

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raja Saeed Akram Khan, J.

Civil Appeal No.192 of 2019
(Filed on 01.10.2019)

Muhammad Saleem s/o Muhammad Munir, Caste Jatt,
r/o Dheri Sultanpur, Tehsil & District Mirpur.

....APPELLANT

VERSUS

1. Tasleem Mahmood Khan s/o Raja Khalid Mahmood Khan, r/o Dheri Brotian, Tehsil and District Mirpur.
2. Mahboob Alam s/o Ghulam Nabi, r/o Pindi Kalan,
3. Muhammad Ajaib s/o Muhammad Nazir, Caste Jat, r/o Dheri Rawpur, Tehsil and District Mirpur.
4. Muhammad Farooq s/o Dost Muhammad, r/o Chak Haryam, Tehsil and District Mirpur.
5. Khalid Hussain s/o Muhammad Gulzar, r/o Chakswari, Tehsil and District Mirpur.

.... RESPONDENTS

[On appeal from the orders of the Additional Registrar
dated 10.06.2019, 11.07.2019, 03.09.2019 in Civil Appeal
No.96/2019]

FOR THE APPELLANT: Sardar Muhammad
Azam Khan, Advocate.

FOR THE RESPONDENTS Nemo.

Date of hearing: 27.01.2020.

ORDER:

Raja Saeed Akram Khan, J.— The captioned appeal has been filed against the orders of the Additional Registrar of this Court dated 10.06.2019, 11.07.2019 through which the appeal titled *Tasleem Mahmood vs. Muhammad Saleem and others*, was set down ex-parte and order dated 03.09.2019 through which the proclamation regarding ex-parte order has been published.

2. The office has reported that the appeal to the extent of orders dated 10.06.2019 and 11.07.2019 is time barred. When this proposition was confronted to the counsel for the appellant, he submitted that the appellant is abroad as is evident from the report of the process server and the case is

being prosecuted through his attorney, namely Zahid Mehmood. He submitted that the subject matter of the main appeal is also the power of attorney, but despite this the respondent has filed the PLA/appeal on the local address of the appellant (*where he is not residing presently*) instead of filing the same through attorney of the appellant. In this state of affairs, the notice issued to the appellant for filing the concise statement could not be served upon him. The substitute service through proclamation, in the newspaper has no circulation in U.K, therefore, the appellant could not file the appeal within the prescribed time. The appellant has also filed the application for condonation of the delay, therefore, while considering the reasons assigned hereinabove, the time may be condoned and the ex-parte order passed by the learned Additional Registrar may be set aside, for the ends of justice.

3. I have heard the learned counsel for the appellant and gone through the impugned orders as well as the other material available on record. The perusal of the record shows that the appellant is residing abroad as is visualised from the report of the process server and the leaf of the passport of the appellant, annexed with the appeal. The appellant is prosecuting the case through his attorney and the subject matter of the main case is also the power of attorney as is evident from the leave granting order of this Court, therefore, the issuance of notice on the address of the appellant instead of his attorney, is not justified. The stance of the learned counsel for the appellant regarding the substitute service through proclamation having no circulation in U.K. has also substance. In this state of affairs, I am convinced that the counsel for the appellant has assigned sufficient reasons for not filing the concise statement as well as the appeal

against the ex-parte order, as no notice had been served upon him.

Resultantly, this appeal is accepted and the orders passed by the Additional Registrar are hereby set aside. The appellant is allowed to file the concise statement within a period of 15 days. The office is directed to complete the file and place the same before the Hon'ble Chief Justice for constitution of bench.

JUDGE

Mirpur.
27.01.2020.