Sr. No.25

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

FAO No. 35/2024

Date of pronouncement: 25.09.2026
Date of uploading:26.09.2026

01. Union Territory of J&K through Chief Secretary Civil Secretariat Jammu/Srinagar. …..Petitioner(s)/Appellant(s)

02. Director Estates, Civil Secretariat Jammu/Srinagar.

03.Deputy Director Estates Kashmir Division Srinagar.

Through: Mr. Illyas Nazir Laway, GA.

vs

Mehmooda Shaheen Medical Trust Hospital, TulsiBagh Srinagar through Rashid Ahmad Dar S/o Late Abdul Rehman Dar R/o TulsiBagh Srinagar. ….. Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT
25.09.2026

(ORAL)

01. Present appeal has been directed by the appellant Union Territory and its instrumentalities, against order dated 19.08.2024, passed by learned Additional District Judge, Srinagar ["the trial Court"] in case titled "*State of J&K and Ors. vs. Mehmooda Shaheen Medical Trust Hospital*", whereby application preferred by the appellant for condonation of 110 days delay in filing an application for setting

aside ex-parte judgment and decree dated 18.12.2012 came to be dismissed.

02. Before a closer look at the grounds urged in the memo of present appeal, it shall be expedient to have an overview of the background facts of the case.

03. The respondent filed a civil suit for perpetual injunction restraining the appellant from demolishing his house situate at Tulsi Bagh, Srinagar, where some trust was stated to be running by him in the capacity of chairman of the said trust. The suit came to be decided by learned Municipal Magistrate, 1st Sub-ordinate Civil Judge, Srinagar, whereby appellants were restrained by way of perpetual injunction from demolishing the structure or causing interference with the subject matter of the suit except in due course of law. Simultaneously, the petitioners also approached this Court by way of OWP No. 686/2006 and this Court vide order dated 21.09.2006 allowed respondent No. 3, an instrumentality of the appellant to take steps for the removal of unauthorized occupation/obstruction on the public road, shown at mark 'D' in the site plan Annexure-L to the said petition.

04. Pursuant to the aforesaid order of this Court dated 21.09.2006, respondent came to be served upon a demolition order dated 29.05.2007, under Section 07 of J&K Public Premises (Eviction of Unauthorized Occupants) Act, 1959, whereby he was directed to demolish the encroachment within 10 days. This demolition order dated 29.05.2007 came to be challenged by the respondent in the

Court of learned 2nd Additional District Judge, Srinagar by way of an appeal, which came to be dismissed on 23.02.2012. After dismissal of the aforesaid appeal against the demolition notice, the unauthorized occupation/obstruction came to be demolished by the appellants with the assistance of police.

05. According to the appellants, since respondent obstructed the demolition process, an FIR bearing No. 133/2011, for offences under Sections 447-A, 353, 506, 336 RPC, came to be lodged against him with Police Station Shergarhi, Srinagar. After the demolition, however, respondent preferred a suit for recovery of damages against the appellants for an amount of Rs. 80.00 lakhs on 24.11.2010, which came to be allowed in ex-parte by learned Additional District Judge, Srinagar ["the trial Court"] on 18.12.2012, whereby 1/4th of the amount of the estimated cost, to the tune of Rs. 20.00 lakhs was ordered to be recovered from the appellant as compensation along with simple interest @ 6% per annum from the date of decree.

06. According to the appellants, on coming to know about the aforesaid ex-parte judgment passed by the trial Court, an application in the trial Court for setting aside the ex-parte judgment and decree along with an application for condonation of 110 days delay was preferred by them. Respondent also preferred an execution petition in the trial Court, whereby in terms of order dated 12.10.2019, attachment warrant came to be issued by the executing Court, and account head of the Chief Secretary, State of J&K, Civil Secretariat to the extent of Rs. 20 lakhs with interest @ 6% per annum w.e.f. 18.12.2012 came

to be attached till the decretal amount along with interest was deposited in the Court. This order came to be assailed by the appellants by way of RFA No. 41/2019 and this Court vide order dated 09.06.2020 set aside the said attachment order dated 12.10.2019 and allowed the appellants to lead evidence in support of their application for condonation of delay.

