

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

Case No.:- CM No. 3054/2025 in
CM(M) No. 9/2024

Subash Chander

.....Applicant(s)

Through: Mr. M.L. Gupta, Advocate.

Vs

Shashi Bhalla and ors

..... Respondent(s)

Through:

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

ORDER
02.06.2025

1. In a civil suit on file No. 5/Civil of 1997 titled “**Smt. Shashi Bala Vs. Inderjeet and ors**”, the court of learned Additional District Judge, Jammu came to pass a preliminary decree dated 30.11.2002 followed by a final decree of partition dated 26.08.2003 with respect to suit property of House No. 194-A Rehari Colony, Jammu.
2. In terms of execution proceedings initiated by reference to the aforesaid decree dated 26.08.2003, the executing court of learned Additional District Judge Jammu, by virtue of an order dated 15.12.2017, came to direct the suit house to be partitioned in terms of the decree dated 26.08.2003 to be

sold/put to auction and proceeds thereof to be divided equally amongst the four stakeholders i.e., the plaintiff and the defendants.

3. One of the defendants in the suit was Subash Chander, figuring as defendant No. 2, who came forward with an application before the learned Additional District Judge, Jammu on its file No. 5/Civil instituted on 05.10.2023 thereby seeking recall of the order dated 15.12.2017 in terms whereof the suit house was ordered to be sold/put to auction for generating sale proceeds to be distributed equally amongst the four stakeholders being parties to the suit for partition of the suit house.
4. The decree of partition is said to have attained finality.
5. The Court of learned Additional District Judge, Jammu, by virtue of an order dated 24.11.2023, came to reject the application of the defendant No. 2/judgment debtor No. 2-Subash Chander by holding that the defendant No. 2/judgment debtor No. 2-Subash Chander in his application seeking recall of the order dated 15.12.2017 has not disclosed the circumstances that kept him to withhold the facts as set out in the application for so long years with no explanation about the delay in approaching the court at the right time and, therefore, the application seeking recall of the order dated 15.12.2017

sought by the defendant No. 2/judgment debtor No. 2-Subash Chander, was dismissed.

6. It is against this order dated 24.11.2023 of the learned Additional District Judge, Jammu that the petitioner Subash Chander, as being the defendant No. 2/judgment debtor No. 2, came forward with a petition under article 227 of the Constitution of India bearing CM(M) No. 9/2024 wherein this Court, in terms of an order dated 31.01.2024, came to order the stay of operation of the impugned order dated 24.11.2023 which, in itself, was of no substantive nature except declining the prayer of the petitioner Subash Chander for recalling the order dated 15.12.2017.
7. The main petition CM(M) No. 9/2024 came to be dismissed for non-prosecution by this Court vide an order dated 14.05.2025 for seeking restoration of which the petitioner/applicant has come forward with an application-CM No. 3054/2025 instituted on 22.05.2025 which is within period of limitation.
8. Issue notice in this application-CM No. 3054/2025 to the non-applicants/respondents.
9. Accompanying the restoration application CM No. 3054/2025 is application-CM No. 3331/2025 seeking interim order/relief for staying the operation of the order dated 24.11.2023 passed by the court of learned Additional District Judge, Jammu.

10. Given the fact that the order dated 24.11.2023 was stayed by this Court in the main case in terms of the order dated 31.01.2024, operation of the order dated 24.11.2023 shall come again under stay with a clarification that the stay of operation of the order dated 24.11.2023 shall not be read by the executing court below to be counting as an order for stay of execution of the decree in terms of the order dated 15.12.2017 passed by the court of learned Additional District Judge, Jammu.
11. Applicant to furnish registered postal covers within a period of seven days for the service of the non-applicants whereupon Registrar Judicial, Jammu to issue notice to the respondents.
12. List again on 11.07.2025.
13. A copy of this order be forwarded to the learned Additional District Judge, Jammu for notice and to be taken on record of the proceedings, if any, relating to execution of the decree.

(RAHUL BHARTI)
JUDGE

JAMMU
02.06.2025
Naresh/Secy.