

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

CFA No. 94/2012

Farooq Ahmad Bhat

...Petitioner(s)

Through: Mr. Prince Hamza, Advocate vice
Mr. Arfat Rashid Lone, Advocate

Vs.

Haji Habibullah Sheikh

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

18.02.2026

1. The Court of Principal District Judge, Anantnag, in a civil suit on file No. **48/Suit of 2010** instituted on **28.12.2010** by the plaintiff-Haji Habib Ullah Sheikh, S/o Gh. Mohammad Sheikh, R/o Shelipora Tehsil & District Anantnag, in which a decree for recovery of Rs. **8.00 lacs** was claimed against the defendant-Farooq Ahmad Bhat, came to pass judgment and decree dated **01.05.2012** thereby

decreeing the suit for recovery of **Rs. 8.00 lacs** with interest at the rate of 6% per annum.

- 2.** The maintainability of suit had taken place under **Order 37** of the **Jammu and Kashmir Code of Civil Procedure, Samvat 1977 (1920 A.D).**
- 3.** Against said money decree, the defendant/judgment debtor-Farooq Ahmad Bhat came forward with institution of a civil first appeal under **Section 96** of **Jammu and Kashmir Code of Civil Procedure, Samvat 1977 (1920 A.D)** before this Court on **18.07.2012.**
- 4.** The appeal came to be diarized as **CFA No. 94/2012**, wherein the sole respondent was the plaintiff/decreed holder-Haji Habibullah Sheikh.
- 5.** By virtue of an order dated **19.07.2012**, this Court directed issuance of notice to the respondent/decreed holder-Haji Habibullah Sheikh and, in the meantime stayed the operation of the impugned judgment and decree.

6. Before service of the respondent/decreed holder-Haji Habibullah Sheikh could take place, the civil first appeal **CFA No. 94/2012** came to suffer dismissal for non-prosecution on account of two consecutive defaults in appearance on the part of the appellant/judgment debtor-Farooq Ahmad Bhat as well as his counsel.
7. The dismissal of the appeal had taken place in terms of order dated **22.05.2013** when the service of the respondent/decreed holder was yet to take effect.
8. From the record of the file, be it physical as well as digital, it is not forthcoming as to whether the appellant/judgment debtor-Farooq Ahmad Bhat ever came forward with any application for seeking restoration of his appeal dismissed in terms of said order dated **22.05.2013**.
9. Incidentally, with passing of the order dated **22.05.2013**, the next judicial order on the file is that of **14.05.2019**. Intervening period proceedings are

not gatherable from the file as it is obtaining in its current form.

10. On the revived date of proceedings on **14.05.2019**, this Court came to observe that there is no representation on behalf of the respondent/decreed holder- Haji Habibullah Sheikh and that even there are no objections filed from his end and, therefore, on the basis of the grounds urged in the application **IA No. 01/2016**, said application was allowed and **CFA No. 94/2012** was ordered restored to its original number.

11. Now, if **IA No. 01/2016** stood allowed, then an application No. **02/2016**, which was filed on **28.12.2016** by the applicant/appellant-Farooq Ahmad Bhat whereby the legal representative-Noor-Ud-Din Sheikh son of deceased respondent/decreed holder-Haji Habibullah Sheikh was sought to be brought on record on account of the fact that the sole respondent/decreed holder-Haji Habibullah Sheikh had expired in **September, 2016**, remained

unattended for the reasons not discernible from the record of this case.

12. From tone of the application No. **02/2016** obviously the substitution of legal representative was sought by reference to the restoration application meaning thereby even the restoration order dated **14.05.2019** was passed against a dead person or in absence of the actual respondent/decreed holder-Haji Habibullah Sheikh who by that time was a dead person which fact being not taken due notice by this Court is a serious error of oversight on the part of this Court.

13. Proceedings from **14.05.2019** remained pending just for the sake of issuance of notice to the respondent least knowing to which respondent when the actual respondent/decreed holder-Haji Habibullah Sheikh was no more alive with effect from **September 2016** and it never occurred to the counsel for the appellant/applicant to take the pain

of apprising this Court about the true state of proceedings.

14. In this meaningless state of proceedings, the case again came to suffer dismissal for non-prosecution in terms of order dated **26.11.2024**.

15. To place the matter in proper perspective, it is necessary to observe that before allowing the restoration application IA No. **01/2016** on **14.05.2019**, the application for bringing on record the legal representative of the deceased respondent ought to have been considered and decided.

16. All along from **14.05.2019**, the appellant/applicant-Farooq Ahmad Bhat did not bother to file an application for bringing on record the legal representative of the respondent/decreed holder-Haji Habibullah Sheikh in the main appeal and now it is almost ten years of the proceedings with effect from date of death of respondent/decreed holder-Haji Habibullah Sheikh that this case is on the docket of this Court aimlessly lost in its correct bearing when

in fact the civil first appeal at no point of time was ever restored or could not have been restored.

17. The very fact that only on the very first date of hearing on **19.07.2012**, the counsel for the appellant/applicant had caused appearance to earn stay of operation of the impugned decree and thereafter absenting himself clearly meant that appellant risked the dismissal of the matter at his own cost and which cost is that the civil first appeal got abated because of a death of the respondent/decree holder-Haji Habibullah Sheikh.

18. Accordingly, the appeal is held to have been abated by reference to the date of death of the sole respondent/decree holder-Haji Habibullah Sheikh from **September 2016**.

19. In view of the above, the appeal shall be deemed and have been **dismissed** as abated.

(RAHUL BHARTI)
JUDGE

SRINAGAR:
18.02.2026
Shabroz