

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 101/2023

MOHAMMAD ABDULLAH

...Petitioner/Appellant(s)

Through: Mr. R.A. Jan, Sr. Advocate with
Mr. Suhail Mehraj, Advocate
Vs.

ABDUL HASSAN & Ors.

...Respondent(s)

Through: Mr. Baber Bilal Malik, Advocate with
Mr. M. Tufail, Advocate
Mr. M. Muzaffar, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDE R

15.07.2025

Per Sanjeev Kumar-J (oral):

1. This appeal under Clause 12 of the Letters Patent arises from an order dated 18th March, 2023, passed by the learned Single Judge [“the writ Court”] in RP No. 23/2023 titled “*Abdul Hassan Vs. Mohammad Abdullah & Ors.*”, whereby the learned Single Judge has rejected the review petition, observing therein unequivocally that the determination of the question whether the appellant could maintain an application for setting aside the ex-parte decree before the trial court is still open to discussion at the time of final disposal of the appeal.
2. Briefly stated, the facts leading to the filing of this appeal are that, against an order dated 26th December, 2022, passed by the Court of Principal District Judge, Kargil [“the trial court”], dismissing the application filed by the respondent for setting aside an ex-parte

judgment and decree dated 13th December, 2019, an appeal was preferred before the learned Single Judge.

3. On the appeal being taken up for consideration, a preliminary objection was raised by the learned counsel appearing on behalf of the appellant herein to the maintainability of the appeal at the instance of the respondent, against whom there was no decree passed by the trial court.
4. Vide order dated 16th March, 2021, the learned Single Judge disposed of the preliminary objection, holding that the respondent, whose application under Section 9 Rule 13 CPC stood dismissed, was entitled to challenge that order by way of an appeal. Accordingly, the appeal by such a person was held maintainable.
5. The appellant took exception to the order dated 16th March, 2021, passed by the learned Single Judge and filed an application seeking review of the judgment on the ground that the learned Single Judge, while holding that the appeal by the respondent was entertainable, also pronounced upon the maintainability of the appeal.
6. The review petition was considered by the learned Single Judge and vide impugned order dated 18th March, 2023, the same was dismissed. The learned Single Judge, however, clarified the judgment under review by observing that:-

“the determination of the question whether the appellant could maintain an application for setting aside ex-parte decree before the trial court, shall be open to discussion at the time of final disposal of the appeal.”

7. Not satisfied with the order passed in review, the appellant is now before us. The counsel for the respondent has taken a preliminary

objection with regard to the maintainability of the appeal under Clause 12 of the Letters Patent.

8. We could have adjudicated upon the objection to the maintainability raised by the learned counsel for the respondent, but having regard to the fact that we are not inclined to interfere with the order passed by the learned Single Judge, we deem it appropriate not to go into the question, which, for the aforesaid reason, is rendered only academic.

9. We, therefore, dispose of this appeal by providing that, as has been held by the learned Single Judge clearly in the judgment under challenge before us, the question ‘whether the respondent, who is the appellant before the learned Single Judge, could maintain an application for setting aside the decree before the trial court’ is open to discussion at the time of final disposal of the appeal, notwithstanding that the appeal at the instance of the respondent is entertainable and lies before the Appellate Court.

10. Disposed of along with connected CMs.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

15.07.2025

“ARIF”

- (i) Whether the order is speaking? Yes/No.
- (ii) Whether the order is reportable? Yes/No.