

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

**Reserved on 12.12.2025
Pronounced on 06.02.2026
Uploaded on 09.02.2026
Whether the operative part or
full judgment is pronounced:
Full**

RFA No. 29/2023

M/s Ram Kour Behari Lal and Co. ...Petitioner(s)/Appellant(s)

Through: Mr. Jagpaul Singh, Adv.

v/s
M/s Hakam Chand and Co. and ... Respondent(s)
others

Through: Mr. Rohan Nanda, Adv. for No. 3

**CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGMENT

PER OSWAL J

1. This appeal under section 13(2) of the Commercial Courts Act, 2015, by the appellants is directed against an order dated 22.05.2023 passed by the Court of learned Additional District Judge (Commercial Court), Jammu (hereinafter to be referred as the 'Trial Court').

2. By virtue of impugned order, the Trial Court has dismissed the appellant's application for condonation of delay attending an application seeking restoration of a civil suit titled '*M/s Ram Kour Behari Lal and Company vs. M/s Hakam Chand and Company and others*', which stood dismissed for non-prosecution on 28.05.2011. Consequently, the accompanying application for restoration of the suit was also dismissed leaving the appellant non-suited without adjudication of civil suit on merits which otherwise was posted for final arguments and judgment.
3. The appellant challenges the impugned order on the grounds that the suit, which was diligently pursued for sixteen years, was at the stage of final arguments when it was dismissed for non-prosecution on 28.05.2011. It is contended that the Trial Court acted in a casual and mechanical manner, failing to appreciate that the default arose from shuffling changes in the engaged counsel's chamber, specifically following the departure of Mr. Raman Sharma, Advocate, from the chambers of Mr. A.V. Gupta, Senior Advocate. The appellant submits that since the trial of the suit was handled by

Advocate Raman Sharma leading to stage of final arguments being underway, the Trial Court ought to have exercised its discretion under Explanation to Order 17 Rule 2 of the J&K Code of Civil Procedure 1920 (in short 'CPC') so as to dispose of the suit on merits rather than dismissing it in default.

4. Mr. Jagpaul Singh, learned counsel for the appellant vehemently argues that in the application for condonation of delay, it stood stated that the delay in filing the restoration application was occasioned by shifting of Mr. Raman Sharma, Advocate, who was all along handling the matter as *de facto* counsel of the appellant and who had transitioned from his Senior's Chamber of senior Advocate Mr.A.V.Gupta, to establish his independent practice coinciding when the suit was listed for final arguments. Consequently, this shift resulted in the appellant's suit suffering lack of due attention and handling at the end of junior association of senior Advocate Mr.A.V.Gupta & Association who otherwise was the appellant's counsel. that led to suit's dismissal for non-prosecution. He has further argued that the learned Trial Court was not correct in holding

that the applications have been filed by a counsel along with his affidavit, who is not even remotely connected with the appellant's suit because even though the Power of Attorney(Vakalatnama) of said counsel filing the applications on behalf of the appellant was not on record, but after he filed the application for condonation of delay for restoration of the suit, said counsel had filed an application for serving the defendants/non-applicants through Publication mode which application was duly signed by the appellant. It is further submitted that the Trial Court, instead of being hyper technical, ought to have adopted a liberal and pragmatic approach in considering the application for condonation of delay, as it is a settled principle of law that a lis, that too original one, should ideally be adjudicated on its merits rather than dismissed on technical cause or default, particularly in the instant case where the suit had reached the stage of final arguments leaving nothing at the end of the appellant as a suitor to be anything from its end. He has placed reliance upon the judgments of the Apex Court in **Mool Chandra v Union of India and another, (2025) 1 SCC**

625 and Raghunath Devi v Administrator, Srinagar Municipality, AIR 1962 J&K 83.

