

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 58/2025
CM No. 1655/2025

Abdul Rehman Sheikh and anr. Appellant (s)

Through: Mr. Musavir Tak, Adv.

V/s

UT of J&K and anr. Respondent(s)

Through:

Coram:

Hon'ble Mr. Justice Rajnesh Oswal, Judge.
Hon'ble Mr. Justice Mohd Yousuf Wani, Judge

ORDER

26.03.2025

1. Aggrieved of the mutation of the inheritance No. 2002 dated 10th December, 2018, the respondent No.5 had filed an appeal along with application seeking condonation of delay, before respondent No.3, on the ground that the mutation impugned was attested at the back of respondent No.5. The appellate authority/respondent No. 3 vide order dated 21.02.2023 dismissed the application seeking condonation of delay, resulting in to dismissal of appeal as well.

2. The order dated 21.02.2023 was impugned by the respondent No.5 through the medium of revision petition before the respondent No. 2, who vide order dated 07.12.2023 accepted the revision petition and submitted the case to the learned Financial Commissioner (Revenue) J&K Srinagar with the recommendation that the impugned order along

with the mutation No. 2002 dated 10.12.2018 be set aside and Tehsildar concerned be directed to attest fresh mutation as per the Muslim Personal Law after conducting de novo enquiry. The Financial Commissioner, Revenue i.e. the respondent No.1 vide its order dated 21.02.2024 accepted the reference and directed the contesting parties to appear before the Tehsildar concerned.

3. The order dated 21.02.2024 passed by the Financial Commissioner, Revenue was assailed through the medium of writ petition by the appellants and the learned writ Court vide order dated 10.03.2025 modified the order passed by the Financial Commissioner (Revenue) J&K by observing that the learned Financial Commissioner was right in setting aside the order dated 21.02.2023 passed by the Additional Deputy Commissioner, Shopian, so far as its refusal to condone the delay in filing the appeal but the Financial Commissioner, Revenue was not correct in its approach in accepting reference to the extent of setting aside the Mutation No. 2002 dated 10.12.2018. Accordingly, the learned writ court directed the parties to appear before the Appellate Authority/Additional Deputy Commissioner, Shopian on 07th April 2025. In nutshell, the learned writ court has arrived the conclusion that order of the Financial Commissioner was correct only to the extent of condoning the delay, but the appellate authority ought to have been left free to decide the appeal preferred by the respondent No.5.

4. The record depicts that respondent Nos.1 and 2 have arrived at the conclusion that the meritorious claim cannot be thrown out on the ground of limitation. Once the respondent Nos. 1 and 2 have condoned the delay and as the learned writ court cannot act as a court of appeal while exercising the power of judicial review, this court does not find any reason to show indulgence. In this context, it would be apt to take note of the observations made by the Hon'ble Apex Court in **Inder Singh vs The State Of Madhya Pradesh, 2025 INSC 382**, which are as under:

14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.

5. This appeal is bereft of any merit. The same is accordingly **dismissed**.

6. We make it clear that we have not made any observation on the merits of the respective claims of the contesting parties and the Appellate Authority shall proceed ahead with the matter without being influenced in any manner in respect of any observation made by respondents No.1 and 2.

(Mohd Yousuf Wani)
Judge

(Rajnish Oswal)
Judge

SRINAGAR
26.03.2025
Aasif