

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

Pronounced on : 17.02.2026

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WP(C) No. 348/2026

Nityanand

.....Petitioner

Through: Mr. Vilakshan Singh, Advocate

Vs

Regional Director,
Survey and Land Records, Udhampur & Ors.

.....Respondents

Through: Ms. Chetna Manhas, Assisting Counsel
to Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

- 01.** The petitioner has challenged order dated 18.01.2024 passed by the Regional Director Survey and Land Records, Udhampur [(Commissioner Agrarian Reforms), for short, 'learned Commissioner'], whereby appeal against mutation No. 1279 dated 29.09.1986 pertaining to land measuring 13 kanals and 14 marlas in Khasra No. 1070, land measuring 09 kanals and 15 marlas in Khasra No. 1523/1074, land measuring 08 marlas in Khasra No. 1525/1075, land measuring 07 kanals and 12 marlas in Khasra No. 1527/1077, land measuring 02

kanals and 13 marlas in Khasra No. 1522/1077 and land measuring 01 kanal in Khasra No. 1030/1079 situated at village Kud, Tehsil Chenani, District Udhampur, has been dismissed.

- 02.** Heard learned counsel for the petitioner and perused record of the case.
- 03.** It appears that mutation under Section 8 of the Agrarian Reforms Act, 1976 came to be attested in respect of the aforesaid land vide mutation order No. 1279 dated 29.09.1986 in favour of the respondent No. 3-Isher Dass S/o Sayan Chand. The said mutation order came to be challenged by the petitioner by way of an appeal filed before the court of learned Commissioner Agrarian Reforms, Udhampur which was instituted on 05.09.2020. The petitioner also filed an application seeking condonation of delay in filing the appeal.
- 04.** Vide the impugned order, the learned Commissioner has dismissed the appeal filed by the petitioner on the ground that the same is barred by limitation.
- 05.** The petitioner has assailed the impugned order passed by the learned Commissioner on the grounds that mutation order dated 29.09.1986 came to be attested at his back

and he was not given any opportunity of hearing at the time of passing of the said mutation order. It has been submitted that limitation would start to run against the petitioner from the date of knowledge of the said order and because the petitioner was not having knowledge about the attestation of the mutation in favour of respondent No. 3, as such, the appeal filed by him was not barred by limitation. It has also been contended that the learned Commissioner while declining to condone the delay in filing the appeal has failed to appreciate that valuable rights of the parties are going to be affected and that a liberal view was required to be taken in the matter while considering the issue of condonation of delay. It has been further contended that the petitioner has a strong case on merits, therefore, on this ground alone, the learned Commissioner should have exercised the discretion of condoning the delay in his favour.

- 06.** It is clear from the mutation order No. 1279, which is subject matter of the present writ petition that the same has been attested in favour of respondent No. 3 on 29.09.1986. The challenge to this mutation order has been laid by the petitioner by filing an appeal before the

learned Commissioner on 05.09.2020 which more than 33 years after the passing of mutation order.

07. As per Section 22 of the Agrarian Reforms Act, 1976, the period of limitation that has been prescribed for filing an appeal is 60 days from the date of order appealed from. In terms of Sub-Section (2) of the Section 22 of the said Act, the provisions of Limitation Act have been made applicable to the appeals under the said Act. Section 5 of the Limitation Act which provides condonation of delay in filing applications/appeals etc., is applicable to the appeals under the Agrarian Reforms Act.

08. In the present case, the learned Commissioner Agrarian Reforms, Udhampur has dismissed the appeal of the petitioner on the ground of limitation. In the application filed by the petitioner seeking condonation of delay in filing the appeal, a copy whereof has been placed on record by the petitioner along with the writ petition, it was pleaded by him that he is in continuous and uninterrupted exclusive cultivating possession of the land in question and that a false mutation order has been manipulated by the respondent No. 3.

- 09.** It was further pleaded that the petitioner has come to know about the mutation order only on 08.08.2020 when respondent No. 3 openly declared that he has got mutation attested in his favour whereafter the petitioner enquired about this fact from the concerned Patwari and applied for certified true copy of the mutation order. It was contended by the petitioner that the appeal has been filed within the prescribed period of limitation which according to him starts to run from the date of knowledge of the order.
- 10.** The question that arises for determination is as to whether by projecting the aforesaid reasons for filing the appeal belatedly, the petitioner has carved out a sufficient cause within the meaning of Section 5 of the Limitation Act that would entitle him to seek condonation of delay in filing the appeal.
- 11.** The learned Appellate Forum while dealing with the aforesaid ground projected by the petitioner has noted that as per the revenue record including the Khasra Girdawaris, respondent No. 3 has continuously been shown in possession of the land in question after the attestation of mutation in his favour in the year 1986.

The learned Commissioner has, therefore, raised a doubt about the contention of the petitioner that he had no knowledge about the attestation of the mutation.

12. The contention of the petitioner that he has been in continuous possession of the land in question is not borne out from any material. He has not placed on record of this Court or before the appellate authority any document that would go on to show that he has been in continuous possession of the land in question. On the contrary, the revenue record relating to the land in question including the Khasra Girdawaris admittedly reflect the name of the respondent No. 3 to be in continuous possession of the land in question ever since the attestation of mutation in his favour. In the face of this situation, the observation of the appellate authority that assertion of the petitioner that he was not having knowledge of the attestation of mutation in favour of the respondent No. 3 is doubtful, cannot be termed as either perverse or irrational.

13. The petitioner and the respondent No. 3 are residents of the same village and once as per the material on record it is shown that the respondent No. 3 has been in

continuous possession of the land in question for the past many decades, it cannot be believed that the petitioner was not aware about the attestation of the mutation in favour of the respondent No. 3, therefore, the explanation offered by the petitioner for the delay in filing the appeal could not have been accepted by the Appellate Forum. The learned Commissioner in these circumstances has rightly declined to accept the application of the petitioner.

