

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

*Reserved on : 08.10.2025
Pronounced on : 10.10.2025*

**CM(M) No.280/2025
CM No. 6446/2025**

CH Thoru Din (Died) through LRs

1. Shabeel Ahmed, age 42 years
2. Shakeel Ahmed, age 44 years, Sons
of late Sh. Thoru Din
3. Nazma Akhter, age 40 years,
4. Rubeena Akhtar, age 36 years,
5. Zareena Akhter, age 38 years,
Daughters of late Sh. Thoru Din
6. Sharifan Begum, age 57 years, Wife
of late Sh. Thoru Din
7. Ch. Mukhtiar Ali, age 75 years, Son
of late Sh. Bashir Ahmed
8. Zafar Ali, 30 years, son of late Abdul
Rashid
9. Asif Ali, age 25 years, son of late Sh.
Showkat Ali,
All residents of Village Chak Sajjan,
Tehsil and District Kathua.

..... Petitioner/Appellant(s)

Through :- Mr. S. M. Chowdhary, Sr. Advocate with
Mr. Bilal A. Chowdhary, Advocate

Vs

1. The Union Territory of Jammu &
Kashmir through Commissioner/
Secretary Depart of Revenue,
Civil Secretariat at
Jammu/Srinagar.
2. The Deputy Commissioner
(District Collector), Kathua.
3. The Tehsildar, Kathua.

.....Respondents

Through :- Mrs. Monika Kohli, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

10.10.2025

01. The petitioners through the medium of instant petition seek the supervisory jurisdiction of this Hon'ble Court to set aside the order dated 23.07.2025, whereby the learned trial court dismissed the petitioners' application for restoration of the suit titled "Shabeel Ahmed & Ors. vs. The UT of J&K & Ors." The petitioners also challenge the order dated 08.01.2024 passed by the same court, which dismissed the original suit for non-prosecution.
02. The suit was initially filed in September 2020 by the predecessor-in-interest of petitioners No. 1 to 5 and husband of petitioner No. 6, namely Thoru Din, along with petitioners No. 7 to 9, seeking permanent prohibitory injunction restraining the respondents from interfering with their peaceful possession of a 4-kanal land parcel situated at Village Chak Sajjan, Tehsil and District Kathua. The learned trial court directed the parties to maintain status quo with respect to the suit land.
03. Further, during the pendency of the suit, the predecessor-in-interest, Thoru Din, died on 25.06.2023. Following his demise, the suit was dismissed on 08.01.2024 for non-prosecution due to non-appearance of the petitioners and their counsel. The petitioners, as legal representatives (LRs) of the deceased, had no knowledge of the suit's pendency or its dismissal until 23.07.2024, when the Patwari Halq informed them about

the same. The petitioners promptly engaged new counsel and obtained a copy of the dismissal order on 24.07.2024.

04. Thereafter, on 30.07.2024, the petitioners filed an application for restoration of the suit along with a condonation of delay application before the learned trial court. However, on 23.07.2025, the learned trial court dismissed the restoration application citing delay, resulting in dismissal of the suit. The petitioners contend that the impugned orders are legally unsustainable and have caused miscarriage of justice.

05. It is submitted by Mr. S.M Chowdhary learned senior counsel appearing on behalf of the petitioners that the learned trial court failed to apply its mind properly while dismissing the condonation of delay application and the court's orders exhibit contradictions regarding the hearing dates and procedural steps, indicating a lack of clarity and erroneous findings.

06. Furthermore, according to the learned counsel, the trial court misconstrued the legal issues involved and adopted an improper approach in addressing the matter of delay. In doing so, it committed a grave dereliction of duty and violated fundamental principles of law and justice by dismissing the petitioners' suit without proper consideration of the facts and applicable legal provisions.

07. It is further submitted that the judgments relied upon by the learned trial court to reject the condonation of delay application are distinguishable and not applicable to the petitioners' case. The delay in the cited cases ranged from 5 years 10 months to 12 years, whereas the delay in the instant case was only 174 days, which is reasonable and liable to be condoned in the interest of justice.

