

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.

Civil Appeal No.195 of 2019

(Filed on 01.11.2019)

Muhammad Tariq s/o Abdul Rashid, Caste Jat, r.o village
Bathrohi, Tehsil Dadyal, District Mirpur.

....APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir, through Chief Secretary, Muzaffarabad.
2. Secretary Electricity Azad Govt. of the State of Jammu and Kashmir Muzaffarabad.
3. chief Engineer Electricity Azad Govt. of the State of Jammu and Kashmir Muzaffarabad.
4. EXN Electricity Chakswari Division Chakswari.
5. Superintendent Engineer Circle Mirpur.
6. Sub Divisional Officer, electricity Tehsil Dadyal.
7. chief Executive Officer Electric Supply Company Limited Islamabad Head Office Street No.40, Sector G-7/4 Islamabad.
8. Muhammad Siddique,
9. Muhammad Afzal S/o Muhammad Sajawal.
10. Muhammad Masood S/o Muhammad Siddique,
11. Muhammad Bashir s/o Jalal,
12. Altaf Arshad S/o Gulab Din,

13. Javaid Iqbal,
14. Muhammad Tariq,
15. Muhammad Arif,
16. Talib Hussain S/o Gulab Din,
17. Mst. Sabiran Bibi, widow,
18. Shaheen Bi,
19. Aasia Bi, Widow,
20. Muhammad Sadiq S/o Dewan Ali,
21. Muhammad Munir S/o Muhammad Yaseen,
22. Chaudhary Kifayat Ali s/o Muhammad Hussain,
23. Abdul Rehman S/o Manga Caste Jatt, R/o Sochani, Tehsil Dadyal, District Mirpur.

.... RESPONDENTS

24. Muhammad Malik S/o Niaz Ali,
25. Liaqat Ali,
26. Asghar Ali,
27. Shoukat Ali Sons of Lal Caste Jat, R/o Sochiani,
28. Muhammad Munir S/o Nawab Din, Caste Bhatti, R/o Bathrohi, Tehsil Dadyal, District Mirpur.
29. Muhammad Tariq S/o Bostan,
30. Riffat Bibi w/o Muhammad Tariq, Caste Jatt, R/o Village Sochani,
31. Abdul Khaliq, S/o Hukam Dad, Caste Jatt,
32. Muhammad Bashir S/o Muhammad Sharif, Caste Mughal, R/o Bathrohi,
33. Lal Hussain S/o Pola,

34. Ghulam Hussain S/o Hayat Ali,
35. Jumma S/o Shah Wali,
36. Allah Rakhi D/o Fateh Ali, Caste Jatt, r/o Thara, Tehsil, Dadyal, District Mirpur.

.... PROFORMA-RESPONDENTS

[On appeal from the order of the Additional Registrar dated 09.10.2019 in Civil PLA No.235/2019]

FOR THE APPELLANT: Ch. Muhammad Sabir,
Advocate.

FOR THE RESPONDENTS Raja Saadat Ali Kiani,
Additional Advocate-
General and Mr. Imtiaz
Hussain Raja,
Advocate.

Date of hearing: 24.01.2020.

ORDER:

Raja Saeed Akram Khan, J. – The captioned appeal has been filed against the order of the Additional Registrar of this Court dated 09.10.2019, whereby during pendency of the petition for leave to appeal, the application filed by the appellant, herein, for arraying the legal representatives of respondent No.11, Muhammad Sabir has been dismissed.

2. The facts forming the background of the captioned appeal are that the land comprising of different khasra numbers, situated at villages Sochani and Pathroi was acquired vide award dated 29.07.2004, for construction of 132 K.V. Grid Station Dadyal. Feeling dissatisfied with the amount of the compensation assessed by the Collector, the appellant, herein, along with some others filed a reference in the Court of Reference Judge/Additional District Judge Dadyal, stating therein, that the market price of the acquired land is not less than Rs.8,00,000/- per kanal but the Collector assessed a meagre amount as compensation. It was alleged that land comprising khasra No.591, measuring 1 kanal, 11 marla, 594 min, measuring 2 kanal, 594 min, measuring 2 kanal, 16 marla, situated at village Sochani is in the ownership, possession and falls within the share of the applicants No.1 to 4, therein, therefore, they have illegally been declared disentitled to receive the compensation of the aforesaid land. After necessary proceedings, the

Reference Judge dismissed the reference vide judgment and decree dated 21.01.2009. Against the said judgment the applicants filed an appeal before the High Court, which was also dismissed vide judgment and decree dated 06.04.2019. The judgment and decree of the High Court was challenged before this Court by filing a petition for leave to appeal. During pendency of the said petition, the appellant, herein, filed the application for arraying the legal representatives of respondent No.11, Muhammad Sabir. The objections were filed on the said application. The Additional Registrar through the impugned order has dismissed the application, hence this appeal.

