

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

WP(C) No. 1663/2023

Raj Kumar and Others

.....Appellant(s)/Petitioner(s)

Through: Mr. Dheeraj Singh Katoch, Advocate

vs

Additional Deputy Commissioner Ramban
and Others

..... Respondent(s)

Through: Ms. Nazia Fazal, Assisting counsel to
Ms. Monika Kohli, Sr. AAG for R-1.
Mr. Rahul Sharma, Advocate &
Mr. Bhupinder Anthal, Advocate for R-2 to 9.

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

ORDER
04.08.2026

1. Heard both the counsel and examined the record.
2. The factual background leading to the filing of the present petition is that one Suram Chand, predecessor-in-interest of the petitioners, challenged mutations dated 17.02.1982 and 15.12.1985 pertaining to land measuring 05 kanals and 10 marlas falling under Khasra No. 105, which had been attested in favour of Prem Chand, predecessor-in-interest of the respondents. The appeal came to be allowed vide order dated 17.09.2002 and both the mutations were set aside on the ground that the officer who had attested them lacked jurisdiction. The concerned Tehsildar was accordingly directed to conduct a de novo inquiry. Pursuant to the said direction, the Tehsildar conducted an inquiry and attested Mutation No.30 in favour of Suram Chand.
3. Aggrieved by the aforesaid mutation, Prem Chand preferred an appeal before the Additional Deputy Commissioner, Ramban (Commissioner

Agrarian Reforms), who, vide order dated 14.11.2007, set aside Mutation No. 30 and directed the Tehsildar to conduct a de novo inquiry. Upon conducting a fresh inquiry, the Tehsildar thereafter attested Mutation No. 30 in favour of Prem Chand, who however, expired on 03.11.2008.

4. On 23.02.2013, Suram Chand challenged the aforesaid mutation, which came to be set aside ex parte with a direction to the Tehsildar to conduct a fresh de novo inquiry. Aggrieved by the said order, the respondents approached the J&K Special Tribunal, Jammu, by way of a revision petition on 07.11.2013. The revision petition was allowed and the matter was remanded to the Additional Deputy Commissioner, Ramban, for fresh consideration. Upon remand by the J&K Special Tribunal, the appeal came to be dismissed for want of prosecution vide order dated 01.12.2015.
5. The petitioners, being successors-in-interest of Suram Chand, thereafter sought restoration of the appeal and also filed an application seeking condonation of delay. The appellate authority, vide the impugned order dated 04.01.2021, dismissed the application for condonation of delay. While doing so, the appellate authority also proceeded to examine the merits of the controversy and held that, since Prem Chand had been recorded as a protected tenant since 1955, he could not have been dispossessed except by following due process of law. The authority further observed that there was no material on record to establish that Prem Chand had been dispossessed from the land in question or that his tenancy rights had otherwise stood extinguished after the enactment of the Agrarian Reforms Act. Respondent No. 1, accordingly, dismissed the application for condonation of delay as well as the appeal. It is this order of respondent No. 1, which is under challenge in the present writ petition.

6. The principal contention urged by learned counsel for the petitioners is that, after the matter was remanded by the J&K Special Tribunal vide order dated 06.08.2014, the father of the petitioners was never informed either about the passing of the said order or about the consequent remand of the matter to the appellate authority. It is contended that, for want of such information, the father of the petitioners could not appear before the appellate authority and, consequently, the appeal came to be consigned to the records for non-prosecution vide order dated 01.12.2015.
7. Learned counsel further submits that it was only on 19.07.2020, when the respondents allegedly started interfering with the land in question, that the petitioners came to know that their appeal had been dismissed for non-prosecution. Upon making inquiries, the father of the petitioners learnt on 20.07.2020 that the Tribunal had already remanded the matter to the appellate authority for fresh consideration, whereupon he immediately applied for a certified copy of the relevant order.
8. Thereafter, on 26.08.2020, an application seeking restoration of the appeal was filed along with an application for condonation of delay. In the interregnum, apprehending that the appellate authority may not adjudicate the matter fairly, the father of the petitioners filed a transfer application before the Joint Financial Commissioner, J&K. It is submitted that the Joint Financial Commissioner called for a para-wise reply and, vide order dated 04.01.2021, stayed further proceedings in the matter.
9. It is further contended that, although the aforesaid stay order was brought to the notice of the appellate authority, respondent No. 1-Additional Deputy Commissioner, Ramban, exercising the powers of Commissioner Agrarian

Reforms, nevertheless proceeded to decide the petitioners' application by passing impugned order, according to the petitioners, was ante-dated.

