

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 64 of 2021
(Filed on 05.05.2021)

Akhtar Bi d/o Allah Dad caste Jatt r/o Mohra Rupyal
Mozia Pind Khurd Tehsil & District Mirpur.

.....PETITIONER

VERSUS

1. Akram Hussain Sharif,
2. Khalid Mehmood,
3. Tariq Mehmood,
4. Arshad Mehmood (sons),
5. Kaneeza Akhtar,
6. Hameeda Bibi,
7. Zahida Khatoon,
8. Zainab Khatoon daughters of Muhammad Sharif
caste Jatt r/o Dhok Rupyal Mozia Pind Khurd Tehsil
& District Mirpur.

.....RESPONDENTS

9. Muhammad Siddique,

10. Abdul-Ghani sons
11. Sona Bibi
12. Naseem Akhtar, daughters
13. Walait Begum, widow of Allah Dad caste Jatt r/o Mohra Rupyal Mozia Pind Khurd Tehsil & District Mirpur.
14. Zafar Mehmood,
15. Zark Mehmood,
16. Tabasum Rasheed,
17. Umar Rasheed s/o
18. Nadia Rasheed d/o Abdul Rasheed s/o Allah Dad, caste Jatt r/o Mohra Rupyal Mozia Pind Khurd Tehsil & District Mirpur.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated
13.02.2019 in civil Appeal No. 10 of 2011]

FOR THE PETITIONER: Sardar Ejaz Nazeer,
Advocate.

FOR THE RESPONDENTS: Sardar Hamid Raza Khan,
Advocate.

Date of hearing: 18.06.2021.

ORDER:

Raza Ali Khan, J.– The captioned petition for
leave to appeal has been directed against the
judgment of the High Court of Azad Jammu & Kashmir

dated 13.02.2019, passed in civil appeal No. 10 of 2011.

2. The relevant and necessary facts forming the background of the captioned petition for leave to appeal are that Abdul Rasheed, plaintiff-father of proforma-respondents No. 11 to 18, herein, filed a suit for declaration-cum-perpetual injunction in the Court of Senior Civil Judge, Mirpur, on 06.08.2002, against the defendant-respondents, herein, pertaining to survey No. 1338, khata No. 378 and khewat No. 137, situated in Mohra Rupyal, Mozia, Pind-Khurd, Tehsil & District Mirpur. During the litigation, respondent No. 3, herein, also filed a cross suit against the plaintiff and others for declaration and possession pertaining to survey No. 1206, 1206 min, khata No. 323/314, khewat No. 158/154, measuring 08 kanal,

156 marla, situated in Mozia Pind-Khurd, Tehsil & District, Mirpur. On filing of the suits, the other side filed separate written statements and refuted the claim of the respective plaintiffs. The learned trial Court in the light of pleading of the parties, framed issues and after recording evidence and hearing the parties, decreed the suit filed by the plaintiff and the cross suit filed by respondent No. 3, herein, was dismissed for want of proof, vide judgment and decree dated 29.11.2008. Feeling aggrieved from the aforesaid judgment and decree, the respondents, herein, filed an appeal before the learned Additional District Judge, Dadyal, Camp Mirpur, on 23.02.2009, which was accepted, vide judgment & decree dated 06.12.2010. The said judgment and decree was challenged by father of proforma-respondents No. 11 to 18, herein, before the learned High Court by filing

an appeal. The learned High Court after necessary proceedings has dismissed the appeal through the impugned judgment and decree dated 13.02.2019.

3. Sardar Ejaz Nazeer, advocate, the learned counsel for the petitioner after narration of necessary facts submitted that the learned High Court has passed the impugned judgment contrary to law, facts and the record of the case. He argued that the impugned judgment has been handed down without due appreciation of record of the case. He submitted that Abdul Rasheed was died during the litigation before the High Court on 11.06.2012, whereas, the impugned judgment and decree has been passed against the dead person i.e. on 13.02.2019. He further argued that the petitioner, herein, is the daughter of Allah Dad and sister of proforma-respondents No. 14

to 18, herein, who has not been arrayed as party in the suit as well as before the High Court, whereas, she was a necessary party. The learned Advocate further argued that learned High Court as well as the learned Additional District Judge has mis-read and non-read the evidence produced by the parties, therefore, the impugned judgment is not maintainable. He finally prayed for grant of leave.

