

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CR 1/2024 CM(123/2024)
CM(124/2024) CM(125/2024).

GHULAM NABI KUCHAY AND ORS.

...Petitioner(s)

Through: Mr. M. Ayoub Bhat, Advocate.
Ms. Mahjabeen, Advocate.

VERSUS

HILAL AHMAD KUCHAY AND ORS.

Through: Mr. Baber Bilal Malik, Advocate.

...Respondent(s)

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE.

ORDER
19.09.2025

01. A civil suit on **File No. 34/Civil of 1985** was commenced by a set of plaintiffs led by one- **Rasool** and three others against another set of defendants led by **Mohammad Kuchay** and others before the Court of Munsiff, Pulwama.
02. Said suit came to be decreed in terms of judgment and decree dated **15.04.1993** which is said to be based upon a purported compromise made between the plaintiffs and the defendants.
03. Out of array of the defendants in the said civil suit, two defendants namely, **Khaliq Kuchay** and **Aziz Kuchay** sons of **Ramzan Kuchay** filed an application on **File No. 19/Misc** on

22.06.2002 for seeking to set aside the *ex-parte* decree dated **15.04.1993**.

04. Said application of said two defendants came to be adjudicated on merits and dismissed vide an order dated **20.10.2018** by the Sub Judge, Pulwama to whom the matter had been later transferred.

05. In the intervening period, there was a round of litigation which reached this Court in the form of civil revisions about which the reference came to be made by the Court of learned Sub Judge, Pulwama in its order dated **20.10.2018**.

06. The order dated **20.10.2018** passed by the Court of Sub Judge, Pulwama dismissing the application under Order 9 Rule 13 of the Jammu and Kashmir Code of Civil Procedure Svt., 1977 being amenable to an appeal under Order 43 Rule 1 of the Jammu and Kashmir Code of Civil Procedure Svt., 1977 came to be assailed by the defendant- **Aziz Kuchay** joined by the legal representatives of co-defendant- **Khaliq Kuchay**.

07. These two applicants had filed an appeal under the Jammu and Kashmir Code of Civil Procedure Svt., 1977 before the Court of Principal District Judge, Pulwama on **File**

No. MP/16 on 16.03.2019 to assail order dated 20.10.2018.

08. However, the appeal was found to be time-barred, involving a delay of 58 days (i.e., 1 month and 18 days).

09. An application for condonation of delay had been made which came to be rejected by the Court of Principal District Judge, Pulwama, vide an order dated **04.09.2023**, holding therein that the applicants i.e., **Aziz Kuchay** and three others who are the legal representatives of **Khaliq Kuchay** are not able to convince the Court about the condonation of delay and consequently the appeal also stood dismissed.

10. The applicants relied upon the disturbed law and order situation in the area as the cause for the delay in filing the appeal within time as well as the illness of the applicant No. 1-**Aziz Kuchay**.

11. It is against the said outcome in the form of order dated **04.09.2023** of the Court of Principal District Judge, Pulwama that the present revision petition came to be preferred by the legal representatives of **Aziz Kuchay** joined by the legal representatives of **Khaliq Kuchay**. The original applicants in the application were only two i.e. **Khaliq Kuchay** and **Aziz Kuchay** sons of **Ramzan Kuchay**. Their

legal representatives appear in this revision petition as petitioners No. 1 to 4, 15, 16 and 17.

12. However, the rest of the petitioners are the legal representatives of the other defendants who at no point of time ever agitated any grievance against the *ex-parte* decree dated **15.04.1993** of the learned Munsiff Pulwama and are therefore deleted from the array of parties, not being necessary parties. They are to be read as proforma respondents, along with the proforma respondents numbered serially from No. 7 to 13 in the array of the respondents.

13. The contesting respondents in the present revision petition are respondents No. 1 to 6. Respondents No. 1 to 4 are the legal representatives of the plaintiff No. 1- **Rasool Kuchay** whereas the respondent No. 5 himself is plaintiff No. 2 and the respondent No. 6 is plaintiff No. 3 of said original suit.

14. In the revision petition, this Court is to examine the legality of the reasoning given by the Court of Principal District Judge, Pulwama in rejecting the application for condonation of delay filed by the four applicants.

15. Though the reasoning given by the Principal District Judge, Pulwama can be said to be probable one but then the

routine human life has contingencies which cannot be expected to be explained in a straitjacket manner, whereby a person who pleads illness as a cause contributing to the delay should be required to prove the same by medical evidence, particularly when the person is a villager who struggles with their recovery from the illness by grit and determination rather than first rushing to seek medical attention unless and until the illness is reportedly life-threatening.

16. This Court cannot lose sight of the fact that the applicant No. 1- **Aziz Kuchay** joined by his brother- **Khaliq Kuchay** being the original applicants had pursued their matter all along before the Court below till passing of order dated **20.10.2018**. Surely, Aziz Kuchay cannot be assumed to have invested his lifetime in pursuing the matter before the Court below just for the sake of losing right of appeal due to a delay which was not substantial but only 58 days, during which the infamous Pulwama bomb blast incident in February 2019 occurred, long disturbing life in the entire Kashmir Valley in particular very seriously.

17. However, if Pulwama incident would not have taken place, then perhaps the length of delay would have been

much shorter for which the explanation given was the illness of the applicant No. 1- **Aziz Kuchay**.

18. Though the learned Principal District Judge, Pulwama reckoned the plea of illness of applicant No. 1 to be not trustworthy but when this Court gets confronted with the fact that at the time of the institution of the present revision petition in **January 2024** that is within a period of 4 months from the date of passing of impugned order dated **04.09.2023**, said **Aziz Kuchay** had demised, this confirms fact that he actually was suffering some sort of ailment which was adverted to in the application though not supported by any medical record but nevertheless led to the demise of the applicant No. 1- **Aziz Kuchay** thereby bringing his legal representatives on the scene to come up with the present revision petition joined by legal representatives of applicant No. 2- **Khaliq Kuchay**.

19. In the light of the aforesaid, this Court believes that the Court of Principal District Judge, Pulwama perhaps applied the rigor of sufficient cause too strictly, thereby non-suiting the applicants in their appeal which, if heard on merits, would perhaps have settled the controversy one way

or the other related to the *ex-parte* decree and judgment dated **15.04.1993** of the learned Munsiff Pulwama.

20. In the given facts and circumstances of the case, this Court is inclined to interfere with the order dated **04.09.2023** of the Principal District Judge, Pulwama by setting it aside and allowing the condonation of delay application in preferring the appeal against the order dated **20.10.2018** of Sub Judge Pulwama.

21. Let the said appeal be recalled and diarised by the Court of Principal District Judge, Pulwama and heard on merits and **disposed** of by or before **30th of November, 2025**. Any extension of time, if required for adjudicating the matter within the time given, shall be solicited by the Principal District Judge, Pulwama by laying a proper application to that effect before this Court, otherwise, the timeline is meant to be honored.

22. **Disposed** of.

(Rahul Bharti)
Judge

SRINAGAR
19.09.2025
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