
(2015) 09 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : COD No. 80 of 2013 c/w Review No. 03 of 2013

Mehraj-ud-Din Mir

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Citation : (2016) 2 JKJ 25

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Hasnain Massodi, J.

Bench : Division Bench

Advocate : Mr. Javed Sathu, GA, vice, Mr. N.H. Shah, AAG, for the Respondent Nos. 1 to 7; Mr. M.A. Qayoom, Advocate, for the Petitioner; None, for the Respondent No. 8

Final Decision : Dismissed

Judgement

Mr. N. Paul Vasanthakumar, C.J. This condonation delay application is filed seeking to condone the delay of 05 years and 181 days in filing

the review petition against the order made in LPA No. 243/2006 dated 31.08.2007.

2. The reason stated in the application seeking to condone delay and filing review petition is that in a connected appeal (LPA No.39/2010) which

was disposed of on 01.05.2010, Division Bench granted liberty to the petitioner for filing appropriate proceedings for recalling/ reviewing of the

order dated 31.08.2007 and if the said order is recalled or reviewed, the result thereof will bind the parties irrespective of dismissal of LPA

No.39/2010.

3. It is to be seen that the said liberty was granted on 01.05.2010, however, this application seeking condoning delay with review petition was filed

on 30.03.2013. There is no explanation for the delay which had occurred from

01.05.2010 to 30.03.2013. In such circumstances, no ground is made out to condone the delay.

4. On merits, learned counsel appearing for the review petitioner argued that the Division Bench judgment dated 31.08.2007 is liable to be

reviewed on the ground that the writ petition (OWP) No.481/2005 filed by the petitioner was not dismissed on merits but on the ground that the

petitioner was having an effective, alternate remedy of filing statutory appeal under Section 7 of the Jammu & Kashmir Migrant's Immovable

Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, for short the Migrant Act, and the appeal filed pursuant to the said

order of the learned Single Judge under Section 7 of the Migrant Act was dismissed by relying upon the order of the Division Bench dated

31.08.2007. The appeal was filed by the petitioner before the appellate authority during the pendency of the LPA No.243/2006 i.e. on

07.07.2007. The petitioner having filed an appeal before the appellate authority under Section 7 of the Migrant Act during the pendency of the

LPA, he could have very well withdraw the LPA and raise all his contention before the appellate authority.

5. On perusal of the order of the Division Bench dated 31.08.2007, it is evident that the learned counsel who appeared for the petitioner argued

the LPA on merits and after considering the submissions on merits, the Division Bench gave a finding which reads as follows:

In the agreement to sell it was categorically stipulated that till the entire consideration money was paid the appellant would not be empowered to

take possession of the property in any manner nor he would have the authority to use or construct any house or any property on it in any manner.

The agreement to sell also stipulated that full consideration money would be paid by the first week of January, 1998 failing which the respondent

could forfeit 25% of the earnest money (Rs.50,000.00). The findings recorded by the District Magistrate seen in light of the stipulations in the

agreement to sell leave no room for doubt that the possession of the appellant over the property in question was unauthorized within the meaning of

the Act and it plainly attracted the provisions of Section 5 of the Act.

On hearing Mr. Qayoom, we find no merit in the appeal. It is, dismissed.

6. The scope of review of an order is very limited and it cannot be a forum to re-

argue the matter already decided and this cannot be also used as

a tool for changing the opinion/ view of the Court. The said position is explained by the Hon'ble Supreme Court in the decisions reported in M/s.

Northern India Caterers (India) Ltd., v. Lt. Governor Of Delhi, (1980) 2 SCC 167, Ajit Kumar Rath v. State Of Orissa (1999) 9 SCC

596, Khela Banerjee v. City Montessori School, (2013) 7 SCC 615 and Kamlesh Verma v. Mayawati(2013) 8 SCC 320. In such

circumstances, the review application filed by the petitioner seeking review of the order dated 31.08.2007 with condone delay cannot be

entertained and the same are dismissed.