10. Per contra, the counsel appearing for the respondents submits that the plea of the petitioners regarding lack of knowledge of the remand proceedings is factually incorrect. It is contended that the J&K Special Tribunal, vide order dated 06.08.2014, set aside the order passed by the Additional Deputy Commissioner, Ramban, and remanded the matter for fresh consideration, with a specific direction to the parties to appear before the Additional Deputy Commissioner, Ramban (Commissioner Agrarian Reforms), on 03.09.2014. The record of the case was received by the said authority on 09.09.2014, whereafter proceedings commenced before it.
11. Learned counsel for the respondents further submits that counsel representing the petitioners appeared before the appellate authority on 16.09.2014, 14.10.2014, 06.05.2015 and 18.08.2015, but thereafter chose to remain absent. It is, therefore, contended that the plea that the petitioners or their predecessor-in-interest had no knowledge of the matter having been remanded by the Tribunal is contrary to the record and is merely an afterthought.
12. Relying upon the judgment of the Hon'ble Supreme Court in "Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy", (2013) 12 SCC 649, learned counsel for the respondents argued that the cause projected by the petitioners is an afterthought and that, once their counsel had been appearing in the proceedings after remand, the petitioners could not feign ignorance or claim that they had no knowledge of the proceedings having been remanded to respondent No. 1. It is, accordingly, submitted that the plea of lack of knowledge lacks bona fides and that the

appellate authority rightly dismissed the application for condonation of delay.

13. On the other hand, learned counsel for the petitioners, relying upon “Commissioner, Nagar Parishad, Bhilwara v. Labour Court, Bhilwara & Another”, (2009) 3 SCC 525, argued that while deciding an application for condonation of delay in filing an appeal, the Court is required to examine only the sufficiency of the cause shown for the delay and ought not to enter upon the merits of the substantive controversy. Further reliance was placed upon “Mohan Singh and Others v. Special Tribunal, J&K and Others”, 2009 Supp JKJ 590, to contend that an application for condonation of delay cannot be dealt with in a casual manner and must be decided by a reasoned and speaking order.
14. Heard learned counsel for the parties and examined the record.
15. The Hon’ble Supreme Court in “Esha Bhattacharjee” (supra), while enunciating the principles governing consideration of an application for condonation of delay, has held that Courts are required to adopt a liberal, pragmatic and justice-oriented approach. The expression “sufficient cause” is required to be understood in its proper spirit, philosophy and purpose, regard being had to the fact that the expression is essentially elastic in nature. Substantial justice being paramount and pivotal, technical considerations ought not to be accorded undue and unwarranted emphasis. At the same time, while no presumption can ordinarily be drawn that delay has been occasioned deliberately, gross negligence on the part of a litigant or his counsel cannot be ignored. The Supreme Court, in the aforesaid judgment, delineated various principles to guide the Courts while considering applications seeking condonation of delay.

16. Admittedly, the litigation between the parties has a chequered history. The predecessors-in-interest of the parties have been litigating over the mutation pertaining to the land in question for a considerable period. The father of the respondents was initially recorded as a protected tenant and mutations under Sections 4 and 8 of the Agrarian Reforms Act came to be attested in his favour. The said mutations were subsequently set aside and the matter was remanded for fresh inquiry. Upon such inquiry, mutation was thereafter attested in favour of the father of the petitioners, which too subsequently came to be set aside.
17. It is also not in dispute that the father of the respondents died on 03.11.2008. It was thereafter that Suram Chand, predecessor-in-interest of the petitioners, preferred an appeal challenging Mutation No. 30, which had been attested by the Tehsildar in the year 2008.
18. The aforesaid mutation came to be set aside by the appellate authority vide ex parte order dated 07.06.2013. The said order, however, was subsequently set aside by the Revisional Authority, namely, the J&K Special Tribunal, vide order dated 06.08.2014, and the matter was remanded to the Additional Deputy Commissioner, Ramban, for fresh consideration.
19. In the aforesaid factual background, the appellate authority/respondent No.1 was under an obligation to decide the appeal afresh in accordance with the remand order passed by the J&K Special Tribunal on 06.08.2014. Having regard to the nature of the remand, the matter was required to be considered afresh after affording due and effective opportunity to the parties.

