

Serial No. 15
Reg Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RFA 71/2025 CM(5752/2025)
Caveat 2038/2025.

BILAL AHMAD SHAH.

Through: Mr. Shabir Ah Najar, Advocate.

...Appellant (s)

VERSUS

AJAZ AHMAD BAKSHI.

Through: Mr. Rizwan ul Zaman, Advocate.

...Respondent(s)

CORAM:
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.



ORDER
08-11-2025

01. The appellant has filed the present appeal against the judgment dated 24th of April 2025, passed by the learned Principal District Judge, Anantnag, whereby the suit of the respondent–plaintiff under Order 37 of the CPC for recovery of an amount of ₹22.06 lakhs has been decreed in favour of the respondent–plaintiff, along with interest at the rate of 6% per annum.
02. Heard and considered.
03. It appears that the respondent–plaintiff had filed a suit before the learned Principal District Judge, Anantnag (hereinafter referred to as the “Trial Court”) seeking recovery of ₹22.06 lakhs on the basis of cheques alleged to have been issued by the appellant–defendant in favour of the respondent.

04. The record reveals that the defendant, after entering appearance before the Trial Court and filing the memo of appearance, but he failed to file application seeking leave to defend the suit within the prescribed period of (10) days and instead, filed the same after a delay of three days.

05. The learned trial court, by virtue of the impugned Judgment and Decree, came to the conclusion that because the appellant–defendant did not file application for condonation of delay in seeking leave to defend, as such, the application for leave to defend the suit cannot be entertained. Accordingly, the suit was decreed in favour of the respondent–plaintiff, by virtue of the impugned judgement.

06. A perusal of the trial court record further reveals that the appellant–defendant had indeed filed the application for leave to defend the suit after the expiry of stipulated period of (10) days, and in fact there was a delay of three days in filing the application. It also appears that the defendant had filed another application under Section 151 of the CPC seeking permission to file additional grounds to supplement the grounds seeking leave to defend the suit. In the said application, it was pleaded by the defendant that he was not present before the court on the date of hearing, and since the proceedings were of a civil nature, he had been advised by his counsel that his personal appearance before the Court was not mandatory. It was also pleaded that one of the close relatives of the defendant had met with sudden death, as a result of which, he was not in a position to approach the Court. The defendant went on to plead that even the counsel engaged

by him was out of the Union Territory in connection with the medical treatment of his ailing uncle.

07. The respondent–plaintiff filed objections to the said application. However, there is no rebuttal to assertions that were made by the defendant with regard to cause of his inability to approach the court well in time.

08. The question that arises for determination is as to whether in the absence of a specific prayer for condonation of delay in filing the application for leave to defend, the Court would be within its jurisdiction to condone the delay, in filing the application for leave to defend the suit in a case where the record shows that the defendant was prevented by sufficient cause from filing the application for leave to defend the suit within the stipulated period of ten days.

09. In the above context, the provisions contained in Sub Rule (7) of Rule (3) of Order 37 of the Code of Civil Procedure, are required to be noticed. The same are reproduced hereinbelow:

Order 37 (3) (7) “*The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.*”

10. From a plain reading of the aforesaid provision, it is evident that the Court has the jurisdiction to excuse the delay on the part of the defendant either in entering appearance or in applying for leave to defend the suit, for sufficient cause shown by the defendant. The provision nowhere mandates the filing of a separate application for condonation of delay in filing the application for leave to defend the suit.

11. Thus, if the defendant from the material on record of the court is able to show that he was prevented by sufficient cause from filing an application for leave to defend, within the stipulated period of time, the court will be within its jurisdiction to excuse the delay.

12. In the present case, as already noticed, the defendant has specifically pleaded that on account of the sudden demise of one of his close relatives, he was unable to approach the Court within the prescribed period, and that his counsel was also out of Union Territory in connection with medical treatment of his ailing uncle. These assertions have remained unrebutted.

13. In the face of the aforesaid material available on record, it was not open to the learned trial court to refuse to condone the delay in filing the application for leave to defend the suit merely on the ground that no separate application to that effect had been filed by the defendant. In the facts and circumstances of the case, it was incumbent upon the trial court to condone the delay of three days in filing the application for leave to defend the suit and to consider the said application on its merits.

14. For the foregoing reasons, the impugned judgment and decree passed by the learned trial court is not sustainable in law and is, accordingly, set aside. The matter is remanded to the learned trial court with a direction to consider the application of the appellant–defendant for leave to defend the suit on its merits. The learned trial court shall do well to decide the said application as expeditiously as possible, in accordance with law.

15. A copy of this order be sent to the learned trial court for information and compliance.
16. ***Disposed*** of along with connected CM(s).

(Sanjay Dhar)
Judge

SRINAGAR
08-11-2025
Showkat Khan

