

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

Case: MA No. 38/2024

Mohd. Amin Bader and another

..... Petitioner(s)

Through :- Mr. P. N. Raina, Sr. Adv. with
Mr. J. A. Hamal, Adv.

vs

Mohan Lal Raina and others

.....Respondent(s)

Through :- Mr. Aseem Sawhney, Sr. Adv. with
Mr. Mohd. Shadab Malik, Adv. for Nos. 1 to 4

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

16.09.2025

1. The instant appeal has been preferred under Order 43 Rule1(t) of the Code of Civil Procedure(CPC) against the order/judgment of learned 1st Additional District Sessions Judge, Jammu dated 02.09.2024 passed in File No. 72/2023, Civil Misc. IA/1/2023 titled as Mohan Lal Raina and others vs U.T. of J&K and others, whereunder the appellants' application filed under Order 41 Rule 21 of the CPC has been dismissed. The appellants also seek setting aside the same and allowing the appellants to contest the appeal on merits.

2. It is specific case of the appellants that initially a suit was preferred by Smt. Mughlani, predecessor-in-interest of the respondents seeking reliefs against the appellants, which suit was heard by the learned Sub Judge, Jammu (for short the trial court) and the same was dismissed vide order dated 31.01.2017.

3. Feeling aggrieved, the respondents had filed an appeal against order of the trial court dated 31.01.2017(supra), before the learned 1st Additional District Judge, Jammu(for short the appellate court), which was heard and decided *ex parte* by the appellate court vide order dated 17.06.2023 against the appellants and set aside the order/judgment of the trial court dated 31.01.2017.

4. It is submitted that the appellants herein had been set *ex parte* while deciding the appeal of the respondents. According to the learned counsel for the appellants, without summoning of the appellants and without letting the appellants to have any knowledge about the filing of the appeal and its pendency and consequently without allowing them any opportunity to contest the appeal, the appellants were set *ex parte* and an *ex parte* judgment and decree were passed by the appellate court.

5. The record further reveals that the appellants after came to know of the *ex parte* judgment and decree dated 17.06.2023, filed an application before the said court for rehearing the appeal by pleading that they had no notice of filing of the appeal or its process in the court and thus, had been prevented from defending the judgment and decree they had earned from the learned trial court. However, learned appellate court has dismissed the said application vide order/judgment dated 02.09.2024, which is impugned in this appeal and since the prayer of the appellants was rejected by the learned appellate court vide order/judgment impugned, the instant appeal has been preferred.

6. The appellants have preferred the appeal on the ground that the order/judgment impugned is liable to be set aside as it is not the intention nor the purpose of law to stop a litigant from seeking rehearing of his grievance before a court of law as it is specific case of the appellants before the learned

appellate court that they did not have knowledge of even filing of the appeal filed by the respondents, much less its pendency nor they were summoned in the appeal.

7. It is further contended by the appellants that in light of the record, no summons were ever issued nor any service was ever effected by the learned appellate court on the appellants. It has also been contended in the aforesaid appeal that the learned appellate court has not correctly appreciated the important fact that since the appellants had earned a judgment in their favour and that too relating to an immovable property which had then become a residential house on the spot.

8. It has also been projected that allowing rehearing of the appeal would not have meant any material injustice to the other party (respondents herein) as it would have best resulted in a contested matter being decided on merits.

9. In the aforesaid backdrop and also in light of the substantial questions of law raised in the instant appeal, a prayer has been made for setting aside of the impugned order and consequently issuance of a direction for rehearing of the appeal preferred by the respondents before the learned appellate court on merits.

10. With the consent of Mr. P. N. Raina, learned senior counsel appearing for the appellants and also in light of no objection from Mr. Aseem Kumar Sawhney, learned senior counsel appearing on behalf of the private respondents, the instant appeal was heard for final disposal. Since the only grievance which has been projected in the instant appeal pertains to the setting aside of order of the appellate court dated 02.09.2024 and consequently, a prayer has been made seeking a direction for rehearing of the appeal decided

by the appellate court in *ex parte*, on merits, this Court is of the considered view that no grave prejudice will be caused to either of the parties in case of the prayer of the appellants is allowed and the issue, which is pending since long, will ultimately stand clinched, if the matter is heard expeditiously by the learned appellate court by providing an opportunity of hearing to both the parties while deciding the appeal on merits.

11. For all what has been said, analyzed and discussed above and with the consent of learned counsel for the parties, the instant appeal is allowed and the order impugned dated 02.09.2024 passed by the learned appellate court is set aside and consequently as a necessary corollary order passed by the learned appellate court dated 17.06.2023 is also set aside. The matter is accordingly, remanded back to the learned appellate court (1st Additional District Judge, Jammu) for rehearing of the appeal on merits after providing an opportunity of being heard to both the parties including the appellants herein.

12. It is expected that the learned appellate court shall decide the said appeal on merits expeditiously preferably within a period of two months from today. Both the parties shall appear before the appellate court on 29.09.2025.

13. Accordingly, the appeal is disposed of in the aforesaid terms.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
16.09.2025
Rakesh

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