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نقل فیصلہ بر اپیل کیس بعنوان عائشہ بنام عبدالستار کوچھے وغیرہ

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Before the Hon'ble Court of Addl. Deputy Commissioner at Pulwama

In the case of:-

TRUE COPY ATTESTED
Addl. Dy. Commissioner
Pulwama

Mst. Aisha

(Appellant)

V/S

Abdul Satar Kuchay and ors

(Respondents)

In the matter of:- Petition in terms of Order 47 CPC seeking review of the Order Dated: 24.12.2022 passed in the above captioned Appeal against the mutation.

ORDER

The assail is to the order Dated: 24.12.2022 passed by the Court of Addl. Deputy Commissioner Pulwama in the above captioned appeal. The appellant has grounded his petition on the commission of error purported to have been done by this court while disposing of the above captioned appeal. Before proceeding further, it would be appropriate to infer to the pre-requisite conditions where the review petition would legally lie.

1. Discovery of new facts when there is no knowledge about the same or could not produce the same due to negligence prior to the time when the order was passed.
2. The error apparent on the face of the record which means errors which do not give rise to re-arguments of the whole case and those which are not related to erroneous decisions.
3. Any other sufficient grounds as provided by the court wherein the misconception of the court can be considered as sufficient ground.

From the perusal of averments contained in the petition filed and the order impugned in the present petition, it explicitly seems clear that the petition filed is the exact clone of the main appeal which already stood disposed of by this court and the petition nowhere satisfies the grounds meant for the institution of petitions of the similar nature. The power of review is distinct from the court's power to hear appeals i.e; the appellate jurisdiction when hearing a review petition filed against its own

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26/8/23

order. the Court does not rehear the case at hand as it would in an appeal. The purpose of a review petition is limited to remedying an apparent error or the resultant grave injustice that has been the consequence of the decision delivered. The court is thus restricted in the exercise of the power of review to cases where there is an error apparent on the face of the record or in accordance with the provisions of order 47 of the Court of Civil Procedure, 1908. The present petitioner is not entitled to seek review of an order delivered by this court merely for the purpose of a re-hearing and a fresh decision in the case. Normally, the principle is that a judgement pronounced by the court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. If the attention of the court is not drawn to a material statutory provision during the original hearing, the court will review its judgement. The Court may also re-open its decision if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. In other terms, the scope of review is a protective measure against the fallibility of the judicial institution so as to ensure the delivery of justice and the same is required to be exercised in a limited manner. Likewise, the order against which the review petition has been preferred doesn't seem to suffer from any fallacy as the contents of the order are self speaking and bypassing the said order, this court has committed no error which would require a fresh consideration in the interests of justice.

In this backdrop, the review petition is hereby dismissed and the same shall be made part of the main file.

Accordingly, disposed off.

No:- 130/ADC/APP
Dt:- 26-8-2023

Addl. Deputy Commissioner,
Pulwama

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Addl. Dy. Commissioner
Pulwama

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نمبر رجسٹر Dep/RK/2023-24/82

تاریخ [illegible] 26/08/2023

تاریخ [illegible] 29/08/2023

تاریخ [illegible] 29/08/2023

تاریخ [illegible] 29/08/2023

نام سائل _____ ولد _____ سکونت _____

تعداد الفاظ _____ اجرت: Rs 10

نمبر رجسٹر اسٹامپ 54321, 54322

واسطے [illegible]

اجرائی کیا گیا۔ نقل مطابق اصل و درست

بماعت _____ قرابت _____

Attested

Addl. Dy. Commissioner
Pulwama

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Before the Hon'ble Court of Addl. Deputy Commissioner Pulwama

File No.	Date of Instt.	Date of Decision
29/ADC/APP	25-06-2022	24-12-2022.

In the case of :-

Mst Aisha D/o Abdul Rehman Kuchay R/o Hajibal Lelhar Tehsil Kakapora District Pulwama.
(Applicant/Appellant)

V/S

1. Abdul Sattar Kuchay S/oRehman Kuchay.
2. Noori D/o Rehman Kuchay Residents of Hajibal Kakapora Pulwama.
3. Tehsildar Kakpora.
4. Patwari Halqav Lelhar.