5. On the contrary, Mr. Rohan Nanda, learned counsel for respondent No. 3, has submitted that the application for condonation of delay along with application for restoration of the suit was filed by the counsel without any formal authorization from the appellant's end for which learned Trial Court rightly dismissed the application for condonation of delay for which there is no perversity in the view point of the learned Trial Court that the appellant has not demonstrated sufficient cause for condoning the delay in seeking restoration of its suit.
6. Heard and perused the record including the record of the Trial Court.
7. The civil suit, in reference, for recovery of an amount of Rs. 5.58 lac came to be originally instituted by the appellant before this Court, which was later assigned to the court of learned Additional District Judge, Jammu for disposal vide an order dated 26.02.1996.
8. After the closure of evidence of the appellant, the evidence of the respondents was led and closed on

30.03.2010. The suit file was then posted for final arguments on 05.05.2010. Thereafter, on 19.04.2011 the matter was posted for 03.05.2011, when none appeared on behalf of the appellant to be adjourned for 03.05.2011 when none had appeared on behalf of both parties. On 27.05.2011, none appeared on behalf of the appellant, while the counsel on behalf of the respondent No 2 was present. Thereafter, the suit was posted for 28.05.2011 when taking note of the absence of the appellant as well as his counsel, the suit was dismissed for non-prosecution.

9. Thereafter, a time barred restoration application accompanied by an application for condonation of delay came to be presented for restoration of the suit on behalf of the appellant through and by Mr. Aditya Gupta, Advocate on 19.12.2012 which was dismissed for non-prosecution on 28.05.2011. The application was supported by an affidavit sworn by advocate Mr. Aditya Gupta.
10. The appellant sought condonation of delay by explaining that Advocate Sh. Raman Sharma, an associate of M/s A.V Gupta & Associates had become

independent and moved from the Chambers of Mr. A.V.Gupta, Senior Advocate, to pursue his own practice while the suit was fixed for final hearing. This transition caused an oversight in file management in the chambers of M/s A.V.Gupta & Associates. Meanwhile, the proprietor of the appellant's own ill health hindered ability to follow up on the proceedings.

11. Contrarily, the respondents submitted before the Trial Court that an engaged counsel's internal chamber arrangements and brief handling do not excuse the appellant's negligence. The respondents maintained that the appellant failed to show due diligence by causing appearance on several dates of hearing, leaving the Trial Court with no alternative but to dismiss the suit in default. It is further contended that it is the primary duty of the litigant, not just the lawyer, to monitor the progress of the litigation.
12. The endorsement on the application for restoration of suit indicates a procedural lapse in the Trial Court's Registry. Although the Trial Court directed a report from the office regarding the filing, no such report was ever prepared and provided. Consequently, notices

were issued on 19.12.2012 without the Court or the Court Clerk noticing the absence of the Vakalatnama/Power of Attorney. The primary purpose of an office report solicited is to catch such clerical deficiencies. Had the Trial Court's office performed its duty with diligence, the counsel would have been prompted to cure the defect immediately. The issuance of notice by the Trial Court, despite the incomplete filing, constitutes a shared error.

13. Under the principle of *actus curiae neminem gravabit*, a litigant must not suffer due to an oversight by the Court's administration. Therefore, the procedural irregularity should not be a ground for dismissing the appellant's plea. In the case of **Jang Singh vs. Brij Lal & Ors., 1966 AIR(SC) 1631**, the Hon'ble Supreme Court of India has encapsulated the essence of maxim "*actus curiae neminem gravabit*" in para-6 which is reproduced as under:-

The facts of the case almost speak for themselves. A search was made for the application on which the order of the Court directing a deposit of Rs. 4,950 was said to be passed. That application

remained untraced though the District Judge adjourned the case more than once. It is, however, quite clear that the challan was prepared under the Court's direction and the duplicate challan prepared by the Court as well as the one presented to the Bank have been produced in this case and they show the lesser amount. This challan is admittedly prepared by the Execution Clerk and it is also an admitted fact that Jang Singh is an illiterate person. The Execution Clerk has deposed to the procedure which is usually followed and he has pointed out that first there is a report by the Ahlmed about the amount in deposit and then an order is made by the Court on the application before the challan is prepared. It is, therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices,

to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "Actus curiae neminem gravabit".

