

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM no. 8266/2024 in
RFA 100/2024
CM no. 8267/2024

UT of J&K and others

.... Appellant(s)

Through: Mr Jahangir A. Dar, GA

v.

Parvaiz Ahmad Naik

... Respondent(s)

Through: M. Ashraf Malik, Advocate

CORAM:

Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge

ORDER

09.09.2025

1. By this application, the applicants/appellants are seeking condonation of delay that has occasioned in filing an accompanying appeal against the judgment dated 24.11.2023, passed by the learned Principal District Judge, Kulgam, in a recovery suit titled 'Parvaiz Ahmad Naik Vs. UT of J&k and Ors.'
2. This court in terms of order dated 24.12.2024, issued notice to the other side for appearance. Pursuant to the notice, the non-applicant/respondent caused appearance and filed his objections to the application seeking condonation of delay.
3. In terms of the report of the Registry, the appeal is delayed by 302 days and the condonation is sought solely on the ground that it took applicants/appellants significant amount of time to collect records from various subordinate officers as also in obtaining the legal advice from the Department of Law, Justice and Parliamentary Affairs. It would be profitable to reproduce Paragraph II of the instant application herein:

"II. That, after having received the copy of the impugned order passed by court below, the question of filing Appeal was examined by the Appellants in light of the records. In the process, the Appellants were required to collect the records from various subordinate offices and also to obtain legal advice from the Department of Law, Justice and Parliamentary Affairs. The examination of the matter and consideration of the question of filing of an appeal at various levels obviously led to consumption of time. Subsequently, the Law Department vide sanction letter No. LAW-LIT 10/956/2024-10 dated 07.09.2024 requested the

Mr. Jehangir Ahmad Dar (Govt Advocate) to file Appeal against the judgment dated 24.11.2023. Thereafter the Appellant No. 4 vide communication dated 03.10.2024 requested the Ld. Counsel for filing the Appeal. The Ld Counsel took up the matter with the Appellants for providing the relevant record alongwith the impugned Judgment/order. After receiving the records alongwith the impugned Judgment and orders, The Ld Counsel took some days for drafting and filing of the Appeal. Thus, the delay has not been caused in filing of the Appeal deliberately, willfully or intentionally.”

4. I have heard learned counsel for the parties and perused the material made available.
5. The learned counsel for the applicants/appellants, Mr. Jahangir Ahmad Dar, submits that the applicants/appellants have a strong case on merit, therefore, the delay occasioned in filing the appeal needs to be condoned. He also submits that sufficient cause has been shown by the applicants for condoning the delay which deserves to be condoned as such.
6. The above extracted portion of the application filed by the applicants/appellants would make it abundantly clear that the applicants/appellants had not taken any steps for either challenging or implementing the impugned judgment dated 24.11.2023 till 07.09.2024. i.e., approximately for about 10 months time. The applicants/appellants have not come up with any explanation as regards the said period of ten months. The above extracted portion of the instant application would also make it clear that since 07.09.2024, till the filing of the instant appeal/application i.e., till 23.12.2024, all that is said is that the applicants/appellants were collecting records and had to obtain legal advice from the concerned quarter. The said explanation rendered by the applicants/appellants is not sufficient to convince the Court to condone the delay.
7. The impugned judgment of which the applicants/appellants are aggrieved of, has been passed on 24th November, 2023, and the instant appeal has been filed by the applicants/appellants on 23rd December, 2024, meaning thereby that there is delay of 302 days in addition to the 90 days' prescribed statutory period of filing the appeal against the judgment in question.
8. Although the law on the subject is liberal, however, it does not clothe the party with a right to seek such condonation as a matter of right. The applicant approaching the Court with an application for condonation of delay must show sufficient cause to convince the Court that the delay

occasioned in the matter has neither been deliberate nor intentional but has been caused by the circumstances beyond its control. In the instant case, all that the applicant is stating in the condonation of delay application is that it took him time in collecting the record, as also in obtaining in legal advice, therefore, the condonation sought is required to be granted.

9. Hon'ble Apex court in case titled '*Postmaster General vs. Living Media India Ltd.*' (2012) 3 SCC 563, in paragraph No. 29 has held as under:

"29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefits of a few."

10. The Apex Court while declining the condonation in yet another case titled '*Pathapati Subba Reddy (Died) by L.Rs and Ors. v. The Special Deputy Collector (LA)*' 2024 INSC 286. It would be profitable to reproduce Paragraph 32 of the said judgment herein:

"32. Moreover, the High Court, in the facts of this case, has not found it fit to exercise its discretionary jurisdiction of condoning the delay. There is no occasion for us to interfere with the discretion so exercised by the High Court for the reasons recorded. First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did. Thus, there is apparently no due diligence on their part in pursuing the matter. Accordingly, in our opinion, High Court is justified in refusing to condone the delay in filing the appeal."

11. Having regard to what has been said hereinbefore and taking into consideration the law on subject as referred to in the preceding paragraphs, this Court is convinced that the applicants/ appellants

have miserably failed in demonstrating sufficient cause warranting condonation of the delay that has occasioned in filing the accompanied appeal. Accordingly, the instant application is dismissed. As a corollary to the dismissal of the application of condonation of delay, the accompanying appeal is also dismissed as time barred.

(Moksha Khajuria Kazmi)
Judge

Srinagar
09.09.2025
Misba

Whether the order is speaking: Yes

