
(1999) 05 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : IANo. 471 of 1998

Syed Riyaz Ahmad Rufai.

APPELLANT

Vs

University of Kashmir

RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 41, 151
Jammu and Kashmir Limitation Act, 1995 — Article 168, 5

Citation : (2000) SriLJ 187 : (2000) 1 SriLJ 187

Hon'ble Judges : G.L.Raina, J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Judgement

Syed BashirUdDin, J.—LPA 230/97. Syed Riyaz Ahmad Rufai Vs. University of Kashmir and Others was ""dismissed for want of

prosecution"" on 2271998. The motion for restoration of this L.P.A. alongwith application for condonation of delay in filing the said motion has

been filed on 21101998. Respondent No. 5 Abdul Rashid Mufti, has contested the restoration and condonation matter and filed objections

thereto.

2. Counsel for the applicant/appellant, submits that the appellant had no knowledge or information about the listing and dismissal of LPA on

2271998. He learnt about the order only on 21101998, when he came across copy of the order of dismissal of the LPA in University. He

immediately took steps and filed the application, the LPA did not figure in the regular cause list on regular supplementary cause list issued by the

Registry for the week from 2071998 to 2471998. The appellant learnt that in fact on the emergency memo of Respondent No 5, the case was

ordered on 2171998 by His Lordship Hon'ble the Chief Justice to be listed next

day the 22/7/1998. the case was so listed and was dismissed, as above. The appellant was not aware about the appearance of case in the daily supplementary list of 22/7/98. He has no notice whatsoever of listing of the case on this date. The moment he learnt about the dismissal he without wasting any time filed the application for readmission of the appeal with condonation application, the appellant had no knowledge or notice about filing of emergency memo or the order of listing of case on 22/7/1998 or the actual listing of the matter in the daily supplementary list on the said date. It is for lack of notice and knowledge in the circumstances that the appellant/applicant or his counsel failed to appear on 22/7/1998 before the court, whence the appeal was dismissed for nonprosecution. In these circumstances, the counsel prays that the appeal may be readmitted for hearing and delay in filing the restoration memo beyond 30 days may be condoned.

3. The counsel for the respondents in his objections has opposed the restoration/readmission of the appeal, the application is stated not to have been filed within time. The listing and dismissal of the case on 22/7/1998 is legal. The appellant/applicant's absence on 22/7/1998 is intentional and deliberate. No sufficient cause is made out for restoration/readmission of the appeal.

4. The counsel for nonapplicant. Mr. MA. Qayoom. submits, that there is no provision for condonation of delay in case application for restoration/readmission of the appeal is moved beyond thirty days as prescribed by Article 168 of the Limitation Act. Section 5 of the Limitation Act, providing for extension of period in certain cases, does not cover such a case. The application being barred by time, has to be dismissed, notwithstanding, that the limitation is not set up as defence in the case.

5. The counsel for appellant/applicant concedes that Section 5 of the Limitation Act is not applicable to the case. Period of limitation cannot be extended beyond thirty days by resorting to Section 5 of Limitation Act, but all the same counsel submits that in the facts and circumstances of the case, the delay can be condoned under Section 151 C.P.C in so far as the court's inherent powers are saved to enable it "to make such orders as may be necessary for the interest of justice or to prevent the abuse of the process of the court". The counsel submits that the inherent powers of the

court are not hedged by any limitations provided the ends of justice warrant recourse to such powers. In this case, the LPA has been dismissed

without notice to utter ignorance of the appellant/petitioner, when case did not figure in the regular or supplementary cause list, but in a daily

supplementary list under orders passed just one day earlier.

6. We have given our thoughtful consideration to the submissions made at Bar and examined the record.

7. In Mohd Yousuf Magrey's case (1998 SLJ 180) a Division Bench of this Court held that, "powers of the court are not fettered to prevent the

abuse of process of court of miscarriage of justice when appropriate circumstances of a case demand so. Section 151 Civil Procedure Code is an

enabling provision by virtue of which inherent powers have been vested with the court not to feel helpless in such circumstances. But. to administer

substantial justice, court can use its own inherent power to fill up the laccunae left by the legislature while enacting law or where the legislature is

unable to foresee any circumstance which may arise in a particular case." The court in this case further held that delay in restoration/readmission of

appeal beyond time though not covered by Section 5 of the Limitation Act. can be condoned by court under its inherence powers saved by

Section 151 ofCPC. Afterall cause of substantial justice has to be preferred over technicalities. Even, the purpose of enacting Section 5 of the

Limitation Act is to enable the Courts to do substantial justice.

8. In this case we find sufficient cause is made out for condonation of delay and readmission of appeal. The appeal is restored/readmitted, after the

order or July 22,1998 of dismissal of appeal is recalled, as same is just and proper.