

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

**APCIV No. 103/2009
IA No. 1/2010**

c/w

**CFA No. 23/2009
IA No. 44/2009**

**CONC No. 262/2009
CONC No. 218/2018
CM No. 1343/2020**

CR No. 28/2024

Kartar Singh Balwal & Ors.

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

Through: Mr. R.K.S. Thakur, Advocate for
applicant in CR No. 28/2024
None for the appellants/applicants in
APCIV No. 103/2009, CONC No.
262/2009 and CFA No. 23/2009,
Mr. R.S. Thakur, Sr. Advocate with
Mr. Vasharan Thakur, Advocate for
applicants in CONC No. 218/2018

Vs

Tirath Kumar & Ors.

..... Respondent(s)

Through: Mr. Vikas Mangotra, Advocate for R-1
in APCIV No. 103/2009, CONC No.
262/2009 and CFA No. 23/2009
Mr. R.S. Thakur, Sr. Advocate with
Mr. Vasharan Thakur, Advocate in
CFA No. 23/2009 for R-2 to 5 and in
CR No. 28/2024 for all the
respondents.

**CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER
(14.05.2025)**

01. Against a judgment and decree dated 17.03.2005 passed by the court of 2nd Additional District Judge, Jammu, in a civil suit on file No. 53/COS of 1999 titled “**Jagdish Raj Gupta & Ors vs. Tirath Kumar Bhagat & Anr.**” non-parties to the civil suit felt aggrieved and, therefore, intended to challenge the said judgment and decree dated 17.03.2005 which led to institution of an application seeking leave to appeal.
02. This application came to be filed on 12.10.2009 registered as APCIV No. 103/2009 accompanied with proposed civil first appeal being CFA No. 23/2009.
03. The applicants/appellants are six in numbers. Incidentally, the applicant No. 6-Shiv Shakti Sain Sat Guru Kabir Trust Sarvedharm Welfare Trust was named as the defendant No. 2 in the civil suit on file No. 53/COS in which the judgment and decree dated 17.03.2005 came to be passed meaning thereby the applicant/appellant No. 6 ought not to have joined the rest of the five applicants/appellants in seeking the leave to appeal, but the purported reason for the applicant/appellant No. 6-Shiv Shakti Sain Sat Guru Kabir Trust Sarvedharm Welfare Trust, to join the five applicants/appellants was that this time applicant/appellant No. 6 was purportedly being

represented by one Inayat Ali Bati claiming to be the General Secretary.

- 04.** As the filing of the proposed appeal was beyond period of limitation, as such, along with APCIV No. 103/2009 seeking leave to appeal, application bearing CONC No. 262/2009 seeking condonation of appeal came to be filed along.
- 05.** By virtue of an order dated 03.10.2018, application bearing CONC No. 262/2009 along with APCIV No. 103/2009 came to be allowed resulting in grant of leave in favour of the applicants/appellants to maintain civil first appeal bearing No. CFA No. 23/2009, in which notice came to be issued to the respondents.
- 06.** Order dated 03.10.2018 so condoning the delay in seeking leave to appeal and also allowing application bearing APCIV No. 103/2009 granting leave to file the appeal, came to be challenged by the non-applicant/respondent No. 2-Jagdish Raj in LPA No. 215/2018 which resulted in passing of an order dated 28.03.2023 setting aside the order dated 03.10.2018 and remanding the matter back to the learned Single Judge for deciding the said two applications i.e. condonation of delay application bearing CONC No. 262/2009 and

APCIV No. 103/2009 afresh and this is how the matter is arrested at this stage of the case.

- 07.** Before the outcome of LPA No. 215/2018 in terms of order dated 28.03.2023, the non-applicant No. 2-Jagdish Raj, non-applicant No. 3-Rajinder Kumar, non-applicant No. 4-Veenu Gupta and non-applicant No. 5-Rekha Gupta, had come forward with an application for seeking review of the order dated 03.10.2018 which review being time barred was accompanied with condonation of delay application bearing CONC No. 218/2018.
- 08.** In view of the outcome of LPA No. 215/2018, the condonation of delay application CONC No. 218/2018 is rendered infructuous and, as such, dismissed.
- 09.** In the meantime, the non-applicant/respondent No. 1-Tirath Kumar Bhagat and Shiv Shakti Sain Sat Guru Kabir Bir Sarva Dharma Welfare Trust, acting through non-applicant/respondent No. 1-Tirath Kumar Bhagat came forward with a civil revision petition bearing CR No. 28/2024 filed on 09.05.2024 against an order dated 29.04.2024 passed by the court of 1st Additional District Judge, Jammu as an executing court seized of execution of decree dated 17.03.2005.
- 10.** There is no appearance on behalf of the applicants/prospective appellants. Therefore, APCIV No.

103/2009 along with condonation of delay application bearing CONC No. 262/2009, are hereby **dismissed for non-prosecution** and consequently, CFA No. 23/2009 which is yet to come on record as an admitted civil first appeal also to suffer dismissal because of non-grant of appeal to leave in favour of the applicants/appellants in the face of dismissal of their application bearing APCIV No. 103/2009 and CONC No. 262/2009 for non-prosecution.

11. Mr. R.K.S. Thakur, and Mr. Parshotam Lal, learned Advocates for the petitioners-Tirath Kumar Bhagat and another in CR No. 28/2024, submit that the case is to be argued by learned Senior Advocate Mr. O.P. Thakur, who is reported to be unwell, therefore, an adjournment is being sought on that ground. Adjourned, as prayed for.
12. List CR No. 28/2024 on **02.07.2025**.

(RAHUL BHARTI)
JUDGE

JAMMU
14.05.2025
SUNIL