20. The specific case set up by the petitioners is that they remained under the impression that the revision petition was still pending before the Tribunal and were unaware that the same had already been decided and the matter remanded to the appellate authority. It is, however, borne out from the record that counsel representing the petitioners had appeared before the Additional Deputy Commissioner, Ramban, on various dates after the order of remand. At the same time, nothing has been brought to the notice of this Court to demonstrate that the father of the petitioners had himself appeared before the Additional Deputy Commissioner, Ramban, after the matter was remanded by the Special Tribunal on 06.08.2014. The appeal eventually came to be dismissed for non-prosecution on account of non-appearance on behalf of the petitioners.
21. Learned counsel for the respondents, placing reliance upon 2024 INSC 891, contended that there has been an increasing tendency amongst litigants to attribute their own defaults to their advocates and thereafter seek indulgence of the Court on that basis. It was, accordingly, argued that since the proceedings came to be dismissed on account of non-appearance on behalf of the petitioners, they cannot simply shift the entire blame upon their counsel.
22. The submission, at first blush, appears attractive. Learned counsel for the respondents further relied upon the aforesaid judgment to contend that the Supreme Court was dealing with a delay of 534 days in filing an appeal by the original plaintiff and, in that factual background, observed that such an enormous delay could not entirely be attributed to negligence on the part of the counsel.

23. In the said case, the appellate Court had condoned the delay essentially on the premise that a litigant ought not to suffer for negligence attributable to his advocate and that a liberal approach should be adopted while considering an application for condonation of delay. The High Court, however, took a contrary view regarding the sustainability of the order passed by the appellate Court, which view came to be affirmed.
24. Coming to the facts of the present case, the appeal was dismissed for want of prosecution on 01.12.2015, whereas the application seeking its restoration was filed on 26.08.2020, i.e., after a lapse of more than four years and six months. The petitioners specifically pleaded that they had no knowledge of the remand order passed by the Tribunal and remained under the impression that the revision proceedings were still pending. Such an assertion, being essentially one of fact, required consideration by the appellate authority on the basis of the material which the petitioners could produce in support thereof.
25. The appeal being a continuation of the original proceedings, the appellate authority was required to examine the explanation offered by the petitioners, particularly their assertion that their father had never personally appeared before the appellate authority after the order of remand and that the counsel representing him had not informed him about the dismissal of the appeal for want of prosecution. The petitioners, however, do not appear to have been afforded an adequate opportunity to substantiate the said plea.
26. The appellate authority proceeded on the premise that, since the petitioners had been represented through counsel after the order of remand, they could not claim ignorance thereof. Considerable emphasis was also laid by the respondents upon the fact that a certified copy of the remand order dated

06.08.2014 had been obtained soon thereafter. However, a perusal of the certified copy indicates that the same had, in fact, been applied for and obtained by the advocate, namely, Suresh Kumar. Significantly, the appellate authority itself recorded a finding that it was the counsel for the applicant who had applied for the certified copy of the order dated 06.08.2014 and obtained the same on 14.08.2014. The contention that the father of the petitioners had himself obtained the certified copy, therefore, does not appear to be borne out from the record.

