

Sr. No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 308/2019 in
CONOW No. 1349/2015

Reserved on : 14.08.2025
Pronounced on : 13.02.2026

Union Territory of J&K
& ors.

.... Petitioner/Appellant(s)

Through:- Mr. M. Younis, assisting counsel

V/s

Haji Ghulam Hassan Dar

.....Respondent(s)

Through:- Mr. Z. A. Qureshi, Sr. Advocate
with Ms. Rehana Fayaz, Advocate

CORAM :

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

PER: SINDHU SHARMA-J

1. This Letters Patent Appeal is directed against:

- (i) the judgment dated 28.05.2019 passed in CONOW No. 1349/2015 in RPOW No. 25/2019 c/w CPOWP No. 91/2015, and
- (ii) the judgment dated 31.10.2014 passed in OWP No. 403/2012, titled *Ghulam Hassan Dar vs. State of J&K and others*.

2. The facts relevant for adjudication of the present appeal are that pursuant to NIT dated 02.01.2009, the respondent-contractor was allotted, vide allotment order dated 14.02.2009, the work of "*Upgradation of Sehpora, Drabgam,*

Putrigam, Sountbugh viz Sheikhhhard and Murran Deri Road” at an estimated cost of Rs. 53,93,590/-. As per the terms and conditions of the contract, two coats of WBM (Grade-II and Grade-III) were required to be laid over a length of 9 kilometers.

3. The case of the appellants is that the contractor failed to execute the allotted work in its entirety. While the first coat of WBM (Grade-II) was laid over the full length of 9 kilometers, the second coat was laid only over 4.65 kilometers, and the work of metaling (Grade-II) was executed only for 5.65 kilometers. Nearly half of the Sountbugh–Sheikhhhard–Putrigam stretch remained untouched, a fact verified at site. Despite this, the contractor demanded payment for the entire length of work.

4. Claiming that the balance amount of Rs. 14.426 lakhs had been illegally withheld, the respondent-contractor filed OWP No. 403/2012, seeking release of the said amount along with interest at the rate of 12%. The claim was founded upon a certificate allegedly issued by the then Executive Engineer, R&B Division, Pulwama, certifying completion of the work.

5. The writ petition was contested by the appellants, asserting that the contractor had not completed the work as per the NIT and allotment order. Pursuant to an order dated 25.10.2013, a supplementary affidavit was filed by the

Executive Engineer, categorically stating that the certificate relied upon by the contractor was a result of fraud and bore forged signatures. Notwithstanding the objections, the learned Single Judge, vide judgment dated 31.10.2014, allowed the writ petition and directed the appellants to release an amount of Rs. 14.426 lakhs along with interest at the rate of 9% per annum.

6. Aggrieved thereof, the appellants preferred LPAOW No. 107/2015, which was dismissed by the Division Bench vide order dated 07.09.2015, granting liberty to the appellants to approach the writ court by way of a review petition. Consequently, a review petition along with an application for condonation of delay was filed and registered as CONOW No. 1349/2015 in RPOW No. 25/2019. The learned Single Judge, vide order dated 28.05.2019, dismissed the review petition.

7. The principal contention of the appellants is that the earlier LPA was not dismissed on merits but only on account of non-production of record, and once the record was produced in review proceedings, the learned Single Judge ought to have reconsidered the matter. It is further contended that the learned Writ Court as well as the Review Court failed to appreciate the supplementary affidavit of the Executive Engineer, who had disowned the certificate relied upon by the contractor.

8. Another ground urged is that the judgment under review was in conflict with the official record, including the Measurement Book and final bill. It is contended that the contractor accepted the final payment in 2012 without protest, and that physical completion does not ipso facto establish execution of the entire quantity of work, which must be determined strictly on the basis of the Measurement Book.

9. We have heard learned counsel for the parties and perused the record.

10. A perusal of the order dated 28.05.2019 reveals that the learned Single Judge correctly noted that the appellants, under the guise of review, were attempting to reopen the merits of the case already adjudicated.

11. The Hon'ble Supreme Court in case titled ***Lily Thomas v. Union of India***, (2000) 6 SCC 224, held that a review lies only for correction of an error apparent on the face of the record and cannot be treated as an appeal in disguise.

In para 53 the Hon'ble Supreme Court observed as under:-

"The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakersh and Ors. v. Pradyunman singh ji Arjun singh ji held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of

justice nothing would preclude the Court from rectifying the error.”

12. Applying the aforesaid principle, the learned Single Judge rightly concluded that no error apparent on the face of the record was demonstrated and that the review petition was wholly devoid of merit.

13. Coming to the judgment dated 31.10.2014, the learned Single Judge relied upon the communication dated 12.11.2011 issued by the Deputy Commissioner, Pulwama, which indicated that an amount of Rs. 14.426 lakhs was payable to the respondent on account of unpaid work and that the work stood physically completed. The communication also recorded that an amount of Rs. 39.51 lakhs had already been paid.

14. The explanation offered by the Executive Engineer that the certificate was issued merely for the purpose of indicating bidding capacity was rightly disbelieved by the learned Writ Court. The certificate unequivocally certified that the work was “satisfactorily completed” and bore the signatures of both the Executive Engineer and the Assistant Executive Engineer. The reasoning adopted by the learned Single Judge in this regard is sound and does not call for interference.

15. It is also significant that despite repeated opportunities, the appellants failed to produce the relevant record before the learned Single Judge as well as before the

Hon'ble Division Bench. The Division Bench, in its order dated 07.09.2015, recorded:

“Even though sufficient opportunity was given to produce the record, the same was not produced. Even in this appeal, no record is produced to controvert the facts.”

16. In ***Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das & Anr.***, AIR 1967 SC 256, the Hon'ble Supreme Court held that mere withholding of documentary evidence by a party is not enough to draw adverse inference against him. The other party must ask the party in possession of such evidence to produce the same, and in case the party in possession does not produce it, adverse inference may be drawn. The Supreme Court further held as under:-

“It is true that the defendant-respondent also did not call upon the plaintiff-appellant to produce the documents whose existence was admitted by one or the other witness of the plaintiff and that therefore, strictly speaking, no inference adverse to the plaintiff can be drawn from his non-producing the list of documents. The Court may not be in a position to conclude from such omission that those documents would have directly established the case for the respondent. But it can take into consideration in weighing the evidence or any direct inferences from established facts that the documents might have favoured the respondent case.”

17. The Hon'ble Supreme Court in case titled ***Musauddin Ahmed vs State Of Assam***, AIR 2010 SC 3813 in para 13 held as under:-

“It is the duty of the party to lead the best evidence in its possession which could throw light on the issue in controversy and in case such a material evidence is withheld, the Court may draw adverse inference under Section 114 illustration (g) of the Evidence Act notwithstanding that the onus of proof did not lie on such party and it was not called upon to produce the said evidence.”

18. The appellants had ample opportunity to demonstrate that reliance on the certificate dated 12.11.2011 was misplaced and contrary to the Measurement Books. However, their consistent failure to produce the record disentitles them from raising such a plea at this belated stage.

19. In view of the foregoing discussion, we find no infirmity or illegality in either the judgment dated 31.10.2014 or the order dated 28.05.2019 warranting interference in exercise of appellate jurisdiction.

20. Accordingly, the Letters Patent Appeal is **dismissed** as being devoid of merit

(SHAHZAD AZEEM)
Judge

(SINDHU SHARMA)
Judge

SRINAGAR

13.02.2026

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