

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) 186/2023
CM(5022/2023)

Abdul Qayoom Mir, Age 65 years
S/o Late Amir Ud Din
R/o: Shaheed Gunj, Srinagar near
Police station Shaheed Gung.

...Petitioner(s)

Through: Mr. I.A. Sofi, Advocate

Vs.

Syed Mushtaq Ahmad Bukhari.
S/o Syed Abdul Rehman Bukhari
R/o Shaheed Gunj Srinagar.
At present Chanpora School Lane, Srinagar.

...Respondent(s)

Through: Mr. Gazanfar Ali, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
18.12.2023

ORAL:

1. The petitioner invokes supervisory jurisdiction of this Court vested by Article 227 of the Constitution of India, to assail an order dated 15th July, 2023, passed by the Court of 1st Additional Munsiff, Srinagar [“the Trial Court”], in a civil suit titled “*Syed Mushtaq Ahmad Bukhari Vs. Abdul Qayoom Mir*”, whereby, the application filed by the petitioner for producing fresh affidavits by way of evidence has been rejected.

2. Briefly, stated the facts leading to the filing of instant petition are that the respondent filed a suit for eviction against the petitioner in the year 2006. After the evidence of the respondent [“the plaintiff in the suit”] was

closed, the petitioner herein [“the defendant in the suit”] was called upon to lead his evidence.

3. In the year 2013, the petitioner filed affidavits of three witnesses by way of evidence. The aforesaid witnesses were not produced for cross examination for almost five years and the suit was successfully protracted. On 20th August, 2018, the petitioner moved an application before the Trial Court seeking permission to file fresh affidavits on the ground that in the earlier affidavits filed by the witnesses there were some mistakes committed by the counsel representing the petitioner earlier. The application was considered by the Trial Court and the same came to be rejected vide order dated 30th March, 2019.

4. This order of the Trial Court was challenged by the petitioner in OWP No. 514/2019. The writ petition was allowed and the Trial Court was directed to reconsider the application of the petitioner. This is how the application was considered by the Trial Court afresh. The Trial Court has taken note of the fact that there has been consistent effort on the part of the petitioner (‘defendant’) to protract the proceedings on one pretext or another. The Trial Court has also taken note of the fact that though affidavit by way of evidence were filed by the petitioner in the year 2013, yet no immediate steps were taken to file additional affidavits or corrected affidavits. It is only after the petitioner succeeded in protracting the trial for almost five years, it occurred to the petitioner to file an application seeking permission of the court to file fresh affidavits on the pretext that earlier counsel had not been diligent in drafting the earlier affidavits. This plea has not been accepted by the Trial Court and, therefore, the application of the petitioner has been rejected in terms of the impugned order.

5. Having heard learned counsel for the parties and perused the material on record, I am in full agreement with the reasoning given by the Trial Court to reject the application. This is a suit for eviction and is pending since November, 2006, i.e., for the last seventeen years and the petitioner ('defendant') is yet to lead his evidence. As is rightly observed by the Trial Court that the affidavits by way of evidence were filed by the petitioner ('defendant') in the year 2013, and no immediate steps were taken to file additional/fresh affidavits if these were so required.

6. Had the petitioner been bonafide in his submission, he could not have waited for five years to come up with an application. It is indeed a ploy devised by the petitioner to unnecessarily protract the disposal of the suit. The petitioner being a tenant in possession gains every day the suit is delayed. I have gone through the application filed by the petitioner and the findings of fact returned by the Trial Court, while passing the impugned order and I am of the considered opinion that the explanation tendered by the petitioner that the affidavits in evidence were not drafted by the learned counsel representing the petitioner diligently is not worthy of acceptance. The petitioner has miserably failed to explain the gap of five years in taking a decision with regard to the filing of the application for seeking permission to file additional/fresh evidence.

7. For the forgoing reasons, I see no reason or justification to interfere with the otherwise well reasoned order passed by the Trial Court. This petition is found without any merit and the same is, accordingly, **dismissed**.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

18.12.2023

"Mir Arif"