

(2002) 03 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : CMP(CSA) No. 180 Of 1999

State of J&K and Others

APPELLANT

Vs

Abdul Rehman Wani

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Section 5

Citation : (2003) JKJ 567 Supp : (2002) KashLJ 263 : (2002) SriLJ 260 : (2002) 1 SriLJ 260

Hon'ble Judges : Muzaffar Jan, J

Bench : Single Bench

Advocate : M.H.Attar, A.K.Kakru, Advocates appearing for the Parties

Judgement

1. Application for condonation of de lay has been submitted with a prayer to condone the delay of one year and 23 days on the main grounds that

the applicants appellants could not file the appeal in time because the counsel for appellants in formed them about the judgement and decree dated

18.04.1998 in the last week of July, 1998 and thereafter it took some time for them to obtain the copy of the decree and judgement. The matter

was thereafter referred to law and Sericulture Department for clearance on the administrative side which took some more time and ultimately

further delay was caused due to annual Darbar Move and in these circumstances the delay was not deliberate and, as such, the delay be

condoned.

2. Heard learned counsel for the par ties.

3. Learned counsel for the applicant appellants has submitted that since the delay was caused in completing the official formalities and on account

of negligence of the counsel to inform the appellants about the date of

announcement of judgement, therefore, the delay in view of law laid down by the Apex Court in AIR 2000 SC 2306 be condoned.

4. The submission of learned counsel for the applicant appellants to condone the delay cannot be permitted for multiple reasons. The fact that there is a general tendency of the functionaries of the State to sleep over their rights, in an indolent manner, will not entitle them to the indulgence of the court while dealing with applications for condonation of delay. If the trend of the State functionaries demonstrating indifferent attitude and indilligence as a litigant is encouraged, avoidable delay will be caused in the disposal of cases besides causing prejudice to other side. The Apex Court in Judgement today 1998 Vol. 7 SC 21 has observed that the period of limitation cannot be extended and delay condoned only on equitable grounds, in AIR 1999 Raj 248 it has been held that where sufficient cause is not shown, delay may not be condoned. The Supreme Court has also observed that where the limitation is allowed to be passed without taking proper care, the explanation must be for the period pertaining to the date of limitation. This view has been held in AIR 1998 SC 733.

5. The explanation submitted by the present applicant appellants obviously pertains to the period after limitation. The explanation for delay should have been for the period after the judgement was passed on 18.04.1998 till 19.07.1998, the period prescribed for limitation. There is nothing submitted in the application or any other document to explain the delay of not filing the appeal within this period of limitation. On the contrary the explanation submitted is for the period starting from 03.08.1998 when the copy of the judgement and decree was applied and subsequently issued prayed to be considered could have been submitted and agitated before the trial courts. Some has not been done at the appropriate stages of the trial in the lower courts.

9. From the facts and circumstances as made out from record, no cause, muchless a sufficient cause, is shown for condoning the delay for the period of limitation. The application for condonation of delay merits to be dismissed.

10. Application is accordingly dis missed. Interim directions issued, if any shall stand vacated.

11. Record be sent back forthwith.