

Serial No. 01

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

CM(M) No. 307/2025
CM No. 7259/2025

Usha Wazir & Ors.

.....Petitioner(s)

Through: Mr. G. S. Thakur, Advocate.

Vs

Gagan Jain

.....Respondent(s)

Through: Mr. Sunil Dutt Sharma, Advocate.

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

ORDER
(12.12.2025)

01. The petitioners are the successors-in-interest of original plaintiff-Wazir Kedarnath who actually instituted a civil suit for eviction from the demised shop in February, 2003 before the court of 3rd Additional Munsiff, Jammu.

02. During the pendency of said civil suit, the original plaintiff-Wazir Kedarnath expired resulting in his legal representatives, who are the petitioners herein, being brought on record to pursue the civil suit which ultimately resulted in a decree and judgment dated 30.04.2025 thereby directing vacation from the demised shop by the defendant/respondent herein. The pendency of the civil suit has lasted more than 20 years.

03. Against this said judgment/decreed, the defendant/judgment debtor/respondent herein has preferred a civil 1st appeal before the court of Additional District Judge, Jammu.

04. The institution of civil 1st appeal came to take place on 01.07.2025 but under a misconception that the institution of the civil 1st appeal was to be governed by the Limitation Act, 1963 instead of J&K Limitation Act, 1995 (1938 A.D.), the institution of the appeal by the defendant/judgment debtor/respondent was reckoned to be time barred for which the judgment debtor/respondent preferred an application on 09.10.2025 for condonation of delay by resorting to an abundant caution which application came to be allowed by 1st Appellate court of Additional District Judge, Jammu by virtue of an order dated 06.11.2025 against which the petitioners/decreed holders have come forward with the present petition.

05. As already observed that the institution of Civil 1st Appeal by the judgment debtor/respondent was to be governed under the J&K Limitation Act, 1995 (1938 A.D.) as coinciding with the institution of the civil 1st appeal under section 96 read with order 41 of Jammu & Kashmir Code of Civil Procedure, Svt. 1977 on the principle that right of appeal is born alongwith the institution of the suit which took place in 2003.

06. As the institution of suit in the present case had taken place under J&K Code of Civil Procedure, Svt. 1977 and so was to remain the origin of civil 1st appeal under section 96 and, therefore, the

limitation which was to govern the institution of the civil 1st appeal under J&K Code of Civil Procedure, Svt. 1977 was to be under J&K Limitation Act, 1995 (1938 A.D) and, therefore, there was no scope for any condonation of delay application being filed to be considered but nevertheless same having been done and disposed of in favour of the appellant/judgment debtor/respondent, this Court finds no scope for intervention in the matter and, therefore, the present petition is not entertained and, therefore, **dismissed**.

07. However, the appellate court of Additional District Judge, Jammu is directed to accord priority to the disposal of civil 1st appeal keeping in view that the original litigation lasted more than twenty (20) years and, therefore, hearing of the civil 1st appeal be accorded some priority as per docket load.

08. During the pendency of the Civil 1st Appeal, the execution of the impugned decree shall remain stayed.

(RAHUL BHARTI)
JUDGE

JAMMU
12.12.2025
Shivalee

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