**Serial No. 86**

# HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case:- CR No. 42/2023

1. **U.K. Paints (India) Pvt. Ltd., SIDCO Phase-I Samba District Samba Through its Chairman, Mr. G. S. Dhingra, Aged 71 years Son of Shri Late Uttam Singh Dhingra R/o 19 DDA Commercial Complex, Kailash Colony Extension, New Delhi.**

2. **Raman Jolly Aged 61 years Son of Late Sh. Gurupartap Jolly, R/o Shanti Vihar, Kunjwani, Jammu. Vice President, U.K. Paints (India) Pvt. Ltd SIDCO Phase-I Samba District Samba.**

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

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Navyug Sethi, Advocate.

**Vs**

**Dimple Khajuria, Wife of Sh. Raj Khajuria, R/o H. No. 479 Sector 3 Channi Himmat, Jammu.**

..... Respondent(s)

Through: Mr. Varun Raina, Advocate.

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**
**(11.03.2024)**

**(ORAL)**

**01.** In the instant revision petition, petitioners have challenged order dated 10.10.2023 (for short ***"the impugned order"***) passed by the Principal District Judge, Samba (for short ***"the trial court"***) whereunder the petitioners herein being

defendants in a civil suit filed by the plaintiff-respondent herein have been held to have forfeited their right to file their written statements to the suit in terms of the provisions of Order VIII of the Code of Civil Procedure.

**02.** Perusal of the record reveals that the suit came to be filed by the plaintiff-respondent herein against the defendants-petitioners herein for recovery of an amount to Rs. 45,43,763/- in the year 2022 and upon issuance of summon to the defendants-petitioners herein, defendant 2 entered appearance on 30.11.2022, however, did not file any written statement till 14.02.2023, on which date, however, an application came to be filed by the defendants-petitioners herein for rejection of plaint on the ground that the suit is a "commercial suit" and the mandate of Section 12(A) of the Commercial Courts Act, 2015 had not been followed by the plaintiff-respondent herein before the institution of the suit. However, the said application came to be *dismissed* by the trial court on 15.06.2023, whereafter the defendants-petitioners herein filed an application on 29.05.2023 seeking condonation of delay for filing written statement, which application in terms of the impugned order came to be *rejected* holding that the right of the defendants-petitioners herein to file a written statement stand forfeited.

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**03.** It further gets revealed from the record that the trial court while passing the impugned order referred to and relied upon the amendment carried out in the Code of Civil Procedure of erstwhile State of Jammu and Kashmir being the Jammu and Kashmir Civil Procedure (Amended Act, 2018 dated 13.12.2018) which Code of Civil Procedure inasmuch as the said amendment dated 13.12.2018 was admittedly not applicable to the suit before the trial court on account of the promulgation of the Reorganization Act of 2019 whereunder the Code of Civil Procedure (Central) became applicable to the case w.e.f. October 2019.

The trial court seemingly has misdirected itself while relying upon and applying the aforesaid amendment dated 13.12.2018 and has grossly erred and in the process caused failure of justice while holding defendants-petitioners to have forfeited their right to file written statement to the said suit.

**04.** The matter having not received appropriate consideration by the trial court, thus, needs to be remanded back for reconsideration by the trial court.

**05.** The petition, under these circumstances, is ***allowed*** and the impugned order is set aside with a direction to the trial court to revisit and reconsider the application of the defendants-petitioners herein wherein the impugned order

dated 10.10.2023 has been passed afresh in accordance with law on its own merits

**06.** Parties to appear on the date fixed before the trial court. The trial court shall decide the application, uninfluenced by any observations made by this Court, on its own merits.

**07.** ***Disposed of.***

**(JAVED IQBAL WANI)**
**JUDGE**

**JAMMU**
**11.03.2024**
*Bunty*

HIGH COURT
सत्यमेव जयते
OF JAMMU & KASHMIR AND LADAKH