

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

Reserved on: 29.07.2025  
Pronounced on: 31.07.2025

**CM(M) No. 327/2023**

**Shafaq Afshan, Age 51 years,  
Principal, Delhi Public School,  
Athwajan, Srinagar**

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

Through: Mr. Sajad Ahmad Sofi, Adv.

**Vs.**

**Mosab Wani (Minor)  
Through Bilkees Jan (Mother)  
W/o Fayaz Ahmad Wani  
R/o Bilal Housing Colony, Soura, Srinagar**

...Respondent(s)

Through: Mr. G. M. D. Baba, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**J U D G M E N T**

*Per Sanjeev Kumar, J*

1. This petition filed by Principal, Delhi Public School is directed against an order dated 4<sup>th</sup> August 2023 passed by J&K State Consumer Disputes Redressal Commission, Srinagar [“the Commission”] in an application for condonation of delay titled Principal Delhi Public School vs. Mosad Wani, whereby the Commission has dismissed the application of the petitioner seeking condonation of delay in filing an appeal against the order of District Consumer Protection Forum, Srinagar [“District Forum”] dated 27<sup>th</sup> June 2018.

2. Before we advert to the grounds of challenge, we deem it appropriate to narrate few facts as are germane to the disposal of controversy raised in this petition.

3. The respondent, a minor, through his mother filed a complaint against the petitioner alleging unfair trade practices and deficiency of service in the matter of admission of the respondent in the school of the petitioner. It was alleged in the complaint that the respondent took admission in the Delhi Public School, Athwajan, Srinagar [DPS] in Class 8<sup>th</sup> on 29<sup>th</sup> April 2011, and incurred different expenses viz. admission fee, tuition fee, bus fee etc. It was the complaint of the respondent that despite having paid all the dues, the petitioner did not allow the respondent to attend classes and avail other facilities w.e.f. June 2011. The respondent was only allowed to sit in the final examination conducted in December 2011. It is also complained that the petitioner directed the respondent to arrange his own transport for to-and-fro travel to the school during examination period. It was submitted by the respondent in the complaint that his mother submitted representations on 27<sup>th</sup> December 2011 and 24<sup>th</sup> March 2012, but no heed was paid by the petitioner. The complaint was accompanied by the documentary evidence evidencing the payment of tuition fee and other charges of the school.

4. The two representations claimed to have been made by the mother of the respondent dated 27<sup>th</sup> December 2011 and 24<sup>th</sup> March 2012 were also placed on record. The complaint which was filed before the District Forum was contested by the petitioner and a clear stand was taken that the charges as are mandated by the rules and regulations of the school were received from the respondent on account of his admission in the school. There was,

however, a delay on the part of the respondent to pay the tuition fee for the month of August 2011 to December 2011 and despite delay, no late fee was charged from the respondent. It was categorically submitted that the respondent had voluntarily decided not to avail the bus facility and, therefore, no transportation charges/bus fee was charged.

5. With regard to the allegation that the respondent was not permitted to attend the class, it was submitted by the petitioner that the respondent was not attending the classes of his own and that this fact was brought to the notice of the parents of the respondent. It is submitted that immediately on receiving an application for issuance of Discharge Certificate, the matter was processed and the Discharge Certificate was issued after charging a fee of Rs. 200/- only. It was further submitted that though the respondent was not regular in attending the classes, yet in the interest of the respondent and to ensure that he does not lose one academic year, he was permitted to sit in the examination.

6. Both the sides lead their evidence on affidavit and the witnesses were also examined by the opposite side. The District Forum on the basis of evidence on record came to the conclusion that though the parents/guardians of the respondent were guilty of not taking the level of care as was legitimately expected from them in respect of their son, yet the School cannot claim to have been absolved of his duties to provide services for which it had been duly paid. By concluding this, the District Forum awarded different sums in favour of the respondent and against the petitioner amounting to a total sum of Rs. 1,05,000/- (Rs. One Lac and Five Thousand) along-with simple interest @ 12% p.a.

7. The petitioner had initially contested the matter and had even addressed final arguments, but the Presiding Officer of the District Forum got transferred and the matter was taken up by the new Presiding Officer. Even before the new Presiding Officer, the petitioner did appear on several occasions, but the matter could not be heard for one reason or the other. It seems that on one date, the matter was heard ex-parte against the petitioner. As is claimed, the petitioner after getting the knowledge of the ex-parte order dated 27<sup>th</sup> June 2018 passed by the District Forum filed an appeal under Section 17 of the Consumer Protection Act before the Commission along-with an application for condonation the delay of about 94 days.

8. The application was contested by the respondent. The Commission having considered the rival contentions and the material on record came to the conclusion that the delay had not been sufficiently explained and, accordingly, dismissed the appeal being barred by limitation in terms of order impugned in this petition.

9. Impugned order is challenged by the petitioner *inter alia* on the ground that the Commission has adopted a very narrow and pedantic approach in the matter of condoning the delay. It is submitted by the petitioner that since the order impugned passed by the District Forum was an ex-parte order, and, therefore, was not within the knowledge of the petitioner. It is only after a notice was received from the executing court that it came to know that some award had been passed against the petitioner. Immediately, an application for obtaining the certified copy was made and on receiving the certified copy of the award/order passed by the

District Forum, the appeal was presented before the Commission without any further waste of time.

10. It is submitted that the Commission should have ignored the small delay of 94 days having regard to the merits of the case. It is also argued that the Commission adopted a hyper-technical approach and, threw out a strong case on the ground of delay.

11. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the Commission has indeed adopted a very narrow and pedantic approach in considering the request of the petitioner for condonation of delay of about 94 days.