(Non-applicants/Respondents)

TRUE COPY ATTESTED
Asstt. Commissioner (R) Pulwama

In the matter of: *Appeal against Mutation No.1601 Dated.13-01-2001 passed by the Naib Tehsildar Lelhar Kakapora .*

Order

The appeal titled Mst. Aisha V/s Abdul Sattar Kuchay & ors has come for disposal before the appellate court against the order passed on mutation No. 1061 dated.13-01-2001 passed by the Naib tehsildar Kakapora. The appeal is not accompanied by the application seeking condonation of delay. The appellant through the medium of the instant appeal has challenged the order passed on mutation No.1601 dated. 13-01-2001 on the ground that the alleged impugned order had been passed at the back of the appellant and the attesting officer who had passed the order had no competence to confer the title of immovable property viz land by way of mutation. As such, the mutation under challenge is prima facie illegal, cryptic and untenable in the eyes of law and the appellant has prayed has setting aside the same on the above enumerated grounds.

The respondents have been summoned consequent upon which, the present respondents have caused their presence and have filed their objections to the appeal filed by the appellant whereby the respondents have called in question the maintainability of the appeal in hand in its present form. The respondents through the medium of their objections have urged that the present appeal is barred by limitation and the appellant is not entitled to any relief as the appellant has not approached this court with clean hands. The mutation purported to have been challenged through the medium of the appeal filed is, in actuality, the offshoot of mutation order No.746 dated.09-04-1976 whereby the landed estate of the deceased

16199
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ahman kuchay had been devolved upon the respondents 1 & 2 and their deceased nother to the extent of their respective shares. However, the share allotted to the deceased mother of the appellant and the respondents had been subjected to her re-marriage or death whichever is earlier. It is important to mention here that after the death of Mst Azizi, her limited interest with respect to her allotted share had ipso facto been reverted back to the respondents 1 &2. As such, the appeal filed is misconceived and the respondent No.2 has prayed for the dismissal of the same.

From the perusal of memorandum of the instant appeal, the objections filed thereto and after having overall considerations of the documentary evidence on record, it appears imperative for the court to decide the maintainability of the appeal in hand in terms of order 41 rule 3A of the Limitation Act before going into the facts and circumstances of the case. As per the mandate enshrined under order 41 rule 3A, the appellant is legally restrained to institute a time barred appeal unless it is accompanied by an application substantiating sufficient cause for the delay accrued. The condonation of delay is a condition precedent to hear such appeals otherwise the litigant doesn't stand to benefit by instituting an appeal late. In other terms, the requirement of application seeking condonation of delay is peremptory in tone and cannot be taken in a cursory manner by the courts adjudicating upon such appeals.

In this backdrop, the appeal in hand is hereby rejected as the appellant has not preferred to file the application seeking condonation of delay alongwith the appeal which the appellant could have. The interim order passed, if any, shall be deemed to have been vacated and the file after its due completion shall be consigned to records.

Announced.
24-12-2022

No: - 165/ADC/APP.
Dated: - 24-12-2022

Addl. Deputy Commissioner
Pulwama

Copy to the:
Tehsildar Kakapora for information and necessary action.

DEP/RK/2022-23/142 نمبر نقل
09/12/2022 تاریخ گزرے سوال
09/09/2023 تاریخ اوفال اجرت
07/03/2023 تاریخ تیاری نقل
07/03/2023 تاریخ تسلیم نقل
through Advocate Manzoor ul-Haq نام سائل
ولد سکونت
600 تعداد الفاظ
Rs=10 اجرت
161992 / 161993 نمبر جسٹر اسٹامپ فروش
بذریعہ صاحبزادہ نقل نویس: منظور الحق
اجرا کیا گیا۔ نقل مطابق اصل و درست ہے۔
قراءت:

Attested
Asstt. Commissioner (R)
Pulwama

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