Sr. No. 12

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No. 2/2025

Date of pronouncement: 23.10.2026
Date of uploading : 27.10.2026

Shahpal Azam & Ors. .....Applicant(s)/Petitioner(s)

Through :- Mr. Ashish Sharma, Advocate

v/s

Collector Land Acquisition SDM Mendhar .....Respondent(s)

Through :- Ms. Priyanka Bhat, Assisting counsel to
Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER
23.10.2026

CM No. 162/2025

1. This is an application seeking condonation of delay of 02 days in filing an appeal against the order dated 10.09.2024 passed by the learned Principal District Judge, Poonch in Reference File No. 09/Civil Misc. titled *"Mohd. Ayoub Khan & Ors. Vs. Collector Land Acquisition (SDM) Mendhar"*.

2. **The application**, for the reasons stated therein, **is allowed** and the **delay of 02 days in filing the afore-titled appeal is condoned**.

MA No. 2/2025

1) This appeal, filed by the appellants, under Order XLIII Rule 1 (c) of the Civil Procedure Code, 1908, is directed against the order dated 10.09.2024 passed by the learned Principal District Judge, Poonch **["the trial Court"]** in Reference File No. 09/Civil Misc. titled *"Mohd. Ayoub Khan & Ors. Vs. Collector Land Acquisition (SDM) Mendhar",* whereby the Reference Court had dismissed the

application of the appellants for restoration of the reference in default, being barred by limitation.

2) Briefly stating the facts, leading to the filing of this appeal, are that on the application and request of the appellants, the Collector Land Acquisition (SDM) Mendhar made a reference to the trial Court in terms of Section 18 of the Jammu & Kashmir Land Acquisition Act. While the reference was pending consideration before the trial Court, the appellants absented on 25.05.2022 when the case was called. The trial Court vide its order dated 25.05.2022 dismissed the reference for non-prosecution. There was no immediate effort made by the appellants to seek restoration of the reference, dismissed in default on 25.05.2022. A belated application for restoration of the reference was moved by the appellants on 07.08.2023, which was delayed by 14 months and 12 days. A separate application for condonation of delay in terms of Section 5 of the Limitation Act was also filed. The trial Court considered the application for condonation of delay and in light of the averments made therein, came to the conclusion that the appellants had failed to show any sufficient cause which prevented them from moving an application for restoration within a stipulated period of limitation. The application for condonation of delay as also the application seeking restoration of the reference were thus rejected in terms of order impugned in this appeal.

3) The impugned order is challenged by the appellants, primarily, on the ground that the reference Court is not empowered or authorized to dismiss the reference in default and that once the reference has

been made by the Collector, it has to be decided by the reference Court on merits.

4) Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the argument raised by learned counsel for the appellants merits acceptance. Once a reference is made by the Collector to the Civil Court under Section 18 of the Land Acquisition Act, the Civil Court has to answer the reference on merits. The claimant may suffer adverse consequences in case he does not appear and lead evidence in support of his claim. The issue as to whether a reference made by the Collector in terms of Section 18 of the Land Acquisition Act be dismissed in default was considered by the Hon'ble Supreme Court in case of *"Khazan Singh (Dead) by Lrs Vs. Union of India"*, **2002 (2) SCC 242,** in which the Hon'ble Supreme Court after referring to the provisions of Section 18 and 26 of the Land Acquisition Act held thus:

> *"The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default."*

5) In view of the aforesaid settled legal position, I am left with no option but to accept the contention of the learned counsel for the appellants that the dismissal of the reference for non-prosecution by

the trial Court was without jurisdiction. The application moved by the appellants, which was apparently a belated one, ought to have been allowed for this reason alone.

6) In view of the above, th**e appeal is allowed and the impugned order dated 10.09.2024** passed by the trial Court in Reference File No. 09/Civil Misc. titled *"Mohd. Ayoub Khan & Ors. Vs. Collector Land Acquisition (SDM) Mendhar"* **is set aside**. **The reference File No. 09,** dismissed for non-prosecution vide order dated 25.05.2022 **is restored to its original number**. The appellants shall appear before the trial Court on 27.11.2026 and the trial Court shall proceed in the matter after putting all the concerned to notice.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

(Sanjeev Kumar)
Judge

JAMMU
23.10.2026
Manan

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