

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

CM(7878/2024) IN FAO 36/2024
FAO No.36/2024
CM(1798/2025) CM(7879/2024)

UNION TERRITORY OF J AND K AND ORS.

.....Petitioner(s)

Through: Mr.Mohammad Younis, Assistant counsel

V/s

MOHAMMAD MANSOOR NAIK

... ..Respondent(s)

Through: Mr.Bilal Ahmad Malla, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

28.07.2026

1. By this order application of the appellants seeking condonation of delay in filing the appeal against order dated 04.03.2023, passed by learned 4th Additional District Judge Srinagar, is proposed to be disposed of.
2. It appears that the respondent/plaintiff filed a suit against the appellants/defendants before the Court of learned 4th Additional District Judge, Srinagar (hereinafter “the trial Court”) seeking a mandatory injunction commanding the defendants to provide space to carry out his business in Pediatric Hospital in Bemina Srinagar with a further direction that the defendants should not

cause any sort of interference with the business of the plaintiff.

Alongwith the suit, the plaintiff also filed application for grant of interim relief under Order 39 Rule 1 and 2 CPC.

3. The learned trial Court after hearing the parties and after analyzing pleadings filed by the parties, disposed of the application of the plaintiff under Order 39 Rule 1 and 2 CPC in terms of impugned order dated 04.03.2023, whereby interim ex-parte order dated 20.08.2022 passed by the said Court has been made absolute. It is pertinent to mention here that vide interim ex-parte order dated 20.08.2022 the defendants have been directed to provide the plaintiff a space to carry out his business in Pediatric Hospital Bemina, Srinagar. Against the aforesaid order the defendants/appellants have filed the accompanying appeal but there is a delay of 544 days in filing the appeal.

4. In their application seeking condonation of delay in filing the appeal, the appellants/defendants have submitted that after receiving the copy of the impugned order passed by the trial Court, the issue with regard to filing of the appeal was examined by the appellants in light of the records. It has been submitted that the appellants had to collect the record from various subordinate offices so as to procure legal advice. It has been further submitted that the matter was taken up with the Law Department for accord of sanction for filing of the appeal and

vide order dated 08.11.2024, the requisite sanction was accorded by the Law Department, whereafter the matter was pursued with the Government counsel for filing the appeal, which came to be filed on 27.11.2024.

5. The appellants have also filed additional affidavit with a view to explain the delay in filing the appeal. In the said affidavit it has been submitted that immediately upon passing of the impugned order dated 04.03.2023, the matter was examined at various administrative levels. It has been submitted that decision to file an appeal against the impugned order cannot be taken unilaterally and it had to be taken after examining the records and after seeking legal opinion from the standing counsel with the approval of the competent authority. This according to the appellants is a time consuming process which is unavoidable and beyond their control. It has been submitted that the appellants pursued the matter with utmost diligence by addressing communications to the standing counsel. In this regard reference has been made to communications dated 17.10.2023, 13.11.2023 and 30.01.2024.

6. I have heard learned counsel for the parties and perused the record of the case.

7. As already stated, there is a delay of 544 days in filing the appeal. Section 5 of the Limitation Act vests power with the

Court to condone the delay in filing the appeal if it is shown that the appellant was prevented by a sufficient cause from filing the appeal within the prescribed period of limitation. Expression “sufficient cause” used by legislature in Section 5 of the Limitation Act is flexible which enables the Courts to apply the law in a manner so as to subserve the ends of justice.

8. There is a long list of judgments of the Supreme Court and this Court wherein a consistent view has been taken that liberal approach has to be adopted by a Court while considering a prayer for condonation of delay in filing the appeal, particularly when the appellant/applicant happens to be a Governmental Authority. In the very nature of Governmental functioning, it is implicit that there would be some procedural delay in decision making process. However, if it is found that the conduct of the litigant, even if it happens to be a Government Authority, has been negligent and it lacks the urge to pursue remedy of an appeal, delay in filing the appeal cannot be condoned in a routine manner.

9. In *Pathapati Subba Reddy v/s Collector Land Acquisition* (2024) 12 SCC 336, the Supreme Court has held that law of limitation is founded on public policy, the object is that a legal remedy is put to an end so that no litigation remains pending for an indefinite period. The Court while, departing from the earlier

view held that merits of the case cannot be considered at the stage of considering the application for condonation of delay.

10. In *Sheo Raj Singh vs Union of India* (2023) 10 SCC 531, the Supreme Court observed that a distinction ought to be drawn between 'explanation' and 'excuse' that is preferred as cause for condonation of delay.

11. In recent judgment of *State of Odisha vs. Managing Committee of Namatara Girls High School* 2026 SCC online SC 191, the Supreme Court has held that condonation of delay cannot be claimed as a matter of right and it is entirely discretionary. The Court emphasized that despite the latitude shown to the State no cause for exercising of discretion is made out if there is unexplained delay in filing the appeal.

12. Keeping the aforesaid legal position in mind, let us now analyse the facts of the present case. The impugned order has been passed by the learned trial Court on 04.03.2023, whereas the appeal came to be filed on 17.11.2024 which is delayed by 544 days. According to the appellants the sanction for filing the appeal was granted by the Law Department on 08.11.2024. The explanation which has been tendered by the appellants for the period between the passing of impugned order up to according of sanction by the Law Department for filing the appeal is that the appellants were examining the matter at different administrative

and legal levels. Neither in the application nor in the affidavit filed by the appellants any particulars of the dates on which the matter was being examined have been mentioned nor the names of the authorities who were examining these files during this long period of more than one year and eight months has been mentioned. Mere vague assertions that the matter was being examined at various administrative and legal levels without mentioning on which dates and which officers were seized of the matter cannot be accepted, particularly when these assertions are not backed by any material on record.

13. The record clearly shows that the appellants have not explained as to what they were doing after passing of the impugned order up to the date when the sanction was accorded by the law Department. The only explanation is that in October-November, 2023 they addressed communications to their standing counsel. Prior to this period, it seems, that the appellants were sitting over the files without taking any action in the matter. This attitude of the appellants clearly reflects negligence on their part. The law does not come to the aid of a negligent litigant. Merely because the appellants in the present case happen to be Government authorities, they cannot be given any undue latitude for filing a highly belated appeal, particularly when their conduct clearly reflects negligence on their part.

14. For what has been discussed herein before, I do not find any ground to condone the delay in filing the accompanying appeal. The application is accordingly dismissed. Consequently, the appeal shall also stand dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR

28.07.2026

Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

