

(2001) 09 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : C.R.P. No. 5 of 2000

Jehlum Exporters Pvt.Ltd.

APPELLANT

Vs

D.M.Oriental Insurance Company

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Section 114

Citation : (2002) KashLJ 435

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : A.M.Khan, Advocates appearing for the Parties

Judgement

1. Respondents have been set exparte. A coordinate Bench of this court on 15072000 dismissed revision petition filed by petitioner against the order dated 20111999 of District. Judge, Srinagar. Under the impugned order, the District Judge permitted Insurance copy to adduce evidence and afforded it time and opportunity to formally apply for summoning of witnesses by the court. The revisional court did not find the direction legally infirm or such as to suffer from a jurisdictional error.

2. Against this order of dismissal of the revision on 2572000, this review petition is filed on the premise that the revisional court could not have approved the action of the trail court in permitting recording of the oral evidence in the matter of on going proceedings in respondent's application for setting aside the exparte decree against it when such application is overwhelmingly barred by time. Further it is alleged that the High Court did not consider the submissions made by the petitioner before it. The factually incorrect submissions made by respondent in the application too were

ignored

3. The learned counsel submits that only evidence on affidavit can be permitted by court while deciding condonation of delay and no oral evidence

can be allowed in the matter. He cites Birendra Nath Singh Vs. Santa Devi and others (AIR 1992 Patna 146). In the facts and circumstances of

that case, a learned Single Bench of the Patna High Court while observing that the condonation of delay matter is to be decided on the basis of

affidavit evidence on record of that case observed that no provision of law requires the court to decide"" condonation on affidavit alone. However,

once it is conceded that the condonation matter has to be decided on evidence and documents, then the evidence can be of any kind and no set

form of evidence is prescribed by any provision of law.

4. Soumitra Panda Vs. A.K.Agarwal and ors (AIR 1994 Cal:165) is another authority cited by the counsel on his above submission. However, it

does not in terms holds that an application for condonation is to be decided on affidavit. This is an authority which deals with the necessity of filing

an affidavit in support of the review petition in terms of the Chapter IV of the (Appellate Side) Rules (1957), of Calcutta High Court.

5. Shanti Devi and Ors Vs.Ram Lal (SLJ 1983 J&K:297) referred by the counsel, deals with the grounds on which and exparte decree can be set

aside within the contours of Orders 9 Rule 13 C.P.C and the power of courts to condone the delay in filing such application on satisfaction drawn

from affidavit or documents on record.

6. The order authorities cited by the counsel AIR 1978 AII.195;SCR 1967 (2) Page 757 and AIR 1993 SC:1245 deal with falsity or otherwise of

the pleas, not arising in the facts and circumstances of this case and in any case not to be addressed in this review petition.

7. AIR 1973, Patna 272; AIR1983 Patna 333 and AIR 1992 Delhi 22; the other authorities cited in terms deal with setting aside of the exparte

decrees barred by time and the conspectus of law laid thereto. Neither the legal pleas not the application of law in the facts and circumstances of

these cases have any application to the legal and factual pleas raised in this review petition. Infact the law and facts of the above cited authorities

are not para materia with the law and the factual pleas raised in these review proceedings.

8. As would be seen, the above grounds cannot serve as basis to justify review of the order. The review is not sought on discovery of any important matter or evidence not within the knowledge of petitioner or which could not be produced by him, despite due diligence when the order was passed. It is not even a case of mistake or error apparent on the face of record. No other sufficient reason is given to warrant or merit review of the order. Merely because an action could be taken in a perceived mode, when same is amenable to be taken in more than one ways under law, cannot be a ground for review. Allegedly ignoring facts or considering part facts by revisional court, if at all so, can be hardly a ground to invoke powers of review in this case.

9. No ground is made out to merit review of this court dated 25/2/2000. Dismissed.