

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No. 04/2026
CM No. 1393/2026
CAV No. 658/2026

Reserved on: 10.03.2026
Pronounced on: 30.03.2026
Uploaded on: 01.04.2026

Whether the operative part or full
judgment is pronounced: Full

**Waheed Khan, Age 54 years,
S/o Late Sh. Khadam Hussain Khan,
R/o House No. 787/EP, Mohalla Ustad,
Tehsil and District Jammu**

.....Appellant(s)

Through: Mr. G S Thakur, Advocate

Vs.

**Hardev Singh Jamwal,
S/o Late Sh. Chamail Singh Jamwal,
R/o Behind Toll Post,
Opp. Patwari Office, Nagrota,
Tehsil Nagrota, District Jammu**

..... Respondent(s)

Through: Mr. Dharamvir, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

- 01.** The appellant, through the medium of the instant Civil Miscellaneous Appeal has called in question the order dated 21.02.2026 passed by the learned Additional District Judge, Jammu in Restoration Application No. 12/2024 by virtue of which the said application has been dismissed by holding that the sufficient cause has not been shown.
- 02.** While the matter was being heard, the learned counsel for the appellant has apprised this Court that the appellant has filed a civil original suit under the Specific Relief Act, 1963 for a decree of specific performance of contract of Agreement to Sell dated 18.11.2019 by directing the respondent to perform

his part of the contract by registering the Sale Deed in favour of the appellant in respect of plaint schedule property i.e Restaurant under the name and style of as “ BSJ” constructed over the land measuring 10 marlas falling under Khasra No. 1209, Khata No. 449-451 and Khewat No. 26 situated opposite IIT Jagti, Nagrota, Tehsil Nagrota, District Jammu. The suit though was originally filed before the Court of learned Special Judge Passenger Tax, Jammu, who returned the said suit to the learned District Judge, thereafter, transferred the same before the Court of learned Additional Judge, Jammu for its disposal.

- 03.** It has been alleged in the instant appeal that the respondent during pendency of the said suit, further transferred the suit property which was a restaurant, with the motive to defeat the rights of the appellant which constrained the appellant to file the application for appointment of a receiver for collecting the rent of the building in which the objections were filed by the respondent and the case was fixed for orders after hearing the arguments. In addition, the Court below also directed the parties to file written arguments as well. It is the specific case of the appellant that the respondent is also facing criminal trial as the respondent after receiving the sale consideration amount from the appellant did not execute the sale deed which forced the appellant to lodge an FIR against the respondent and the police after investigation, proved the case against the respondent, though the same was challenged by the respondent before this Court, but the same was dismissed, as such, the appellant was diligently pursuing the case before the Court below. It has been alleged that the case was fixed for orders in the application filed under Order XL of the Code of Civil Procedure by the appellant and after hearing the arguments, the case was

kept by the learned Court below for orders, however, instead of passing the order in the main application, the suit was dismissed by the Court below.

- 04.** The appellant feeling aggrieved of the same, filed the application for restoration alleging therein that though the case was fixed on 24.11.2023 and the date of hearing was given to the learned counsel by the Civil Clerk of the Court as 23.12.2023, which was Saturday, however, on the fixed date i.e 23.12.2023 the counsel for the appellant appeared before the Court below and came to know on the given date of hearing that the suit was already dismissed in default on 30.11.2023. It is specific case of the appellant that the appellant along with his family members were putting up in Rajasthan, thus he was not having knowledge of dismissal of the suit and after obtaining the knowledge of dismissal of the suit on 15.01.2025, contacted the Advocate on same day and obtained certified copy of the order of dismissal of the suit and thereafter filed the application for restoration but the same was dismissed vide order dated 21.02.2026 by the Court of learned Additional Judge, Jammu which is impugned in the present appeal. In the aforesaid backdrop, it has been vehemently argued by Mr. G S Thakur that the non-appearance of the appellant as well as his counsel who was diligently pursuing the case was neither intentional nor deliberate but due to the circumstances mentioned herein above and since this aspect of the matter has not been appreciated by the Court below, the present appeal has been preferred. Lastly, the learned counsel for the petitioner has submitted that the Court below has dismissed the application for restoration of the suit without giving any reason and feeling aggrieved of the same, the instant appeal has been preferred. The Court below has observed that there is no necessity to file a separate application for

condonation of delay and that a composite prayer can be made.

