

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**OWP No. 1001/2018**

**Director Health Services and Another**

...Petitioner(s)/Appellant(s)

Through: Mr. Sajad Ashraf, GA

**Vs.**

**Iqbal Ahmad Baqal**

...Respondent(s)

Through: Mr. N.A. Beigh, Sr. Adv. with  
Mr. Sofi Manzoor, Advocate, Mr. Irfan, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE**

**ORDER**

**04.12.2023**

The present petition has been filed under Article 227 by the Director Health Services and another against the order which was passed on 14.05.2018.

2. In paragraph 4 of the said order, the Executing Court directed the judgment debtor No. 1 to remain present before the court on 30.05.2018, and to show cause as aforesaid, failing which appropriate proceedings as warranted under law shall be initiated. It is undisputed that the petitioner did not appear before the Executing Court as required. Instead the present petition was filed against the order of the Executing Court, stating that the order passed by the Court of Execution is bad in law and on facts as the decree given by the learned Trial Court in favour of the respondent herein has already been complied with and, therefore, there was nothing further to fulfill in the decree passed by the learned Trial Court.

3. Some brief facts of the present case have to be stated.

The petitioners were the defendants in the civil suit filed by the respondent-plaintiff before the Court of City Judge, Srinagar on 01.07.2001. That suit was decreed by the learned Trial Court in favour of the respondent-plaintiff on 05.06.2003. The suit was decreed as ex-parte defendants who after being served, remained absent and, therefore, ex-parte proceedings were initiated against them. On 17.10.2001, evidence was recorded ex-parte and thereafter defendants filed an application for setting aside the ex-parte proceedings and thereafter once again remained absent which resulted in the dismissal of their application seeking setting aside of the ex-parte proceedings, on 07.02.2003. Therefore, it is clear from the conduct of the petitioners that they had knowledge of pendency of the suit before the learned Trial Court as they had filed the application for setting aside the order, whereby they were declared ex-parte.

4. After the suit was decreed, the appeal was not filed by the petitioners, challenging the judgment and decree passed by the learned Trial Court within prescribed period of limitation, resulting in the dismissal of the first Appeal on the ground that the Appeal was time barred and filed without an application for condoning the delay. Thereafter, when execution proceedings were initiated, the petitioners filed a revision petition before the learned Principal District Judge, Srinagar which was also dismissed. Thereafter, the writ petition was filed before this Court which too was dismissed in default. The petitioner moved an application for restoration of the writ petition along with an application for condonation of delay of 550 days, but that was also dismissed by this Court on 23.04.2015. The conduct of the petitioners reveals that it was casual and careless about the manner in which it was prosecuting the case.

5. After having failed in the first appeal, revision and the writ petition, the petitioners filed a second appeal against the judgment and order of the First Appellate Court after a delay of 13 years, 9 months and 20 days and moved an application for condoning the delay. This Court dismissed the second Appeal on the ground that the petitioners did not show any good or sufficient grounds to condon the unexplained and inordinate delay of 13 years, 9 months and 20 days. The order dismissing the second appeal was passed on 25.03.2021. This petition was filed by the petitioners in the year 2018. What is sought to be urged before this Court is that the learned Executing Court did not appreciate the fact that the petitioners have already complied with the directions given in the decree in the year 2003.

6. Learned senior counsel appearing for the respondent submits that the correct forum for the petitioners to make this submission was before the Executing Court itself but instead chosen to file present petition in the year 2018, which has been pending for the past five years, during which time it has been listed for almost 15 times. This Court is in agreement with the argument put forth by the learned senior counsel for the respondent. If the petitioners were aggrieved by the order passed by the learned Executing Court, they had an opportunity to go before it and demonstrate there that the decree passed by the Trial Court was already complied with and there was no reason for any execution, but instead it has chosen to further delay the proceedings by another five years by filing this petition. Thus, it is seen that the respondent who was recipient of an order in his favor in the year 2003 has been kept hanging for twenty (20) years thereafter by repeated frivolous litigation by the petitioners.

7. Under the circumstances, despite the strenuous efforts of the learned counsel for the petitioners, this petition is **dismissed** and costs of Rs. 2,00,000/- imposed upon the petitioners to be paid to the respondent within a period of thirty days from the date of this Order. The Union Territory is given liberty to recover the amount of costs of Rs. 2,00,000/- from the Director Health Services, Kashmir.

8. List this matter on 11.03.2024 at the top of the list for the purpose of securing compliance

(ATUL SREEDHARAN)  
JUDGE

SRINAGAR:  
04.12.2023  
ARIF