08. It is also submitted that the petitioners' counsel was unable to bring these authoritative decisions to the trial court's notice during the proceedings, which led to the impugned orders being passed without due consideration.
09. The petitioners have no other equally efficacious remedy except to invoke this Court's jurisdiction under Article 227 to set aside the impugned orders and remand the matter for restoration of the suit and further appropriate proceedings.
10. Heard learned counsel for the petitioners and perused the record.
11. The challenge pertains to the dismissal of the restoration application and rejection of the accompanying application for condonation of delay. The principal contention advanced by learned senior counsel for the petitioners is that the trial court failed to properly appreciate the facts and law, and that the delay of 174 days in filing the restoration application was neither intentional nor deliberate, but occurred due to the death of the original plaintiff and lack of knowledge on the part of his legal representatives.
12. Before advertng to the merits, it is well settled that the supervisory jurisdiction under Article 227 is limited in scope. This Court does not sit as an appellate forum over subordinate courts, nor does it re-appreciate evidence or substitute its conclusions for those of the trial court unless there is manifest perversity, gross irregularity, or patent illegality resulting in a miscarriage of justice as has held in ***Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil*, (2010) 8 SCC 329; Radhey Shyam v. Chhabi Nath**, (2015) 5 SCC 423, wherein it was held as under;

“The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.”

13. In a recent judgment passed by the Hon'ble Supreme Court in case titled

K. Valarmathi and Others v. Kumaresan 2025 SCC OnLine SC 985, it

was held as under

“8. Power of the High Court under Article 227 is supervisory and is exercised to ensure courts and tribunals under its supervision act within the limits of their jurisdiction conferred by law. This power is to be sparingly exercised in cases where errors are apparent on the face of record, occasioning grave injustice by the court or tribunal assuming jurisdiction which it does not have, failing to exercise jurisdiction which it does have, or exercising its jurisdiction in a perverse manner.

9. Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908⁵. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise of supervisory jurisdiction under Article 227.”

14. It is important to note that Order 9 Rule 4 of the Code of Civil Procedure (CPC) specifically deals with the restoration of a suit dismissed for default. The provision mandates that a suit dismissed for default can be restored if the plaintiff applies within thirty days from the date of

dismissal, providing a satisfactory explanation for the delay and demonstrating that the dismissal was due to mistake or inadvertence and that the suit has a prima facie case. The object of Order 9 Rule 4 CPC is to strike a balance between procedural discipline and the interests of justice. Restoration is an equitable remedy that requires the plaintiff to exhibit bona fide intentions and reasonable diligence in prosecuting the suit, failing which restoration cannot be granted. The limitation of thirty days is subject to condonation under Article 122 of the Limitation Act, which provides judicial discretion to condone delay for sufficient cause.

15. With a view to proceed further, this Court deems it proper to place reliance upon Hon'ble Apex Court judgment titled as ***Balwant Singh (Dead) v. Jagdish Singh And Others*** 2010 SCC (8) 68 wherein, it has been held as under;

“We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

16. From bare perusal of the impugned orders, it is apparently clear that the trial court considered the petitioners' explanation for the delay and recorded reasons for not finding it satisfactory. The learned trial court observed that despite the death of the original plaintiff on 25.06.2023, no steps were taken for substitution of legal representatives for over seven months. The plea of ignorance regarding the pendency of the suit was not found convincing, as the petitioners were closely related and had a common interest in the subject matter. The court also noted a pattern of repeated absence by the plaintiffs and their counsel prior to dismissal, indicating lack of diligence.

17. The trial court's finding that the petitioners failed to show "sufficient cause" under Section 5 of the Limitation Act cannot be termed perverse or unsustainable. While "sufficient cause" must be interpreted liberally to advance substantial justice, the applicant must still demonstrate bona fides and reasonable diligence. In the present case, the petitioners failed to satisfactorily explain the entire period of delay or show that they acted promptly after the cause for delay ceased.

18. Article 122 of the Limitation Act is instrumental in matters of restoration applications under Order 9 Rule 4 CPC. It empowers courts to condone delays beyond the prescribed period of thirty days if the applicant satisfies the court that the delay occurred due to "sufficient cause." The expression "sufficient cause" is interpreted liberally by courts to advance substantial justice, but it requires a credible explanation showing bona fide intent and reasonable diligence.

