

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

**LPA 242/2025
In [RP 58/2025]**

**Date of Pronouncement: 11.11.2025
Uploaded On: 12.11.2025**

**1. Abdul Samad Bhat
S/O: Ghulam Ahmad Bhat.**

**2. Mst. Maroofa Akhter
W/O: Abdul Samad Bhat
R/O: Subzi Market, Soura Srinagar.**

...Appellant(s)

Through: Mr. M.A. Chashoo, Sr. Advocate with
Ms. Hikma, Advocate

Vs.

**1. Javid Ahmad Hakak
S/O: Gh. Mohi-ud-Din Hakak
R/O: Peer Mohd Sahieb, Buchpora,
Srinagar.**

2. Gh. Nabi Bhat

**3. Gh. Rasool Bhat
Sons of: Late Ab. Kariem Bhat
R/O: Subzi Market, Soura Srinagar.**

...Respondent(s)

Through: None

CORAM:

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

JUDGMENT (ORAL)

CM No. 6448/2025:-

1. This is an application seeking condonation of delay of
one day in preferring the appeal.

2. The application for the reasons stated therein is allowed and the delay of one day in filing the appeal is condoned.

3. CM **disposed of.**

LPA No. 242/2025:-

4. This intra-court appeal by the appellants is directed against the orders dated 30th June, 2025 passed in CM No. 3824/2025 and 25th July, 2025 passed in RP No. 58/2025 both in CFA No. 139/2017, whereby the learned Single Judge has declined to set aside the order dated 5th June, 2025 dismissing the Civil First Appeal for non-prosecution.

5. It seems that a Civil First Appeal challenging the dismissal of the suit for preemption by the court of Additional District Judge, Srinagar [“the trial Court”] came to be dismissed for non-prosecution by the learned Single Judge vide order dated 24th November, 2022. Later, on the application moved by the appellants, the Civil First Appeal was restored to its original number vide order dated 27th December, 2022.

6. Since the matter was not prosecuted by the appellants diligently, the appeal came to be dismissed again for non-prosecution vide order dated 5th June, 2025. The appellants thereafter filed an application seeking restoration of the appeal dismissed for non-prosecution on 05.06.2025, which

was dismissed by the learned Single Judge in terms of order dated 30th June 2025, on the ground that the restoration of the appeal would be an exercise in futility, in view of the repeal of the Jammu and Kashmir Right to Prior Purchase Act, 1993 by the Jammu & Kashmir Reorganization Act, 2019.

7. Feeling dissatisfied with the order dated 30th June, 2025, dismissing the application of the appellants for restoration of the appeal, the appellants filed a review petition, which too was dismissed vide order dated 25th July, 2025, on the ground that there was no error of law or fact apparent on the face of the record calling for exercise of review jurisdiction by the learned Single Judge.

8. The order passed by the learned Single Judge dated 25th July, 2025 supra and order dated 30th June, 2025 are subject matter of challenge in this intra-court appeal.

9. Having heard learned counsel for the appellants and perused the material on record, we are of the considered opinion that both the orders which are impugned before us in this appeal are in consonance with law and do not call for any interference. This is notwithstanding the fact that the maintainability of the instant appeal against the orders passed by the learned Single Judge in the exercise of the appellate jurisdiction is fairly debatable.

10. Be that as it may, it is a settled legal position that Right to Prior Purchase which is also known as Right of Preemption is a weak right, and must exist not only at the time of execution of the Sale Deed/filing of the suit but it should be in existence at the time of passing of the decree. If that be the settled legal position, it would infact be an exercise in futility if we restore the appeal and even after restoration allow the appeal. We are saying so because if the decree of dismissal of the suit filed before the trial Court is set aside and the appellants are relegated to pursue the suit, no decree on the Right to Prior Purchase could be passed by the trial Court in view of the repeal of the Jammu & Kashmir Right to Prior Purchase Act by coming into operation of the Jammu & Kashmir Reorganization Act, 2019.

11. The legal position in this regard has been very clearly stated by the Hon'ble Supreme Court in the case of ***"Shyam Sunder and Another Vs. Ram Kumar and Another"*** reported as ***2001 (8) SCC 24***, wherein it has been categorically held that the Right to Preemption should not exist only on the date of filing of the suit but it must exist at the time of the passing of the decree. No exception can, therefore, be made to the view taken by the learned Single Judge.

12. We fully concur with the view taken by the learned Single Judge that in the instant case the entire exercise of restoration of the appeal and even relegating the appellants to pursue the suit would be an exercise in futility.

13. We, therefore, find no merit in this appeal and the same is accordingly **dismissed**.

SRINAGAR:

11.11.2025

"Mir Arif"



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