27. Merely because the certified copy of the order of remand had been obtained by the counsel representing the petitioners would not, by itself, conclusively establish that the petitioners or their predecessor-in-interest had actual knowledge of the said order throughout the relevant period.
28. The respondents have also not been able to demonstrate that the father of the petitioners had personally appeared before the appellate authority after the order of remand passed by the Tribunal. In these circumstances, the plea raised by the petitioners that they did not have actual knowledge of the order passed by the J&K Special Tribunal could not have been rejected without affording them a reasonable opportunity to substantiate the same.
29. The question as to whether the petitioners or their predecessor-in-interest had actual knowledge of the remand order was essentially a question of fact. The appellate authority could, therefore, have required the petitioners to substantiate their plea by way of an affidavit or, if considered necessary, by examining the counsel who had been representing them in the proceedings. Denial of such an opportunity materially affected the consideration of the explanation offered for the delay.

30. There is yet another aspect of the matter. While considering an application for condonation of delay, the appellate authority was primarily required to examine whether sufficient cause had been shown for the delay. It was not required, at that stage, to adjudicate upon the merits of the substantive appeal. The Hon'ble Supreme Court has reiterated this principle in (2009) 3 SCC 525. Unless the delay is condoned and the appeal restored or readmitted, there is, in effect, no appeal available for adjudication on merits.
31. Though no serious exception may otherwise be taken to the procedure adopted by the appellate authority, the denial of a reasonable opportunity to the petitioners to establish the "sufficient cause" pleaded by them cannot be countenanced. This assumes greater significance in the present case because the superior revisional authority, namely, the J&K Special Tribunal, had specifically remanded the matter to the appellate authority for fresh consideration. Such remand cast an obligation upon respondent No.1- Additional Deputy Commissioner, Rambanto consider the matter afresh in accordance with law after affording an effective opportunity of hearing to both sides.
32. The appellate authority also appears to have lost sight of the settled principle that an application seeking condonation of delay is required to be considered by adopting a pragmatic and justice-oriented approach. The expression "sufficient cause" cannot be construed in an unduly rigid or technical manner and must be appreciated in the context of the facts and circumstances of each case.
33. There can be no automatic presumption that a litigant was negligent or that he necessarily had actual knowledge of the proceedings merely because his

counsel had appeared therein. Whether and when a litigant acquired actual knowledge may itself be a question of fact requiring determination on the basis of the material available on record. No doubt, the tendency of litigants to shift responsibility for their defaults upon their advocates cannot be encouraged. Nevertheless, that principle cannot be applied mechanically to every case irrespective of its peculiar facts and circumstances.

34. In the present case, the parties and their predecessors-in-interest have been litigating over the subject matter through successive rounds of proceedings; the mutations in question have been set aside on more than one occasion; and the matter itself had been remanded by a superior authority for fresh consideration. Viewed against this background, the appellate authority was required to examine the cause shown by the petitioners for their inability to approach it within the prescribed period in a pragmatic and justice-oriented manner rather than rejecting their plea solely on technical considerations.
35. There is, undoubtedly, a delay of more than four years in seeking restoration/readmission of the appeal. However, having regard to the chequered history of the litigation, the nature of the remand order passed by the J&K Special Tribunal and the circumstances noticed hereinabove, this Court is of the considered view that the petitioners ought not to have been non-suited merely on the ground of limitation. The ends of justice would be better served by condoning the delay and having the appeal decided on its merits after affording adequate opportunity of hearing to both sides.
36. For the foregoing reasons, the present petition is allowed. The impugned order passed by the appellate authority, i.e., the Additional Deputy Commissioner, Ramban, is set aside. The delay in filing the application for restoration/readmission of the appeal shall stand condoned and,

consequently, the appeal shall stand restored to its original number before the appellate authority subject to payment of costs of Rs 5000/- to be paid by the petitioners to the other side on the date fixed herein.

37. The parties shall appear before the appellate authority, either in person or through their respective counsel, on 20.08.2026. Thereafter, the appellate authority shall proceed to consider and decide the appeal afresh, strictly in accordance with law, after affording a reasonable and effective opportunity of hearing to both parties. It is made clear that nothing observed herein shall be construed as an expression of opinion on the merits of the controversy, which shall be determined independently by the appellate authority on the basis of the material available before it.
38. The petition stands disposed of in the above terms.

(Sanjay Parihar)
Judge

Jammu
04.08.2026
Manik

Whether order is speaking? Yes.
Whether order is speaking? Yes.