12. From perusal of the record of the District Forum, it clearly transpires that the complaint filed by the respondent was all-along contested by the petitioner. Not only the witnesses of the respondent were cross-examined, but even the statements on affidavit of the witnesses of the petitioner were also produced and the witnesses presented for cross-examination by the respondent. It also comes out from the perusal of the record that the District Forum even heard the final arguments on 15<sup>th</sup> February 2014 and listed the case for orders on 26<sup>th</sup> March 2014. Thereafter, the case was not decided though it was listed on several occasions.

13. On 27<sup>th</sup> November 2014, the matter came to be placed before the new Presiding Officer. The Presiding Officer in its order dated 27<sup>th</sup> November 2014 directed the parties to argue the matter afresh. Thereafter, again the matter was listed on number of occasions, but the Presiding Officer could not conclude the hearing of the matter. On these dates, the petitioner had appeared regularly minus a couple of occasions where he

could not remain present. Thereafter, the matter was taken up by the District Forum on 20<sup>th</sup> July 2016 and due to strict restrictions and curfew in the Valley, none of the parties could appear and the matter was listed on 5<sup>th</sup> October 2016.

14. On 15<sup>th</sup> July 2017, the Presiding Officer was on leave and the matter was listed on 12<sup>th</sup> August 2017. It is hereinafter when the matter was listed, there was no representation on behalf of the petitioner. Ultimately, the case without hearing was reserved for final orders and this is how the final order impugned before the Commission came to be passed.

15. The manner in which the proceedings were conducted by the District Forum from the year 2014 till the passing of the order by the District Forum dated 27<sup>th</sup> June 2018 clearly indicates that for almost four years after the matter was heard finally, no proceedings could be conducted by the District Forum. It is because of these circumstances, the petitioner had probably lost touch with the case. The petitioner is required to be believed that it was only after the summons in the execution were served upon him, he came to know about the passing of the ex-parte order by the District Forum. Immediately thereafter, he took steps to file the appeal.

16. In our considered opinion and given the facts and circumstances of the case, the petitioner has sufficiently explained the delay in approaching the Commission. Otherwise also, the order of District Forum which was challenged before the Commission was apparently non-speaking and not supported by any evidence, documentary or oral. The witnesses examined by the respondent in support of the complaint do not *prima facie* substantiate the allegations made by respondent. Keeping in view the

merits of the controversy, the Commission ought to have exercised its discretion and condoned the delay of about 94 days.

17. It is trite law that when the technicalities are pitted against substantive justice, it is the substantive justice that must prevail. It is true that when the Statute prescribes a particular limitation for taking an action that action must be taken within the prescribed period, and, if there is a provision for condonation of delay, then delay is to be condoned subject to demonstrating a sufficient cause. The party claiming condonation must demonstrate such cause. However, while considering as to whether the explanation tendered by the applicant constitutes sufficient cause, the Court must adopt a liberal and pragmatic approach so as to ensure that a good cause is not thrown only on mere ground of delay.

18. In the instant case, we find that the Commission adopted a hyper-technical approach and probably insisted for explaining each day's delay, ignoring that the judgment passed by the District Forum was on the face of it not sustainable in law. We may point out that the grievance of the respondent as projected in the complaint is that he was not permitted to attend the classes from the month of June 2011 to December 2011 is not supported by any documentary or oral evidence on record. If the respondent was not permitted to attend the classes and used the transport facility in the last week of June 2011, what prevented him or his parents from protesting against such action of the school before the school management in the month of July 2011 itself. The respondent claims to have made first representation on 27<sup>th</sup> December 2011 and second on 24<sup>th</sup> March 2012, though the receipt of these representations has been denied by the petitioner.

19. As is clearly stated by the petitioner in its written version filed before the District Forum, the respondent had not paid the tuition fee for the month of August 2011 to December 2011 and despite delay, no late fee was charged from the respondent. The respondent though was not regular in the class, but was yet allowed to sit in the examination. There is thus no evidence on record to show any deficiency of service on the part of school authority. The respondent who had been thrown out of the earlier school had also not disclosed this fact at the time of admission in the school of the petitioner. That apart, the District Forum on the basis of material on record has also come to the conclusion that there was neglect and lack of reasonable care on the part of the parents/guardian, who had failed to respond to the school authorities for mending the ways of the respondent. It is also noted by the District Forum that despite school authorities regularly communicating with the parents of the respondent regarding his academic performance and discipline, had failed to respond. Several communications issued by the school authorities to the parents noted in the respondent's school diary remained unanswered by the parents/guardians of the respondent. If this was a nature of evidence on record, we fail to explain as to how the entire responsibility for erratic behavior of the respondent was fastened by the District Forum on the school authorities. The District Forum completely strayed in the matter and passed the order dated 27<sup>th</sup> June 2018 only on the basis of his conjectures and imagination. Had the Commission adverted to the merits of the case, it would not have thrown out a good cause only on the technical ground of delay.

20. In view of the above, the order passed by the Commission is not sustainable in law. Ordinarily, we could have set-aside the order of the

Commission and remanded the case back for deciding the appeal on merits. However, having regard to the fact that this litigation is pending for the last 13 years and also having regard to the fact that the complaint initiated by the respondent has no legs to stand, we have decided to act otherwise.

21. For the foregoing reasons, we find merit in this petition and the same is accordingly allowed. The order dated 27<sup>th</sup> June 2018 passed by the District Forum and the order of Commission dated 4<sup>th</sup> August 2023 impugned in this petition are quashed.

22. As a result, the complaint filed by respondent against the petitioner is found without substance and is accordingly dismissed.

(SANJAY PARIHAR)  
JUDGE

(SANJEEV KUMAR)  
JUDGE

**SRINAGAR:**  
**31.07.2025**  
Altaf

Whether approved for reporting? Yes/No