

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

MA No. 59/2025  
CM No. 6213/2025

Cav. No. 1581/2025

Anil Kumar Sharma & Ors.

.....Petitioner

Through: Mr. Narinder Kumar Attri, Advocate

Vs

Shanta Kumari & Ors.

.....Respondents

Through: Mr. Akshay Manhas, Advocate vice  
Mr. Arun Gandotra, Advocate for  
Caveator

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**  
**ORDER**  
**(15.10.2025)**

1. This is an appeal filed by the appellants against order dated 30.06.2025 passed by learned 2<sup>nd</sup> Additional District Judge, Jammu whereby application of appellants seeking restoration/readmission of appeal filed by them against the respondents has been dismissed.
2. Since respondent Nos. 1 and 2 are yet to be served in the main appeal pending before the appellate court, no notice is required to be issued to the said respondents.

3. Notice be issued to respondent No. 3. Mr. Akshay Manhas, Advocate appearing vice Mr. Arun Gandotra, Advocate, who is on caveat, accepts notice on behalf of respondent No. 3.
4. Heard learned counsel for the parties and perused record of the case.
5. It appears that the appellants have filed an appeal against judgment and decree dated 12.03.2016 passed by the Sub-Judge (City Judge), Jammu before the learned 2<sup>nd</sup> Additional District Judge, Jammu (hereinafter referred to be as 'appellate court'). It also appears that the said appeal was dismissed for non-prosecution on 19.01.2023 whereafter the appellants filed an application under Order 41 Rule 19 of the CPC seeking restoration/readmission of the appeal. The said application came to be filed on 16.02.2023.
6. In the application it was pleaded by the appellants that on the date when the appeal was dismissed for non-prosecution, the counsel for the appellants was busy in attending the cremation of one of his close relations as a result of which he was unable to attend the court. The application was supported by an affidavit of one of the appellants.
7. The learned appellate court vide impugned order dated 30.06.2025 has proceeded to dismiss the application of the

appellants primarily on the ground that conduct of the appellants in prosecuting the appeal has not been satisfactory. It has been noted by the learned appellate court that in the previous past also the appeal was dismissed for non-prosecution which came to be restored on 24.09.2019 and thereafter it has been dismissed for non-prosecution on 19.01.2023 second time. Learned appellate court has further observed that the appellants are under legal obligation to explain the sufficient cause for non-appearance since the date of restoration of the appeal on 24.09.2019 up to the date of its dismissal on 19.01.2023.

8. The provisions contained in Order 41 Rule 19 of the CPC govern the legal position as regards readmission of appeal dismissed in default. It reads as under :-

**“19. Readmission of appeal dismissed for default.** – Where an appeal is dismissed under Rule 11, sub-rule (2), or Rule 17 <sup>783</sup> [\*\*\*], the appellant may apply to the Appellate Court for the readmission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.”

9. From a plain reading of the aforesaid provision, it is clear that an appellant seeking readmission of the appeal which has been dismissed for non-prosecution has to show that he was prevented by a sufficient cause from appearing when the appeal was called on for hearing. The law does not require an appellant should explain his non-appearance or his conduct prior to the date of dismissal of appeal for non-prosecution. The learned appellate court has fallen into a grave error of law by observing that in the application for restoration of the appeal, the appellants have not explained the sufficient cause for their non-appearance prior to 19.01.2023. The impugned order passed by the learned appellate court is, therefore, not sustainable in law.
10. Since appellants have demonstrated a sufficient cause for non-appearance of their counsel on 19.01.2023, the date when the appeal was dismissed for non-prosecution by stating that their counsel was busy in attending cremation of one of his close relations on the said date, the application for readmission of the appeal deserved to be allowed.
11. Accordingly, the impugned order passed by the learned appellate court is set-aside and the appeal filed by the appellants before the learned appellate court is readmitted/restored subject to deposition of Rs. 500/- as

costs with the Advocates' Welfare Funds within a period of 10 days from today.

12. The parties are directed to appear before the learned appellate court on 07.11.2025.
13. A copy of this order be sent to the learned appellate court for information with a direction to proceed further in the matter in accordance with law.

**(SANJAY DHAR)**  
**JUDGE**

**JAMMU**  
**15.10.2025**  
**SUNIL**

