

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 835/2018

Nisar Ahmad Zargar

...Petitioner(s)/Appellant(s)

Through: Mr. Kaiser Ali, Adv.

Vs.

Chairman J&K Special Tribunal & Ors.

...Respondent(s)

Through: Mr. Rais-ud-Din Ganai, Dy. AG

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

ORDER

18.12.2023

The present petition has been filed by the petitioner who is aggrieved by the order dated 16.04.2018 for restoration of the appeal filed by him being STS/2015/18 titled Nisar Ahmad Zargar vs. Srinagar Municipal Corporation & Ors. The application for condonation of delay and restoration of the appeal was dismissed. The appeal of the petitioner was dismissed on 17.05.2017. The ground taken by him in his application for restoration is that his mother who was suffering from liver disease was being taken care of by the petitioner and that she passed away on 25.02.2017. Learned tribunal dismissed his application on the ground that the appeal was taken up for hearing and dismissed three months after the passing away of his mother and therefore, the plea taken by the appellant that he could not pursue the appeal on account of the illness of his mother, appeared untenable to the tribunal which dismissed the appeal.

2. Learned counsel for the respondents-State submits that the order passed by the learned Tribunal is not perverse and therefore does not call for any inference by this Court in exercise of its jurisdiction under Article 227. He further submits that the reasoning given by the learned Tribunal is plausible as the mother of the petitioner had passed away

- three months before the appeal was taken up for hearing and therefore there was concealment on the part of the petitioner.
3. Annexure-G is the application filed by the petitioner before the tribunal for restoration of the appeal. Paragraph No. 2 of the said application clearly discloses that his mother was diagnosed with a liver disease on account of which the petitioner could not pursue the appeal before the tribunal as he was looking after his mother. He further averred in the same paragraph that on account of his pre-occupation with the health of his mother, he was unable to communicate and effectively instruct his counsel who is stated to have abandoned the appeal before the tribunal. The petitioner has also annexed a copy of the death certificate of his mother which reflects that his mother passed away in February 2017. In paragraph No. 4 of the application, it is averred by the petitioner that after the passing of his mother, he could not reconcile the loss for a considerable period of time and, therefore, failed keep track of the case as losing his mother was the biggest tragedy in the life of the petitioner.
 4. It is apparent from the impugned order that the learned tribunal has not considered the human aspect in this case. The averments in the application for restoration itself discloses that the date of his mother passing away was February 2017 which is supported by a death certificate filed as Annexure accompanying the application showed that the petitioner had no intention for concealing anything. Concealment occurs when a party seeking a particular relief does not disclose facts germane to the cause and relief claimed and which is disclosed by the adverse party.
 5. In this particular case, the impugned order itself reflects that the grounds of dismissal are based upon the averments made in the application for restoration itself.
 6. Learned tribunal however did not take into consideration that once a close relation, more-so a mother passes away, the life of a litigant actually does fall into disarray for a while. So the contention of the petitioner in the application that he had specifically averred that he was unable to reconcile to the situation for nearly three months, during which time, the appeal was dismissed for want of prosecution, is not

an unreasonable contention and the learned tribunal ought to have taken the same into account. Therefore, this Court set-aside the impugned order and remands the matter to the tribunal for consideration afresh of the application for restoration by taking into consideration the aspect that have been stated in this order.

7. Petition stands finally disposed of.
8. The matter be taken up earliest by the learned tribunal. Till this application for restoration of the appeal is decided by the learned tribunal, interim protection granted by this Court shall continue.

SRINAGAR:
18.12.2023
Altaf

(ATUL SREEDHARAN)
JUDGE

