
(2021) 05 J&K CK 0040
In the Jammu And Kashmir High Court
Case No : CR No. 26 Of 2018

Ghulam Mohammad Bhat And Anr	Vs	APPELLANT
State Of J&K And Others		RESPONDENT

Date of Decision : 20-05-2021

Acts Referred:

Limitation Act, 1963 — Section 5
Code Of Civil Procedure, 1908 — Order 9 Rule 13

Citation : (2021) 05 J&K CK 0040

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : M.I.Qadri, Naveed Gul, Irfan Andleeb

Final Decision : Disposed Of

Judgement

1. The revision has been filed against the order dated 26.02.2018 passed by Munsiff, Pulwama (for brevity â??Trial Courtâ?) allowing Application

under Section 5 of Limitation Act and Application under Order IX Rule 13 of the Code of Civil Procedure, condoning delay and setting-aside

judgement and decree dated 30th April 2016.

2. The order impugned has been challenged by petitioners precisely on the following grounds:

(a) The application filed by respondent no.3 in terms of Order IX Rule 13 CPC before the Trial Court was time barred and explanation vis-Ã -vis

delay was somewhat cryptic in nature but the Trial Court even then has allowed the application and set-aside decree dated 30.04.2016.

(b) The Trial court has invoked the procedure by deciding the application under Order IX Rule 13 CPC along with application seeking condonation of

delay, without first discussing and deciding condonation of delay application. The

Trial court was required to decide the application for condonation of delay first, after seeking objections from the other-side and only thereafter decide the application under Order IX Rule 13 CPC. The Trial Court has committed error apparent on the face of record, by allowing both the applications at the same time, as such, committed wrong, which renders impugned order bad in law and deserves to be set aside, as such.

3. I have heard learned counsel for the parties and perused the record.

4. It is the submission of Mr. M. I. Qadri, learned senior counsel appearing for the petitioners, that the Trial Court has adopted a novel procedure in this case while deciding the application under Order IX Rule 13 CPC along with application seeking condonation of delay. It is submitted by him that the Trial Court had to seek objections to the application for condonation of delay from other-side. Since the question with regard to the condonation of delay was to be considered and decided first, the application seeking setting-aside of the decree, was to be taken up only after the application seeking condonation of delay was considered and decided. It is contended that the Trial court has committed wrong by deciding/allowing the application for setting aside the decree without seeking objections from and hearing the petitioners. Diarizing and entertaining of application for setting aside ex parte decree was dependent upon the outcome of application for condonation of delay. If the condonation of delay is rejected, the result would be that application under Order IX Rule 13 CPC is to be dismissed as being time barred. It is also contended that the Trial Court by allowing both the applications by composite order has not only committed procedural wrong but has also passed the order impugned regarding setting aside ex-parte of decree without giving the petitioners opportunity of being heard or to contest the same.

5. Mr. Irfan Andleeb, learned Dy. AG appearing counsel for the respondents, submits that there is no wrong in passing the order impugned, whereby both the applications have been allowed. The Trial court is said to have passed well-reasoned order and therefore the revision petition is liable to be dismissed.

6. Considered the arguments put forth by learned counsel for parties and perused the record on file. I am of the opinion that the Trial court by allowing both the applications by composite order has committed procedural wrong and

the order impugned insofar as it relates to setting aside of ex parte

decree has passed without giving other-side opportunity of hearing to contest the same, thus, the order under Order IX Rule 13 is concerned is wrong.

7. While going through the order impugned, it appears that the Trial Court, without proper application of mind, has allowed the application seeking

setting aside of ex parte decree as is evident from operative portion of judgment dated 26.02.2018, which reads as under:

â??To sum up, it is evident that the application under Order 1X Rule 13 CPC is moved by the above named Defendant No. 3 is time barred, however,

the explanation viz-a-viz delay is somewhat cryptic in nature while as on the other side public purpose is subject matter of the above captioned

judgement/ decree and only the question of compensation is to be assessed and evaluated by the officials of the Irrigation Department and

inconvenience caused to the above named plaintiff(s) can be compensated monetarily and by this very way the cause of justice will be advanced so

far the rival claim in the above captioned suit is concerned. Accordingly, the application moved by the above-named non-applicant/plaintiff No. 3 under

Order IX Rule 13 of Civil Procedure Code is allowed subject to costs of Rs. 6000 (six thousand only) and the delay so cause viz-a-viz presentation of

the said application is condoned under Section 5 of Limitation Act and the judgment followed by decree as passed in File No. 116/N date of institution

22.02.2006 date of decision 30.04.20126 is set aside and the civil clerk is directed to call the original file from the record room and list the same before

this court for further proceedings on 8th of March 2018.â??

8. Perusal of application for condoning delay filed by respondent no.3 before the Trial Court would reveal that for seeking condonation of delay, it has

been stated that respondent no.3 (applicant) got knowledge of judgement on 26.10.2016 and when non-applicants (petitioners herein) presented the

judgement in the office of respondent no.3 and due to winter vacation of judiciary, respondent no.3 could only approach standing counsel on

28.01.2017 and certified copy of judgement was obtained on 23.02.2017, after which respondent no.3 applied with legal position of the case.

In the present case, the Trial Court has passed impugned order without first independently deciding application for condonation of delay. The Trial

Court has exceeded its jurisdiction while passing the order impugned.

9. For the reasons discussed above, revision petition on hand is allowed and impugned Order dated 26.02.2018 passed by Munsiff, Pulwama, is set-

aside. The Trial Court shall first decide the condonation of delay application after hearing both the parties without there being influenced by the

observations made herein before, and only thereafter decide application under Order IX Rule 13 CPC.

10. Disposed of as above.

11. Copy be sent down.