14. The record contains an application signed personally by the appellant, accompanied by an affidavit dated 08.11.2014, wherein the appellant affirms that his counsel was acting on his express instructions. This is clear manifestation of the appellant's intent which suffered to cure any procedural defect regarding *Vakalatnama*. In the peculiar facts and circumstances of the case, the non-filing of a *Vakalatnama*/ Power of

Attorney can be held to be a technical irregularity and not a fatal flaw to the competency of an application. We disagree with the respondents' contention that the restoration plea was 'incompetent'. The appellant's personal involvement and subsequent filings sufficiently validate the authority of his counsel.

15. It now falls upon this Court to examine the legality of the order dated 22.05.2023, whereby the learned Trial Court rejected the appellant's plea for condonation of delay.
16. The primary ground for condoning the 560-days delay is the confusion resulting from Mr. Raman Sharma, Advocate, transitioning to an independent practice away from the chambers of Mr. A.V. Gupta, Senior Advocate. While the application does not explicitly state the date when the appellant gained knowledge of the dismissal, this omission should not overshadow the procedural history of the case.
17. The suit had been pending for final arguments for over a year, with the recording of evidence already concluded. Under Explanation to Order 17 Rule 2 of the CPC, when entire or substantial portion of evidence

in suit has been recorded, the Trial Court possesses the discretion to proceed for final adjudication as if the parties to suit were present.

18. Given that the appellant had fulfilled his obligation by concluding his evidence, the responsibility for addressing final arguments rested with his counsel. The counsel's absence, caused by the reasons aforementioned, led to a dismissal that contradicts the spirit of the CPC. Ordinarily, a suit poised and positioned at the stage of final arguments should be adjudicated on its merits rather than being dismissed for non-prosecution.
19. When a suit in particular pending for final arguments is dismissed for non-prosecution, an adjudication friendly approach is required while considering an application be it for condonation the delay in filing the application for restoration or for restoration of such suit unless and until the purported cause put up for seeking condonation of delay and consequent restoration is nothing but to honeyfuggle the court.
20. We are of the considered view that every endeavour should be made by the courts to decide on merits the

lis which has matured for adjudication. So far as controversy at hand is concerned, the appellant had been diligently contesting the suit for 16 years before the learned Trial Court. The cause projected by the appellant for condoning the delay can neither be termed imaginary nor fanciful warranting its rejection.

21. Denying the appellant of his right to get the suit adjudicated on merits, particularly when he was vigorously pursuing the same for 16 long years, just because of delay, would be unjust and iniquitous.
22. In **Mool Chandra's case (supra)**, the Hon'ble Apex Court has observed that *"If negligence can be attributed to the appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court deserves to be accepted. However, if no fault can be laid at the doors of the appellant and cause shown is sufficient then we are of the considered view that both the Tribunal and the High Court were in error in not adopting a liberal approach or justice-oriented approach to condone the delay"*.
23. For all what has been said, analyzed and discussed hereinabove, we are of the considered view that the

learned trial court was not correct in its approach in rejecting the application filed for condoning the delay.

24. Accordingly, the instant appeal is allowed. Order dated 22.05.2023 passed by the learned Trial Court is set aside. Application for condonation of delay is allowed. Delay in filing the application for restoration of the suit is condoned. Resultantly, the restoration application filed on identical grounds is also allowed. The suit is restored to its original number. The matter is remanded to the learned Trial Court for its adjudication on merits in accordance with law. Parties through their respective counsel shall appear before the learned Trial Court on 02.03.2026.
25. Original record be sent back forthwith.

(RAHUL BHARTI)
JUDGE

(RAJNESH OSWAL)
JUDGE

JAMMU:
06.02.2026
Rakesh PS

Whether the judgment is speaking: Yes
Whether the judgment is reportable: Yes