07. Pursuant to the aforesaid order of this Court, appellants adduced evidence in support of their application for condonation of delay and learned trial Court vide impugned order dated 19.08.2024 dismissed the application on the ground that there was no plausible reason constituting sufficient cause warranting condonation of delay. According to the executing Court, from the statements of witnesses of the appellants, it was found that plea taken by the appellants was unfounded because after the issuance of institution of the suit, the trial Court issued registered cover summons to the appellants way back in the year 2013, which was evident from the postal receipts on record.

08. Appellant is aggrieved of the impugned order, primarily on the ground that learned executing Court has failed to appreciate the controversy in its correct perspective.

09. Having heard Mr. Illyas Laway, learned counsel appearing for the appellants, I have gone through the record.

10. The appellants approached the trial Court for condonation of 110 days delay, primarily on the ground that they were unaware about the proceedings held by the Court because they were never served with

any summons. They came to know about the ex-parte judgment and decree, as also the filing of the suit only on 25.04.2013, when they received summon in the execution proceedings. Immediately thereafter they contacted the standing counsel who applied for issuance of the certified copies which were made available to them on 07.05.2013 and the application for setting aside ex-parte decree was presented on 09.05.2013.

11. According to the appellants, though their application, for setting aside ex-parte judgment and decree, was within the prescribed period of limitation, however, as a matter of abundant precaution application for condonation of delay was filed by them, which was required to be condoned, because the controversy involves public interests as respondent has encroached upon the state land and it should not have been overlooked by the trial Court.

12. A perusal of the impugned order reveals that learned trial Court has dismissed the application preferred by the appellants, for condonation of delay, primarily on the ground that after the institution of the suit, summon under registered covers were issued to the appellants, defendants in the suit, and there are postal receipts as evidence on the record.

13. A postal receipt proves only dispatch or posting, not actual or due delivery of the item, though it triggers a rebuttable presumption of service under law. Under Section 27 of the General Clauses Act, 1897 and Section 114 Indian Evidence Act, 1872, if a document is properly addressed, prepaid and sent by registered or speed post to

the correct address, court raises a presumption that it would have been delivered in the ordinary course of business. However, in such circumstances, the Court before raising the statutory presumption, is obliged to record a finding that document or the summons, as the case may be, was not only properly addressed but also sent by registered or speed post to the correct address of the addressee, otherwise a postal receipt would only confirm that item was handed over to the post office with correct address and prepaid charges but it would not verify that the envelope actually arrived at its destination.

14. To firmly establish due delivery when service is disputed, Courts may also look for corroborating evidence beyond the basic postal receipt including the tracking report of the India Post website showing "item delivered", a signed physical acknowledgement card returned by the recipient or the official written remarks of the postal authorities on the returned cover such as "refused", "house locked" or "addressee not found", which may also invite legal presumption of valid tender.

15. The appellants in order to establish their contention produced three witnesses. All the 3 witnesses on affidavit deposed in clear terms that respondent has encroached on its state land and an FIR in this respect was also lodged against them. They also stated in clear terms that they never received any notice/summon from the Court and the department came to be know about the proceedings when they received a notice in the execution petition. However, it appears that learned trial Court by reading in between the lines has observed that

since the witnesses never perused the dispatch register, they could not say, if any summon was received by the department and was entered in the dispatch register or not.

16. Learned trial Court has dismissed application preferred by the appellants, for condonation of delay, solely on the ground that there was postal receipts on the record. Nothing more nothing less. A perusal of the record reveals that neither the trial Court before proceeding ex-parte against the appellants, recorded the required satisfaction that the registered envelope containing the summons was properly addressed and sent by registered post to the addresses, the appellants herein, nor dealt with this important aspect of the matter while deciding application of the appellants for condonation of delay.

17. Be that as it may, since the contention raised by the petitioner is that respondent has encroached upon the state land, learned trial Court having regard to the public interest involved in the matter ought to have condoned the delay and allowed the parties to contest fair & square.

18. For what has been analysed, observed and discussed above, present appeal is allowed and impugned order dated 19.08.2024, passed by the trial Court, whereby application filed by the appellants for condonation of delay came to be dismissed is set aside. As a result, the said application is allowed and delay of 110 days in filing the application for setting aside ex-parte proceedings is condoned.

19. Trial Court is directed to consider the application preferred by the appellants for setting aside ex-parte judgment and decree, after affording a reasonable opportunity of being heard to both the sides.

20. **Disposed of**.

(Rajesh Sekhri)
Judge

Srinagar
25.09.2026
Sushant

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