Before the Court of Hon'ble J and K Special Tribunal Kashmir
Divisional Commissioner

In the case of:-

Mst Aisha D/o. Abdul Rehman Kuchay R/o. Hajibal Lelhara Tehsil Kakapora District Pulwama.

(Petitioner)

V/s

1. Abdul Satar Kuchay S/o. Rehman Kuchay
2. Noori D/o. Rehman Kuchay Residents Of /Hajibal Kakapora Pulwama.
3. Tehsildar Kakapora.
4. Patwari Halqa Lelhara ***(Respondents)***

Synopsis of the Case

That the petitioner has challenged the mutation no. 1601 dated 13-01-2001 in the court of ADc Pulwama speaking in the Memo of Appeal the reasons of the challenge and also the position and stand taken by the petitioner, but the Court below found the Appeal delayed one and found the Appeal not supported by the COD Application and as such without offering an opportunity of explanation to the petitioner , the Court below dismissed the Appeal of the petitioner on this count as on 24-12-2022, as such the Petitioner filed a petition before the same court seeking indulgence of the court below in terms of Order 47 CPc, but the court below turned down the request of the petitioner and passed an order vide dated 26-08-2023, hence both the orders are under challenge in this court.

Petitioner through Counsel

Manzoor ul Haq Wani Advocate

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Before the Court of Ho[illegible] Kashmir

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3. Tehsildar Kakapora.
4. Patwari Halqa Lelhara ***(Respondents)***

***In the matter of*:-** Revision Petition challenging the Order dated 24-12-2022 Passed by the Court of ADC Pulwama in File no. 29/ADC/APP, dismissing the Appeal of the petitioner for want of Condonation Application and Order Dated 26-08-2023 bearing no. 130/ADC/APP passed by the same court in the review Petition in the above captioned Appeal against the mutation No. 1601 dated 13-01-2001.

Presented by the Counsel for the Petitioner today. Transferred to Add. Com. (S) for disposal w/L.

May it please your Honor Sir,

Div. Com
Kmr

The appellants submits as under:-

1. That the petitioner has submitted the above titled Appeal against the mutation passed by the Naib Tehsildar, in exparte, as such having no jurisdiction to attest the same and has mentioned in the pleadings the following pedigree table so as to show the correct legal heirs, and the petitioner has been skipped in the Shajra Nasb, as such the impugned mutation being erroneous and the petitioner has submitted the following paras in the appeal before the ADC Pulwama as under:

Reader
22/9/23

the brief resume of the case along with pedigree table of the parties :

Abdul Karim
↓
Abdul Raheem
↓
Rehman Kuchay — Azizi
↓
Azi (Widow)
↓
↓
↓

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That the Estate Holder Abdul Rahman Kuchay S/o. Abdul Raheem Kuchay (and Mst Azi Widow of Rahman Kuchay) R/o. Village Hajibal Lelhara Tehsil Kakapora District Pulwama has died and leaving behind the above reflected legal heirs, but the petitioner is not reflected in the mutation and the petitioner has approached the patwari concerned for the revenue Extract of the properties left behind by her father and surprisingly the patwari concerned has lingered the matter on one or the other pretext and lastly the appellant has been informed that the properties of the father of the appellant has been transferred upon only the respondent no. 1 and respondent no. 2, as such the appellant approached the revenue agencies for the certified copy of the mutation entered, and was provided the same which is annexed herewith for the kind perusal of this court as is annexed herewith as **ANX.A.** That the Revenue Agencies Respondent no. 3 and 4 has attested the mutation of the entire properties of the estate holder Rahman Kuchay (Mst Azi Widow of Rehman Kuchay) in favour of Respondent no. 1 and 2 against the principles of law and Sharriah, and the said mutation makes the respondent no. 1 and 2 to be the only legal heir of the deceased Rehman kuchay in clear violation of the Law, and the said facts were revealed to the respondent no. 3 and 4 in his court, by presenting an application, and the Order passed has been passed in violation of law, and the same merits to be looked into.

That the appellant being the legal heir of the deceased is entitled to the properties left behind by the deceased Rehman Kuchay , as above mentioned, and the appellant got surprised to hear about the impugned mutations, The Appellant being age old, illiterate lady and accordingly the appellant approached the court below for the issuance of certified copy of the said orders along with the complete file, but the Respondent no. 3 and 4 is so concerned in the matter in hand, has not issued the same, however a Copy of the said mutation was received by the **appellant as on 05-06-2022**, and after receiving the same the appellant approached the Revenue Agencies i.e. respondent no. 3, for making the entries correct, but the same did not pay any heed to the requests of the applicant, Copy of the representation is also annexed herewith.