19. The learned counsel for the petitioners have relied upon the judgment passed by Hon'ble Apex Court in case titled **Rudaram v. Saroj Devi**

reported as **2021(1) ICC 885**, wherein the Hon'ble Apex Court has held that *“a delay of 176 days could not be termed inordinate, particularly since the matter pertained to a First Appeal where the appellants should have been afforded a fair opportunity to pursue their case. Accordingly, the impugned order of the High Court was set aside, the delay was condoned, and First Appeal No. 554 of 2016 was directed to be restored to its original number for decision on merits after hearing both parties.”*

20. Further the counsel has also placed reliance upon case titled as **Krisan Pal and Ors. v. The Commissioner, Rohtak Division, Rohtak and Ors.** **2021(1) ICC 934**, wherein the Hon'ble Apex Court has held that *“the appellant's Letters Patent Appeal No.407 of 2017 (0&M) arising out of C.W.P. No.7123 of 2011 was dismissed by the Division Bench of Punjab and Haryana High Court essentially on the ground of limitation holding that since the appellants have filed the appeal by 454 days delay, it is liable to be dismissed on the ground of limitation. It was held that the cause alleged by the appellants cannot be regarded as a sufficient cause to condone the delay. This order is challenged by the appellants in this appeal. Having heard learned counsel for the appellants and on perusal of the record of the case, we are inclined to allow the appeal and set aside the impugned order.”*

21. Both the judgments relied by the learned counsel for the petitioner are not applicable to the petitioners' case, as one pertains to proceedings under the Civil Procedure Code (CPC) and the other relates to Letters Patent Appeal (LPA) jurisdiction, which involve different procedural contexts and principles. The present case concerns restoration of a suit

and condonation of delay under Section 5 of the Limitation Act, and therefore, the reliance on these decisions is misplaced and does not support the petitioners' claim. The judgments cited are distinguishable and not applicable to the present case. In ***Rudaram v. Saroj Devi and Krisan Pal v. Commissioner*** (Supra), the delay was considered in the context of different facts and the courts found sufficient cause to condone the delay based on bona fide conduct and circumstances peculiar to those cases. In contrast, the petitioners here failed to demonstrate reasonable diligence or satisfactorily explain the entire period of delay, especially given the prolonged seven-month inaction following the death of the original plaintiff. Therefore, these precedents do not support the petitioners' claim for condonation of delay or restoration of the suit.

22. The argument that the trial court misapplied precedents or relied on distinguishable judgments is without merit. The fact that delay was condoned in other cases with longer durations does not ipso facto render the present reasoning erroneous. What matters is whether the explanation inspires confidence and reflects bona fide conduct, not the mere length of delay. The trial court was justified in evaluating the facts on their own merit.
23. The further contention that the outcome might have been different had certain judgments been cited before the trial court is equally untenable. Such a submission does not constitute a valid ground for interference under Article 227. The petitioners cannot be allowed to improve their case at this stage by relying on authorities admittedly not cited below. Supervisory jurisdiction is intended to correct jurisdictional or procedural

errors, not to re-argue matters on new legal grounds not urged before the trial court.

24. Before parting, it may also be noted that mere pendency of a meritorious claim is not sufficient for condonation unless the party seeking such indulgence demonstrates that they were reasonably vigilant. The burden lies on the applicant to explain each day of delay, especially in the context of restoration where delay follows dismissal for default. The petitioners' repeated absence from proceedings, coupled with their inaction despite having knowledge of the matter, clearly undermines their claim of having exercised due diligence.

25. In view of the above, no perversity, patent illegality, or miscarriage of justice is discernible in the impugned orders. The trial court exercised its discretion within the bounds of law, and this Court sees no reason to substitute its view merely because another interpretation may also be possible.

26. Accordingly, this Court is of the considered view that the petition lacks merit and the same is, therefore, liable to be dismissed.

27. The petition is accordingly ***dismissed*** in limine along with all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
10.10.2025
Riya Kochhar

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