14. The other contention raised by the petitioner is that his case is meritorious, therefore, technicalities of Limitation Act should not come in the way of substantial justice. In this regard, it is to be noted that Supreme Court in the case of **Pathapati Subha Reddy Vs. Special Deputy Collector; 2024 SCC Online SC 513** has clearly held that merits of the case are not required to be considered in condoning the delay.

15. Para 26 of the aforesaid judgment is relevant to the context and the same is reproduced as under:

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there

should be an end to litigation by forfeiting the right to remedy rather than the right itself;

- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

16. Recently, the Supreme Court has, in the case of **“Shivamma (Dead) By Lrs Vs. Karnataka Housing Board & Ors”, 2025 Live Law (SC) 899**, while analyzing the issue relating to technical considerations vis-à-vis substantive justice, observed as under:

135. *In construing “sufficient cause” it must be borne in mind that rules of procedure are handmaids of justice. Procedural rigidity should not become an instrument of injustice. In the context of Section 5 of the Limitation Act, this balance assumes special significance. Courts have repeatedly underscored that while limitation provisions are founded on sound principles of finality and certainty, their application cannot be divorced from the overarching objective of ensuring that litigants are not shut out from the doors of justice merely on account of technicalities.*

136. *When technical considerations of limitation conflict with the imperative of substantial justice, the latter should ordinarily prevail. Rules of limitation are not designed to destroy the rights of parties but to prevent inordinate delay in seeking remedies. Thus, the interpretation of “sufficient cause” must be liberal and purposive, aimed at advancing the cause of justice rather than defeating it. This is why the courts, while construing applications for condonation of delay, emphasize the bona fides of the applicant over the sheer arithmetical length of the delay.*

137. Where strict adherence to these rules results in injustice, the Court is dutybound to apply a liberal interpretation of “sufficient cause” so as to balance technical requirements with the demands of justice. A litigant does not stand to benefit by lodging an appeal late, and therefore, a pragmatic and justice-oriented approach must inform the judicial discretion under Section 5. This decision continues to be the most frequently cited authority for the proposition that the judiciary should incline towards justice rather than technicality. Therefore, when courts interpret “sufficient cause,” they are expected to exercise discretion in a manner that fosters justice, fairness and equity, keeping in mind the realities of litigation.

138. When a Court of Law deals with an application to condone the delay filed under Section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. Section 5 of the Limitation Act must be liberally construed and applied so as to advance substantial justice. It is undoubtedly true that a justice oriented approach is necessary while deciding application under Section 5 of Limitation. However, it cannot be said that in every case delay must necessarily be condoned. It is a condition precedent for Section 5 of the Limitation Act that there must be a sufficient reason for condoning the delay.

139. However, while substantial justice must be advanced, the law of limitation is equally binding, and “sufficient cause” must be shown in substance, not in empty form. This ensures that the balance between justice and certainty is not skewed in favour of unmerited litigants.

140. However, at the same time, the courts must be mindful that strong case on merits is no ground for condonation of delay. When an application for condonation of delay is placed before the court, the inquiry is confined to whether “sufficient cause” has been demonstrated for not filing the appeal or proceeding within the prescribed period of limitation. The merits of the underlying case are wholly extraneous to this inquiry. If courts were to look into the merits of the matter at this stage, it would blur the boundaries between preliminary procedural questions and substantive adjudication, thereby conflating two distinct stages of judicial scrutiny. The purpose of Section 5 of the Limitation Act is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable justification for the delay.

141. Test of “sufficient cause” cannot be substituted by an examination of the merits of the case. Condonation of delay is a matter of discretion based on explanation for the delay, not on the prospects of success in the case. If merits are considered, a litigant with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out. This would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain.

142. Another practical reason why merits must not be considered at the stage of delay condonation is that it risks prejudicing the mind of the court against one party even before the matter is substantively heard. By glancing into merits prematurely, the court may inadvertently form a view that colours the fairness of the

subsequent adjudication. The judicial discipline required at this stage demands that only the cause for delay be scrutinized, and nothing more. This ensures that the ultimate adjudication of rights occurs in a neutral and unprejudiced setting.

143. The law of limitation is meant to apply uniformly across cases, regardless of the intrinsic strength or weakness of the claims involved. To import merits into condonation proceedings would effectively dilute this uniformity.

- 17.** In the face of aforesaid statement of law, even if it is assumed that the case of the petitioner may be meritorious, still then huge delay of more than 33 years in filing the appeal against the impugned mutation order without any proper explanation, cannot be condoned merely because the petitioner claims that he has a strong case on merits.
- 18.** It is a settled law that a writ Court while exercising its power of judicial review of an order passed by a *quasi judicial* authority has to only satisfy itself as to whether the order passed by the authority below is not vitiated due to any material irregularity, want of evidence, extraneous considerations or failure to take into consideration any relevant fact or being contrary

to the law of land. In the present case, the learned appellate forum and revisional forum while refusing to exercise their discretion to condone the delay in filing the appeal has neither committed any material irregularity nor the refusal to condone the delay is based upon extraneous consideration.

19. In the aforesaid circumstances, it is not open to this Court to interfere in the impugned order passed by the learned Commissioner whereby the petitioner's application seeking condonation of delay in filing the appeal was rejected, and consequently, the appeal was dismissed as being time-barred. Thus, without going into the merits of the case, the writ petition deserves to be dismissed.

20. Accordingly, the writ petition is **dismissed**.

(SANJAY DHAR)
JUDGE

JAMMU
17.02.2026
SUNIL

Whether the order is speaking ?	:	Yes
Whether the order is reportable ?	:	Yes