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That the Appellant has provided the court below with all the papers of the case in hand including the Voter list of the Village Hajibal Lelhara and also the other papers like Adhaar Card, Election Card establishing the correct name parentage and residence of the Appellant, but the same has not been looked into by the court below/Respondent no. 3 and 4, the same are also annexed herewith.

2. That the Court below has not gone into the details of the memo of Appellant in its true spirit and has passed the impugned judgment dated 2-12-2022 against which the petitioner has sought the intervention of the court below through a review petition however one more order came to be passed dated 26-08-2023 by the court below, the certified copy of which is annexed herewith and both are challenged among other upon the following grounds:

a) That the Impugned orders are passed without application of mind and without following the due process of Law, The court below has fallen in error in passing the orders impugned and has not looked into the contents of the memo of appeal minutely, the memo explains the situations arising out of the matter and filing of the Petition lately and has explained the said situation. The court below has not appreciated the concept of the Sufficient cause.

b) The impugned orders has been passed in a hot haste and the orders impugned are confusing one, The Passing of the Order Impugned has destroyed the object of concept of sufficient Cause as also the bear reading of the Section 17 of the limitation Act which says: **17. Effect of fraud or mistake.**— (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,— (a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or (b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or (c) the suit or application is for relief from the consequences of a mistake; or (d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which— (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or (ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the

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mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or (iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed. (2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order: Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be. The court below has not appreciated the said perspective of the knowledge of the petitioner about the fraud committed.

c) That the order impugned is Passed in hot haste without appreciating the Law on the subject. The object of the condo nation has been explained in catena of judgments and also Shanti Devi vs Ramlal 1988 SLJ 297 has quoted that court can allow the Delay condo nation even in absence of the Application Separate seeking condo nation of the delay.

d) That the order impugned is totally illegal and harsh, and has no basis at all, the said order if not set aside the Petitioner Shall suffer in the Appeal in hand besides the said orders are unknown to law. The precious legal and civil rights of the Appellant are on stake in the Appeal in hand and also the Mutation impugned takes away the identity of the petitioner as the mutation impugned does not reflect the petitioner in the Shajra Nasb also, hence the claim of the petitioner to be daughter of her father Rahman Kuchay, The appeal and the annexure sufficiently explained the position and the reasons of coming late and shall have to be accepted in the court below.

e) The said order is vague, cryptic, illegal and against the mandate of Law. The fact is that this court has erroneously passed the Order and the error is apparent on the face of the order, as the appeal of such nature where in the order under challenge is the mutation passed by NT who is not competent to pass such a order, that too was passed in exparte, was to be heard even if the separate application for condo nation of delay was not filed. Further in **terms of O7 Rule 6** which says: 6. Grounds of exemption from limitation law. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed: **Provided** that the Court may permit the plaintiff to claim

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exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

f) Hence the mutation is nullity under the law and is liable to be set-aside, and such an appeal even if was not accompanied by the separate Condo nation of delay petition was liable to be heard on merits even though the petitioner has mentioned the circumstances causing delay in the para 3 of the petition / memo of appeal, as such the Order passed by this court is liable to be reviewed so as justice is done to the parties, the Judgment of the Hon'ble High Court of J and K in owp no. 949 of 1994 is the guiding principle on the subject and can be taken note of.

g) That the other grounds shall be taken at argument Stage.

3. That a duplicate of the Memo of Revision Petition is annexed herewith and also a duly sworn affidavit is annexed.

In the premises it is as such very humbly prayed and requested that the Order dated 24-12-2022 Passed by the Court of ADC Pulwama in File no. 29/ADC/APP, dismissing the Appeal of the petitioner for want of Condo nation Application and Order Dated 26-08-2023 bearing no. 130/ADC/APP passed by the same court in the review Petition in the above captioned Appeal against the mutation No. 1601 dated 13-01-2001 be set aside and the court below be directed to hear the appeal on merits and providing the Petitioner opportunity to Explain the delay caused, and the same shall be justice done to the petitioner .

Petitioner through Counsel
Manzoor Ul Haq Wani Advocate

Verified that the contents of this petition are true and correct to the best of my knowledge and the legal paras are believed to be true.

Petitioner

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