

State of J&K

Vs

Enquiry Officer and Others

Civil Appeal No. 7528 of 1997

(S. P. Barucha V. N. Khare JJ)

03.11.1997

ORDER

1. Delay condoned.

2. Leave granted.

3. The order under appeal was passed in an appeal (CIA No. 40 of 1995) by the High Court of Jammu and Kashmir. The order states some facts, records the submission on behalf of the second respondent that the appeal was not maintainable, and proceeds thus :

"The records of this appeal state that appellant's counsel has been taking adjournments and according to the learned counsel for the respondents, only to delay the grant of relief to Respondent 2.

Considering the overall circumstances and that Respondent 2 had been struggling for compensation for the last more than five years of his property which was admittedly taken over by the security forces and the tactics adopted by the appellant, a request for adjournment sought by the Government Advocate, Mr. Geelani, is rejected and this appeal is dismissed for non-prosecution,"

4. Learned counsel for the second respondent was at pains to convince us that the appeal had been dismissed on the ground that it was not maintainable. The submission is without merit. The order under appeal records a submission to that effect but gives no finding thereon.

5. The appeal was dismissed for this reason : "... a request for adjournment sought by the Government Advocate, Mr. Geelani, is rejected and this appeal is dismissed for non-prosecution". That the High Court was right in declining the adjournment is not in dispute, but it was then necessary for it to hear the appeal and come to a conclusion on its merits. If for any reason the appellant's advocate declined to argue the appeal, that is what the High Court should have recorded and should then have dismissed the appeal on the ground of non-prosecution. There was no justification for dismissing the appeal only on the ground that the appellant's application for adjournment had been rejected.

6. Learned counsel for the second respondent tried to persuade us to hear the matter because the record was before us and not remand it. We decline to do so. We think that the High Court, having been set right on the legal position as aforesaid, must now hear the appeal on its merits, including the aspect of maintainability, if argued.

7. The appeal is allowed. The order under appeal is set aside. The appeal (CIA No. 40 of 1995) is restored to the file of the High Court to be heard and disposed of on merits. No order as to costs.