of the local area, is relevant who had stated that one person had died because of electricity line had fallen down near the transformer, therefore, this is sufficient to show the negligence of the Applicants in not

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maintaining the wires/ lines, thereby causing threat to lives of the citizens. Therefore, on perusal of the Judgment impugned, there does not seem to be any such case that can be bracketed into the phrase “miscarriage of justice”, as projected by the learned Additional Advocate General.

13. For the foregoing reasons and having regard to the mandate of law on the subject, as discussed hereinabove, the inordinate and unexplained delay of 850 days in filing of the appeal cannot be condoned, for no sufficient cause or plausible explanation. That being so, this application seeking condonation of delay is, thus, rejected. As a corollary thereto, the main appeal shall also stand **dismissed**, along with the connected CM(s). Interim direction(s), if any subsisting as on date, shall stand vacated.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

December 22nd, 2023

“TAHIR”

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| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reporting? | Yes. |