

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

Reserved on: 18.08.2023

Pronounced on: 01.09.2023

CM(M) No. 159/2023, CM No. 4271/2023, Caveat No. 1144/2023

SHAH MASOOD AHMAD AND ANR

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

Through: Mr. M. A. Makhdoomi, Advocate with
Mr. Manan, Advocate

Vs

SHAH SHABIR AHMAD

...Respondent(s)

Through: Mr. Farhat Zia, Advocate

CORAM:

HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE

J U D G M E N T

01.09.2023

1. The petitioners herein, aggrieved of order dated 07.07.2022 passed by the Court of City Judge, Srinagar in a civil suit pending between the parties whereby application for grant of interim relief came to be allowed, filed a Civil First Miscellaneous Appeal before the Court of Principal District Judge, Srinagar. The application for condonation of delay also came to be filed before the appellate court. The details of the controversy between the parties are not required to be stated.
2. The application filed for condonation of delay was further supplemented with an application seeking leave of the court to place on record additional grounds on affidavit in the application seeking condonation of delay which had already been filed with memo of appeal. The condonation application was contested by the respondent herein, plaintiff in the suit. The appellate court vide impugned order dated 22.05.2023 dismissed the application filed for condonation of delay on the grounds mentioned in the order. The court did not find any plausible reason to condone the delay.
3. It is mentioned in the impugned order that the petitioners herein had filed certified copy of the order dated 07.07.2022 after one and a half month of the passing of the order by the trial court when the limitation period for filing the appeal had already expired. The court also held that the bonafide mistake that the petitioners had with regard to limitation for

filing the appeal was no ground to condone the delay as the new Limitation Act had come into force in October, 2019 itself which prescribed the limitation period for filing such an appeal within 30 days.

4. Learned counsel appearing for the petitioners has argued that the appellate court has gone wrong in its reasoning given in the impugned order. The petitioners herein could not be non-suited on the basis of the judgments relied upon by the appellate court.
5. Learned counsel appearing for the respondent, on the other hand, has also taken the court through the impugned order passed by the 1st Appellate Court in order to impress upon the court that the appellate court has not erred in passing the order. The petitioners through the application had tried to incorporate the grounds which were available to the petitioners while filing the appeal but failed to do so. The petitioners only tried to improve upon the case set up by them in the condonation application through the aforesaid application.
6. Learned counsel appearing for the petitioners while arguing the case has relied upon explanation to Section 5 of the Limitation Act which reads as under:-

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

7. The limitation period for filing the miscellaneous appeal against the order like the present one passed by the trial court is 30 days as per the Limitation Act which is now in vogue in the Union Territory of Jammu & Kashmir. Prior to the Re-organization Act of 2019, the limitation period was 90 days under J&K Limitation Act applicable to the State of J&K. There is no dispute regarding this aspect of the matter.
8. The petitioners have sought condonation of delay in filing the appeal on the grounds as mentioned in the application which was filed along with

the appeal filed before the 1st Appellate Court. The application through which the petitioners further intended to take refuge was on the basis of explanation in Section 5 of the Limitation Act. The court is not in agreement with the learned counsel for the respondent that the application filed for supplementing the grounds as mentioned in the application qua the application originally filed for condonation of delay could not be entertained being an afterthought and, therefore, cannot be looked into for the purposes of determining the application filed for condonation of delay. The pedantic approach need not be applied by the court as far as supplementing the original pleadings with the one which the party intends to incorporate in the application when the same is not to finally determine the rights of the party to the suit on the outcome of the application.

9. The main contention raised by the petitioners is that there was sufficient ground in terms of proviso to Section 5 of the Limitation Act to condone the delay. The petitioners were under the genuine belief and practice that the limitation period for filing First Miscellaneous Appeal was 90 days and not 30 days as ordained in the Limitation Act which is now applicable to this part of the country. The argument of the learned counsel for the petitioners in this regard cannot be accepted as gospel truth till they satisfy the appellate court qua the contention raised by them.
10. As the petitioners claim to be misled by the practice qua the time period for filing the First Miscellaneous Appeal, the same can be determined only on the basis of evidence that comes on record. The petitioners have to make out that the error in application of period of limitation was a bonafide one. The application filed for condonation of delay could be brought to its logical end only after the petitioners are given opportunity to prove their contention in the application.
11. Learned counsel for the parties have cited number of judgments in support of their contentions, however, the same need not find place in this order for the reason that the court has held that the controversy involved in the matter can only be determined after the evidence is led in the application filed for condonation of delay.

12. The court is of the view that the court should invoke its power of superintendence in the case in hand keeping in view the issue in controversy though the respondent has contended that the jurisdiction need not be invoked by this Court in the present case.
13. For the aforesaid reasons, the present petition filed under Article 227 of the Constitution of India is allowed and the order impugned dated 22.05.2023 passed by the court of Principal District & Sessions Judge, Srinagar is set aside. The appellate court is directed to grant opportunity to the petitioners to prove their contention raised in the application. The petitioners shall produce all the evidence within three dates that shall be fixed by the appellate court. The respondent shall also be granted same number of opportunities in case he intends to avail the same. The application shall be decided after taking into consideration the evidence and the arguments that may be advanced by both the sides.
14. Disposed of.

(PUNEET GUPTA)
JUDGE

SRINAGAR
01.09.2023
AAMIR

Whether the judgment is speaking Yes/No

Whether the judgment is reportable Yes/No