- 05.** Mr. Dharamvir, the learned counsel appearing on behalf of the caveator submits that since the appellant has failed to show any sufficient and reasonable cause, therefore, the delay has not been condoned in the instant matter and the prayer was rightly rejected and consequently, the application for restoration of the suit was also dismissed by the Court below. He further submits that the order is perfectly legal, justified and the appeal preferred by the appellant is devoid of any merit and is liable to be rejected at the threshold.
- 06.** Heard learned counsel for the appellant as well as the caveator, the caveat shall stand *discharged*.
- 07.** It has been brought to the notice of the Court by the learned counsel appearing on behalf of the appellant that the appellant has been cheated by the respondent, inasmuch as the respondent, after receiving the sale consideration amount, failed to execute the sale deed. Aggrieved by such conduct, the appellant filed a suit for specific performance of Agreement to Sell before the learned trial Court, however, the said suit came to be dismissed. Being further aggrieved, the appellant filed an application for restoration of the said suit, which application was also dismissed by virtue of order impugned dated 21.02.2026.
- 08.** A perusal of the record reveals that there was a delay of only 10 days in filing the application for restoration. Therefore, this Court is *prima facie* of the view that the Court below ought to have adopted a liberal approach in restoring the suit instead of dismissing the said application, so that the case could have been adjudicated on merits. It is also not denied by the respondent that he is facing criminal trial, having failed to execute the sale

deed after receiving the sale consideration amount from the appellant, which compelled the appellant to lodge an FIR against him. Upon investigation, the police have found substance in the allegations against the respondent. The reasons for the appellant's non-appearance before the learned Trial Court appear to be plausible, and sufficient cause has been shown in the present appeal. In the interest of justice, the Court below ought to have restored the suit, thereby enabling the learned Trial Court to proceed with the matter and adjudicate the rights of the parties on merits.

- 09.** While the matter was being argued, it has been brought to the notice of the Court by Mr. G S Thakur, learned counsel for the appellant, that the appellant has, as on date, already paid an amount of Rs.15.00 lacs towards the total sale consideration of Rs. 1.30 Crore. Out of the said amount, Rs.12.00 lacs was paid as a part of the sale consideration vide Cheque No. 006488 dated 11.11.2019 drawn on ICICI Bank from the account of the appellant's partner, namely, Sandeep Singh Pathania. It is further submitted that an amount of Rs. 2.00 lacs was paid vide Cheque No. 006490 dated 20.08.2020 and Rs.1.00 lakh was transferred to the account of respondent through J&K Bank on 20.08.2020. The aforesaid payments were made with the agreement that the balance sale consideration would be paid on or before 28.02.2020, subject to the respondent handing over possession of the property along with the relevant revenue extracts.
- 10.** Mr. G. S. Thakur, learned counsel for the appellant, on instructions from his client, undertakes that the appellant shall pay the balance sale consideration within a period of one month from today. It has further been agreed between the parties that, in the event the aforesaid amount is paid by the appellant to the respondent within the stipulated period, the respondent

shall have no hesitation in executing the sale deed in favour of the appellant, subject to there being no legal impediment.

11. In view of the aforesaid, it would be appropriate to restore the suit and have the same decided on merits by the learned Trial Court, so that the issues raised before the Civil Court are adjudicated expeditiously in accordance with law and in the light of the statements so made by rival counsel for the parties on the instructions of their clients before this Court while deciding the present appeal.
12. This Court is of the considered view that the ends of justice would be adequately met by setting aside the impugned order and remitting the matter to the learned Trial Court for fresh adjudication, so as to ensure that the dispute between the parties is resolved in a just, fair and thorough manner. This becomes all the more necessary in the peculiar facts and circumstances of the case and in view of the statement made by Mr. G. S. Thakur, learned counsel for the appellant, on instructions, that the appellant is ready and willing to pay the balance sale consideration within a period of one month from today.
13. Accordingly, the impugned order dated 21.02.2026 passed by the learned Additional District Judge, Jammu, is set aside and the suit is restored to its original number. In view of the above discussion and the consensus emerging between the parties, the learned Trial Court is directed to proceed with the matter and decide the same afresh on merits, strictly in accordance with law. It is further directed that the statement so made before this Court shall be reduced into writing by the learned trial Court in the form of a duly executed agreement deed and shall be placed on record before the learned Trial Court. The learned Trial Court shall take the said agreement on record

and consider the same while adjudicating the matter on merits, which shall facilitate the learned trial Court for effective and expeditious resolution of the dispute between the parties in accordance with law.

14. The parties are directed to appear before the learned trial Court on 15.04.2026.
15. **Disposed of** accordingly.

(WASIM SADIQ NARGAL)
JUDGE

Jammu:
30.03.2026
Vijay

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