4. In reply, Sardar Hamid Raza Khan, advocate, the learned counsel for the respondents, vehemently opposed the petition for leave to appeal and submitted that the impugned judgment of the learned High Court is in accordance with law. He argued that the learned High Court has not committed any illegality while passing the impugned judgment. He further argued that the argument advanced by the

learned advocate for the petitioner that the petitioner, herein, has not been arrayed as party, is misconceived, as the petitioner remained party throughout the litigation. The learned Advocate further argued that this petition for leave to appeal is hopelessly time barred. The petitioner has also filed an application for condonation of delay wherein, no sufficient reason has been mentioned. He added that according to section 5 of Limitation Act, the delay of each and every day has to be explained but no sufficient cause for delay has been mentioned in the application for condonation of delay. He further argued that the petitioner has not come to the Court with clean hands, therefore, this petition for leave to appeal is not maintainable which is liable to dismissed.

5. I have heard the learned advocates for the parties and have gone through the record of the case. Leaving aside all other aspects, as the learned counsel for the petitioner has taken a stance that the petitioner, herein, was a necessary party who was not arrayed as party in High Court as well as in the suit before the trial Court. When the learned counsel for the respondents was confronted in this regard, he stated that the petitioner, herein, was properly arrayed as party throughout the litigation with the name Naseem Akhtar. While perusing the record it discloses that Naseem Akhtar has been arrayed as proforma-defendant No. 12 in the suit filed before Senior Civil Judge, respondent No. 5 in the appeal before the Additional District Judge and proforma-respondent No. 12 in the High Court. The learned advocate for the respondents produced before the

Court an attested copy of writ petition No. 71 of 2003, filed on 16.07.2003, decided on 16.11.2005, filed by the Mst. Akhtar Bibi d/o Allah Dad, wherein, in para No.9, she stated that:-

“9. That no relief is claimed against proforma-respondents their rights in the land in dispute are admitted they may join as petitioners, if so chose to do. The name of petitioner No.1 is wrongly given as Nasim Akhtar in annexure H. The correct name is the one given in this petition.”

(underlining is mine)

As per the petitioners own statement before the High Court, her correct name is Akhtar Bi and it has wrongly been mentioned as Nasim Akhter. For further elucidation, I have also summoned the original Identity Card of the petitioner which was also produced before the Court, wherein, her name is mentioned as “Akhtar Bibi”. The learned advocate has

also brought on record a copy of suit which has been filed with the name “Akhtar Bi” on 16.03.2021, before the Civil Judge, Court No. II, Mirpur. After going through the record, I am of the view that the petitioner has concealed this fact from the Court that her correct name is Akhtar Bi and the same has wrongly been mentioned as Nasim Akhtar. It seems like she has not approached the Court with clean hands; on one hand she remained party in the suit and the appeals as well and at the same time, while concealing this fact from the Court, she has filed this petition for leave to appeal with the name “Akhtar Bi”. It is well settled that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and in any case, such person is not entitled to any relief. The object underlying the principle is that every Court is not only

authorized but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issues arising in the case.

6. The other argument of the learned advocate for the respondent that this petition for leave to appeal is time barred, has substance. The impugned judgment was passed by the High Court on 13.02.2019, and this petition has been filed on 05.05.2021 i.e. after more than two years. As it has been mentioned earlier that she has remained party throughout the litigation, therefore, she was well in knowledge of the impugned judgment of the learned High Court. In this regard, no plausible explanation has

been brought on record. According to section 5 of the Limitation Act, the delay of each and every day has to be explained. There is plethora of judgments of this Court in this regard, wherein, it has been held that the delay is fatal for the case of a party and if a party seeks condonation, it must have furnished the sufficient cause and explained the delay. In the case titled *Mujahid Hussain Naqvi vs. Director/ Deputy Director Anti-Corruption*, [2001 SCR 272], it was held as under:-

“It is worthwhile to point out that the petitioner was well aware of the aforesaid notification issued by the Registrar of this Court and it was only for this purpose that he filed the petition for leave to appeal before the Registry office and on 15.08.2001 obtained a relief of ad-interim pre-arrest bail in his favour from the vacation Judge which was subject to confirmation and the same came up for hearing alongwith the petition for leave to appeal on 10.09.2001. On the other hand,

the petitioner claimed a relief from the Vacation Judge praying that he may be admitted to ad-interim pre-arrest bail and on the other pressed into service the submission that the whole period of summer vacation should not be computed in the period of limitation. The conduct of the petitioner being contradictory in nature, he does not, in my view, deserve the condonation of delay, particularly so when the above ground has not been taken in the application for condonation of delay...”

Therefore, in the light of above, this petition for leave to appeal stands dismissed. No order as to cost.

JUDGE

Mirpur,
23.06.2021.

Akhtar Bi VS Akram Hussain & others

ORDER:

The Judgment has been singed. It shall be announced by the Registrar after notifying the learned counsel for the parties.

JUDGE

Mirpur:
23.06.2021.