3. Ch. Muhammad Sabir, Advocate, the learned counsel for the appellant submitted the learned Additional Registrar while dismissing the application for arraying the legal representatives of Muhammad Sabir, has misinterpreted the statutory provision i.e. Order XV, Rules 7 and 8 of the Azad Jammu and Kashmir Supreme Court Rules, 1978 and

has not considered the proviso attached to the said rules which clearly speaks that the Court may for sufficient cause extend the time for arraying the legal representatives of the deceased. He forcefully argued that the appellant sufficiently, explained the reason for delay in filing of the application that he could not gain the knowledge about the death of the deceased respondent and got knowledge about his death on receiving back the A/D. receipt from the post office. Thus, it was enjoined upon the Court to extend the time in the light of the statutory provisions as well as the pronouncements of this Court which were duly referred. Even otherwise, under section 22 of Legal Reforms Ordinance, 1972, which was adopted in Azad Jammu & Kashmir in the year 2003, the application was filed within the time, but this aspect of the case has also not been adhered to while handing down the impugned order. He referred and relied upon the cases reported as *Qadir Bakhsh vs. Saif-ur-Rehman and others* [1981 SCMR 166], *Niamat and another vs. Allah Banda*

and another [1984 SCMR 321] [2018 SCMR 762] and requested for acceptance of appeal and setting aside the impugned order.

4. Conversely, Mr. Imtiaz Hussain Raja, Advocate, while appearing on behalf of the private respondents forcefully opposed the arguments advanced on behalf of the appellant, while submitting that the order passed by the Additional Registrar is perfectly legal, which is not open for interference by this Court. He submitted that the deceased respondent died on 02.10.2013, during the pendency of the appeal before the High Court but the appellant failed to bring on record his legal heirs in spite of the fact that the deceased respondent and appellant belong to the same area, tribe and are also the relatives with each other, therefore, it does not appeal to the prudent mind that the appellant was not aware about the death of the deceased respondent. While referring to the application filed by the appellant the learned counsel submitted that the appellant in the application has

neither mentioned the date of death of the deceased nor he alleged that how he got the knowledge about the death of the deceased. The ground agitated by the learned counsel for the appellant that the appellant got the knowledge about the death of the deceased after receiving back the A.D. receipts has not been taken in the grounds of the application. In this state of affairs, the learned Additional Registrar has passed the well-reasoned order. This appeal is liable to be dismissed.

5. Raja Saadat Ali Kiani, the learned Additional Advocate-General supported the arguments addressed by the learned counsel for the private respondents and requested for dismissal of the appeal.

6. I have heard the arguments of the learned counsel for the parties as well as the learned Additional Advocate-General and perused the available material. The controversy involved in the matter is regarding the impleadment of legal heirs of deceased respondent, Muhammad Sabir. The claim of

the appellant is that he could not gain the knowledge about the death of the said respondent at the time of filing of the petition for leave to appeal and for the first time got the knowledge about his death on receiving back the A.D. receipts. The application filed by the appellant is part of the record, from the perusal of which it reveals that no such ground has been incorporated in the said application. There is no cavil with the proposition that under the proviso attached to Order XV, Rule 8 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, this Court may extend the time for arraying the legal representative but the applicant has to show sufficient cause. In this instant case, the appellant has filed the simple application with the prayer for arraying the legal representatives of the deceased and has neither mentioned that on what date the respondent died nor mentioned that how he got the knowledge about his death, whereas the respondents have specifically alleged in the objections filed on the application that the deceased

died about seven years ago during the pendency of appeal before the High Court. Furthermore, the appellant and the deceased respondent belong to same village/area and are also relatives with each other. This stance of the respondents has not been rebutted by the appellant. In this state of affairs, I am convinced, that no sufficient cause has been shown by the appellant for extension of the time for arraying the legal representatives of the deceased respondent and the Additional Registrar has passed the well-reasoned order. The case law referred to by the learned counsel for the appellant is not applicable in the case in hand having its distinguishable facts and circumstances.

Resultantly, finding no force this appeal is hereby dismissed with no order as to costs.

JUDGE

Mirpur.
24.01.2020.