Serial No. 1
Supplementary

# HIGH COURT OF JAMMU & KASHMIR AND LADAKH
# AT JAMMU

**(Through Virtual Mode)**

**Pronounced on : 17.10.2024**

Case No: CM (M) No. 101/2024

Naveen Chander, aged 63 years,
S/o Late Sh. Kewal Krishan,
R/o Ward No. 14, Tehsil and
District Kathua-184101. ...Petitioner(s)..

Through :- Mr. Rahul Sharma, Advocate.

**Vs**

Ram Nath, aged 55 years,
S/o Late Sh. Kewal Krishan
R/o Ward No. 14, Tehsil and
District, Kathua-184101. .....Respondent(s)..

Through:- Mr. Ved Bhushan Gupta,
Advocate with Mr. Rahul Aggarwal,
Advocate.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

**Coram : HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

## JUDGMENT

1. The petitioner-plaintiff is aggrieved of the order dated 20.07.2022 and order dated 13.12.2023 passed by the court of learned Civil Judge (Sr. Division) CJM, Kathua whereby the learned court has closed the right of the petitioner to lead evidence and the application to deposit the diet expenses on the ground that the evidence of the plaintiff already stood closed vide order dated 20.07.2022. It is submitted that in the suit filed by the petitioner, the issues were framed on 19.07.2010 and the issue No.1 which was treated as preliminary issue was decided by the trial court vide order dated 12.11.2010. The petitioner was directed to file list of witnesses within a period of 15 days by the same order. It is further submitted that the petitioner had already filed application for deposit of

witness expenses on 16.09.2010. It is also submitted that the file of the trial court was summoned by this Court in Civil Revision No. 133/2010 and in the revision petition the original record summoned by this court was later on directed to be sent back to the trial court. The petitioner contends that due to COVID 19 restrictions and the confusion that occurred to the petitioner due to another suit pending between the parties before the said court and the dates given in those suits led to non-examination of the witnesses by the petitioner. It is also submitted that the application filed by the petitioner on 16.09.2010 wherein he had given list of witnesses and intended to deposit the expenses of the witnesses remains pending with the trial court. The petitioner has been deprived of his right to lead evidence by virtue of impugned order is the precise submission of the learned counsel for the petitioner.

2. Mr. Ved Bhushan Gupta, learned counsel appearing for the respondents has argued that no case is made out by the petitioner for allowing him to lead evidence in support of his case in view of the facts of the case. It is submitted that even if the contention of the petitioner is to be accepted the petitioner has not done his part and there is a delay which is not satisfactorily explained by the petitioner. The petitioner failed to deposit the expenses for fairly long time or produce the evidence otherwise in the suit.

3. The Court has been taken through the various orders by the counsels for both the sides in support of respective contentions.

4. The suit though pending for the last more than fourteen years yet for one reason or another is still at the initial stage. There may be some lapse on the part of the petitioner-plaintiff in pursuing his suit diligently. However, the petitioner need not be deprived of his right to further pursue the suit effectively against the respondent-defendant.

5. The Court is of the view that the overall circumstances that emerge out of the proceedings of the trial court do make out a case for granting relief in favour of the petitioner. The party cannot be made to suffer for every default made by the party and face extreme consequences such as

depriving him of leading evidence more so when the case is still at its infancy and has not progressed to the extent it should have by now. The non-compliance to the procedural mandate as designed in Code of Civil Procedure should not in all circumstances cause hardship to the party. The petitioner is entitled to the relief in the following terms set forthwith by the Court.

6. Accordingly, the impugned orders are set aside. The petitioner is allowed to lead evidence in support of his case. The petitioner shall deposit the witness expenses within a period of fifteen days from today of only those witnesses which he cannot produce of his own. The trial court can also dispense with the examination of any witness mentioned in the original application if it finds so necessary. The petition is, however, allowed subject to payment of Rs.3000/- as costs to be paid by the petitioner to the respondent within a period of fifteen days from today. The parties shall appear before the trial court on 06.11.2024.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

**(PUNEET GUPTA)**
**JUDGE**

Jammu:
17.10.2024
Pawan Chopra

Whether the Judgment is speaking? Yes/No
Whether the Judgment is reportable? Yes/No