

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

Case No.:- CR No. 29/2024
CM Nos. 2684/2024 & 2685/2024

1. Abdul Qayoom aged 82 years
2. Abdul Latief aged 75 years
Sons of Late Abdul Aziz
3. Saleema Banoo aged 70 years
4. Misra Begum aged 72 years
Both daughters of Abdul Aziz
All residents of Nagar Bhaderwah District Doda.

.....Petitioner(s)

Through: Mr. A.K. Shan, Advocate.

Vs

1. Pushpa Kak W/o Late Suresh Kumar
2. Ram Jee Kak S/o Late Suresh Kumar
Both Residents of Ghata Bhaderwah.
3. Shikha Kak W/o Rashi Bhatt R/o Subash Nagar, Jammu.
4. Deepa Kak W/o Vishu Matoo R/o Pamposh Colony, Jammu.

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
03.06.2025

1. Heard Mr. A.K. Shan, learned counsel for the petitioners.
2. A civil suit on file No. 110/Dewani and 23/Dewani bearing dates of institution as 10.04.1990 and 24.07.2016 came to be commenced by one Suresh Kumar, the predecessor-in-interest of the present respondents, against the four defendants, who are the petitioners herein.

3. The civil suit so commenced by Suresh Kumar for eviction as well as for recovery of an amount of Rs. 3,000/- (Rupees three thousand) related to the suit land comprising khasra No. 3955/962 measuring 6 kanals situated in village Nagar, Bhaderwah.
4. In the said suit, it is an admitted fact that the four defendants, i.e. the petitioners herein, had entered appearance by engaging a counsel. The first counsel to be engaged by the petitioners to represent them in the civil suit was Advocate Mr. Abdul Qayoom.
5. It is stated that the said Advocate Mr. Abdul Qayoom expired which led the petitioners, as defendants, to engage Advocate Mr. Chander Kant Gupta who was entrusted with the brief by the petitioners to contest the civil suit of said Suresh Kumar. It is from this stage onwards the petitioners relieved themselves from the responsibility of taking care of prosecution of their case in defense in the civil suit.
6. The civil suit came to be decreed by the trial court by virtue of a judgment and decree dated 31.05.2017. The decree was passed ex parte as the petitioners, being the defendants, had absented in the course of proceedings of the civil suit and thus, were proceeded ex parte.

7. As per the petitioners, they came to learn about existence of a decree dated 31.05.2017 passed by the court of Sub Judge, Bhaderwah in a civil suit filed by Suresh Kumar against them only when execution proceedings came to be initiated and thus, the petitioners ventured to prefer a civil 1st appeal under section 96 of the Jammu and Kashmir Code of Civil Procedure, Svt., 1977 accompanied with an application for condonation of delay filed before the court of learned Principal District Judge, Bhaderwah.
8. In the condonation of delay application, the petitioners came up with a story to tell that firstly Advocate Mr. Chander Kant Gupta let them down in the course of conduct of proceedings in the civil suit. Thereafter, Advocate Mr. Rama Kant Gupta also let them down in the matter of not acting with due dispatch & diligence in preferring civil 1st appeal against the decree though time barred and that only when Advocate Mr. M.A. Wani came to be contacted by the petitioners after receiving the documents from them that the petitioners came to prefer the time barred appeal accompanying application for condonation of delay.
9. With this factual narrative the petitioners expected the learned Principal District Judge, Bhaderwah to condone the

delay of 1095 days in the matter of filing of the civil 1st appeal.

10. The institution of the condonation of delay application came to take place on 23.07.2022 whereas the date of decree is 31.05.2017.
11. Even if the petitioners were to be accommodated by reference to the Covid period, the appeal preferred by the petitioners was still suffering delay of good number of days for which they were to account for and their excuse was that Advocate Mr. Rama Kant Gupta let them down after they had delivered him the certified copy of the impugned judgment and decree and also other connected case papers and he had failed to come forward with the institution of any civil 1st appeal accompanied with condonation of delay application. The petitioners have stated in their petition that Advocate Mr. Rama Kant Gupta ditched them by not filing the appeal as assured by him.
12. The court of learned Principal District Judge, Bhaderwah was not convinced of the pretext so set up by the petitioners in seeking condonation of delay and for the reasoning set out in his order dated 23.07.2022, the application for condonation of delay preferred by the petitioners came to be dismissed and that is how the petitioners came to land

before this Court through the medium of the present civil revision petition under section 115 of the Jammu and Kashmir Code of Civil Procedure, Svt. 1977.

