

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

Reserved on 16.10.2024  
Pronounced on 08.11.2024

CM(M) No. 40/2023  
CM No. 1587/2023

Bharat Bhushan Sharma .....Appellant(s)/Petitioner(s)

Through: Mr. Rakesh Chargoitra, Advocate

vs

Ajit Kumar and others ..... Respondent(s)

Through: None

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

01. The petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India for quashing the order dated 27.12.2022 passed by the Court of 3<sup>rd</sup> Additional Munsiff, Jammu (for short "the trial court") in case titled, "Bharat Bhushan vs. Kashmir Dass and others", whereby the application filed by the respondents for condoning the delay in filing an application for setting aside *ex parte* judgment and decree dated 23.08.2014, passed in suit titled "Bharat Bhushan Sharma vs. Kashmir Dass and others, has been allowed.

02. The order dated 27.12.2022 has been assailed by the petitioner primarily on the ground that the learned trial court has allowed the application for the reason that fault of the lawyer is sufficient cause to condone the delay, as long as there is no negligence and laches on the part of the litigant, but while doing so, the learned trial court has failed to take note of the conduct of the respondents as they were set *ex-parte* on 05.09.2012 and thereafter they slept over the matter for nearly three years and suddenly, they came with an application on 15.12.2015 for setting aside *ex parte* judgment and decree along with the application for condonation of delay on the ground that their counsel had told them not to

appear in the case, as he would appear on their behalf. It is also stated that the learned trial court has failed to take note that the respondents came to know about the *ex parte* judgment on 12.08.2015, when they appeared in the execution petition, but they applied for certified copy of the judgment on 30.09.2015 i.e. after 49 days from the date of knowledge, which was collected by them on 15.10.2015 and thereafter application for condonation of delay was filed on 15.12.2015 i.e. after the period of two months from the date they got copy of the judgment.

03. Mr. Rakesh Chargoira, learned counsel for the petitioner argued that the learned trial court has passed the order impugned mechanically and has not taken note of the submissions made by the petitioner.

04. None has appeared on behalf of the respondents, they are set *ex parte*.

05. Heard learned counsel for the petitioner and perused the record.

06. A perusal of the record reveals that *ex parte* decree was passed on 23.08.2014 and the application seeking condonation of delay in filing the application for setting aside *ex parte* decree was filed on 15.12.2015. The record further depicts that it was pleaded by the respondents that they were told by their counsel that they need not appear in the case on each and every date of hearing fixed by the court and they believed their counsel in good faith. Accordingly, they stopped coming to the court, but their counsel did not appear as a result of which, they were set *ex parte* on 05.09.2012 and ultimately the suit was decreed *ex parte* on 23.08.2014. It was further pleaded by the respondents that they got the knowledge of *ex parte* judgment and decree when they got notice in the

execution proceedings and appeared in the same before the court on 12.08.2015. It is also borne out from the application that the certified copy of the judgment was applied on 30.09.2015 and the same was issued on 15.10.2015. It was also pleaded by the respondents that some time was consumed in engaging the counsel and because of that, the delay was occasioned in filing the application for setting aside the judgment and decree.

07. The learned trial court while passing the order impugned has taken note of the various pronouncements of the Hon'ble Supreme Court and arrived at the conclusion that the respondents have demonstrated sufficient cause for condoning the delay and a pedantic and hyper technical view in respect of the explanation tendered by the litigants demonstrating cause for delay in availing the appropriate remedy should not be taken.

08. This Court does not find any jurisdictional error on the part of the learned trial court. It was well within the jurisdiction of the learned trial court to either accept the cause projected by the respondents for condoning the delay or not and once the learned trial court has exercised its discretion on the basis of settled proposition of law, this Court does not find any reason to show indulgence.

09. In view of the above, the present petition is found to be misconceived. The same is, accordingly, **dismissed**.

**(RAJNESH OSWAL)**  
**JUDGE**

**Jammu:**  
08.11.2024  
Karam Chand/Secy.

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No