

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(APPELLATE JURISDICTION)

PRESENT:

Kh. Muhammad Nasim, J.
Raza Ali Khan, J.

Civil Appeal No.270 of 2019
(PLA filed on 16.03.2019)

Muhammad Hafeez s/o Muhammad Din r/o Rerah,
Tehsil and District Bagh.

....APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Secretary Agriculture, Livestock, Irrigation and Isma, having his office at New Secretariat, Muzaffarabad.
2. Secretary Agriculture, Livestock, Irrigation and Isma, having his office at New Secretariat, Muzaffarabad.
3. Director General Agriculture, having his office at Gojra, Muzaffarabad.
4. Director Agriculture Extension having his office at Gojra, Muzaffarabad.
5. Deputy Director Agriculture Extension, having his office at District Bagh.
6. District Account Officer, District Bagh.
7. Muhammad Naeem Arif Khan s/o Muhammad Arif Khan r/o Rerah appointed as Baildar in the office of Deputy Director Agriculture Extension, District Bagh.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 06.02.2019 in Application No.36 of 2019)

FOR THE APPELLANT: Sardar M.R. Khan,
Advocate.

FOR RESPONDENTS NO.1-5: Syed Wasif Ali
Gardezi. Advocate.

Date of hearing: 09.08.2021

JUDGMENT:

Raza Ali Khan, J.— The captioned appeal by leave of the Court arises out of the order of the High Court dated 06.02.2019, whereby the application for restoration of writ petition has been dismissed.

2. The brief facts of the case are that the appellant, herein, filed a writ petition No.1999/2018 before the Azad Jammu & Kashmir High Court on 20.11.2018 which was dismissed for want of prosecution vide order dated 28.01.2019. The appellant filed an application for restoration of the writ petition on 04.02.2019 stating therein that he could not appear before the Court on the relevant date due to death of a close relative. It was further stated that the learned Advocate representing the

appellant also could not appear due to the fact that he was out of station in relation to the medical check-up of his mother. It was prayed that the non-appearance of the appellant or his counsel was neither deliberate nor intentional, therefore, while accepting the application the writ petition may be restored. The learned High Court after necessary proceedings through the impugned order dated 06.02.2019 has dismissed the application for restoration, hence, this appeal by leave of the Court.

3. The learned counsel for the appellant, Sardar M. R. Khan, Advocate, argued that the writ petition filed by the appellant, herein, was dismissed for non-prosecution vide order dated 28.01.2019. An application was filed on 14.02.2019 for restoration of the writ petition which was within limitation. He further submitted that the learned Advocate who was representing the appellant could not appear due to ailment of his mother and sufficient proof to that effect was appended with the application along with an affidavit but the learned High Court has not considered the same. He further argued that the

appellant could not appear in the Court due to death of his close relative. All these points constitute sufficient cause for restoration of the writ petition but the learned High Court has mistakenly held that no sufficient cause has been shown. In this state of affairs, while accepting this appeal the impugned judgment may be set-aside and the writ petition filed by the appellant may kindly be restored to its original number.

4. Conversely, Syed Wasif Ali Gardezi, Advocate, the learned counsel appearing on behalf of respondents No.1 to 5 submitted that the impugned order passed by the High Court is well in accordance with law. He argued that it was enjoined upon the appellant to show any sufficient or good cause for non-appearance but he failed to do so. In this situation, the learned High Court was justified to dismiss the application for restoration and the same has rightly been dismissed. He further argued that no legal ground exists for interference in the impugned judgment; hence, this appeal is liable to be dismissed.

5. We have heard the arguments of learned counsel for the parties and gone through the record made available along with the impugned order. The writ petition No. 1999/2018 filed by the appellant in the High Court was dismissed for non-prosecution on 28.01.2019. The appellant filed an application for restoration of the writ petition on 04.02.2019. The Court in the given circumstances was required to satisfy as to whether the plea raised was on the basis of some authentic document and whether the explanation would fall within the scope of the term “sufficient cause”. The stance taken by the appellant is that he could not appear in the Court due to death of a close relative, but in support of his version he did not bother to file any affidavit. Mere verbal assertion is not sufficient until and unless the same has some proved by some documentary proof. Whereas, the absence of the counsel for the appellant is stated due to ailment of his mother and the counsel for the appellant annexed with the application for restoration of the writ petition the copies of prescriptions of treatment of his mother in

furtherance of his contention. The perusal of these prescriptions, it is evident that the same pertain to the dates before the date of appearance, hence, these documents are not relevant. According to the consistent view of the superior Courts, it was enjoined upon the appellant to show sufficient cause for non-appearance but he failed to do so. Suffice it is to refer here the case reported as *Muhammad Akbar Khan vs. Mst. Anees Begum* [2005 SCR 23], wherein it has been held that:-

“4. I have considered the grounds raised in the petition for leave to appeal and argument pressed by the learned counsel for the petitioner in support of the same. Under law the parties are bound to appear before the Court on the date of hearing fixed by the Court. In this case admittedly the appeal was fixed by the High Court on 24.12.2003 but the petitioner and his counsel failed to appear before the Court when the case was called for hearing. The Court in the circumstances had no option left but to dismiss the appeal in default. The same would have been allowed to be restored if some sufficient cause would have been shown in the application for restoration of the case. As discussed by the High Court, in the application the ground disclosed was the illness of the learned counsel for the petitioner but the same was not supported by his personal affidavit or medical certificate. The petitioner had not given any explanation for his non-appearance before the High Court on the

date fixed. Sufficient cause as is laid down by all the superior Courts of Sub-Continent is one which is beyond the control of a party. As said earlier, the petitioner had not shown any cause for his non-appearance on the fixed date and his counsel had not supported the ground of his illness through his personal affidavit or by placing on record the medical certificate. In these circumstances the High Court was justified in rejecting the application moved for restoration of appeal by the petitioner.”

Although, there is no hard and fast rule to determine “sufficient cause”, the Courts consider each case according to its own facts while determining sufficient cause, but a guiding principle has been established by the Courts and that when because of lapse of time, a valuable right accrues to other side, it should not be taken away. Admittedly, the appellant has failed to show any sufficient cause for his non-appearance. It has rightly been held by the learned High Court that the prescriptions produced in relation to treatment of the mother of the learned counsel for the appellant do not relate to the date of dismissal of writ petition. The explanation tendered in this regard by the learned counsel for the appellant is not convincing in nature. No legal

ground exists for interference in the well-reasoned judgment of the High Court.

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

Muzaffarabad,
16.08.2021

JUDGE

JUDGE

Muhammad Hafeez **vs.** Azad Govt. & others

ORDER:

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

JUDGE

JUDGE

Muzaffarabad
16.8.2021