13. In the present revision petition, Mr. A.K. Shan, learned counsel arguing for the petitioners submits that the appellate court of learned Principal District Judge, Bhaderwah ignored to take notice of the judgment of the High Court of Gujarat in the case of **“Nimesh Dilipbhai Brahmbhatt vs. Hitesh Jayantilal Patel”** reported in **2022 Legal Eagle (GUJ) 597** pronounced on 02.05.2022 according to which 3330 days of delay in filing the written statement came to be condoned by acknowledging the negligence of the counsel engaged by the defendants in the civil suit.
14. Mr. A.K. Shan, learned counsel arguing for the petitioners further refers to the judgment of the Hon’ble Supreme Court of India in the case of **“State of Haryana Vs. Chandra Mani and ors”** reported in **(1996) 3 SCC 132**.
15. In the aforesaid judgment of the Hon’ble Supreme Court of India so cited by Mr. A.K. Shan, the Hon’ble Supreme Court of India has dealt with the principle on which condonation of delay is supposed to take place. The principles come to the aid of a litigant who is a vigilant litigant and who while

acting at his or her own end has not defaulted in acting with due responsibility in terms of attending the litigation initiated by or against him/her.

16. In the present case, if left to believe the petitioners in a civil suit preferred against them, all of them expected Advocate Mr. Chander Kant Gupta to be even a witness on behalf of the petitioners to file written statement on his own without signatures of the petitioners, to cross-examine the witnesses on behalf of the petitioners, as defendants, on his own and the petitioners were only to be told at the fag end of the outcome of the civil suit.
17. The petitioners are four in number as defendants. The petitioners No. 3 and 4 are women and, therefore, can be expected not to visit court premises in connection with their representation in the civil suit but the petitioners No. 1 and 2, as being the defendants No. 1 and 2, are men who, at the relevant point of time, were young in their age and at least one of them was supposed to have been monitoring of the civil suit by staying and being in touch with the Advocate Chander Kant Gupta.
18. There is not even a whisper of line in the entire petition before this Court as well as in the case set up before the learned Principal District Judge, Bhandarwah that whether at

any point of time during the currency of the civil suit the two petitioners No. 1 and 2 ever visited Advocate Mr. Chander Kant Gupta to know from him the stage and status of the suit.

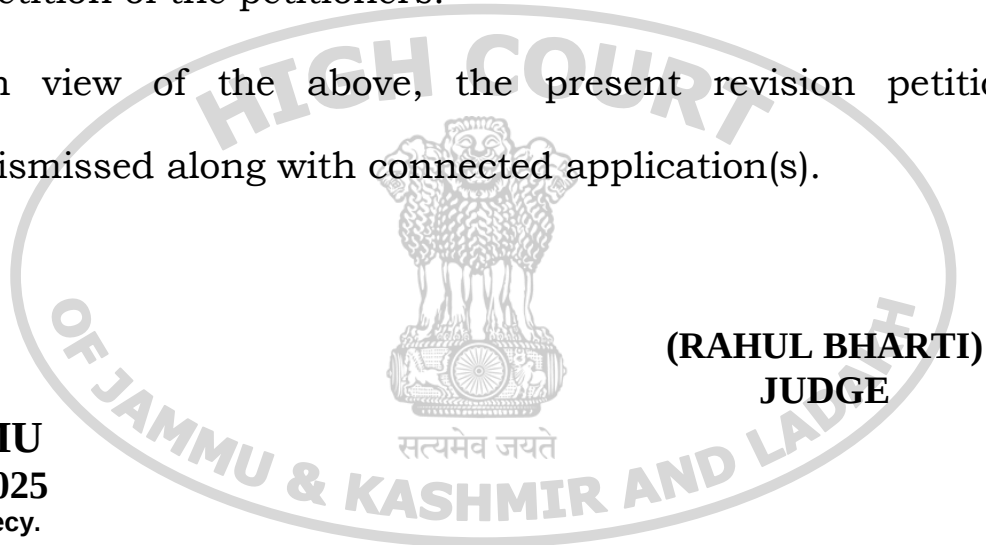
19. If the petitioners are caught in speaking false facts, then the said petitioners cannot be believed with rest of their story in the matter of seeking condonation of delay that Advocate Mr. Rama Kant Gupta also failed them and only Advocate Mr. M.A. Wani came to be their care taker in the case in filing the time barred appeal accompanied with condonation of delay.
20. Even Mr. M.A. Wani, Advocate seems to have done his home work in a half hearted manner without referring himself to the proceedings of the civil suit so as to quote as to at which stage the petitioners came to set ex parte so as to assure the appellate court of learned Principal District Judge, Bhadwerwah that from that particular stage of the civil suit the petitioners could be expected not to attend the court proceedings leaving it for the counsel engaged in the civil suit to carry forward the litigation to its logical end and that stage can be when a civil suit has matured to be in the stage of arguments. Advocate Mr. M.A. Wani also came up with

irresponsible averments without cross checking the same with the record of the civil suit.

21. Unfortunately, this Court is handicapped in referring itself to the record of the civil suit given the fact that the same came to be gutted in fire as has been observed by this Court in its order dated 05.06.2024 and, therefore, with whatsoever material is available on the record of this case, this Court has taken a call of dismissing the present revision petition of the petitioners.

22. In view of the above, the present revision petition is dismissed along with connected application(s).

JAMMU
03.06.2025
Naresh/Secy.



Whether order is reportable: Yes/No
Whether order is speaking: Yes/No