

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CM(M) No. 160/2025
CM No. 3440/2025**

**Mulkh Raj, Age: 73 years,
S/O Late Lachhman Dass Arora
R/O Adarsh Colony, Udhampur
“Arora Pan Shop” Gole Market,
Udhampur.**

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

Through: Mr. Dinkar Gupta, Advocate

Vs

- 1. Smt. Satya Devi Wd/o Late Sh. Madan Mohan.**
- 2. Madhukar Raina.**
- 3. Sudhanshu Raina.**
Ss/o Late Sh. Madan Mohan.
- 4. Radhika Sharma D/o Late Sh. Madan Mohan**
All Rr/o W. No. 9, H. No. 142, Lambi Gali Udhampur.

..... Respondent(s)

Through:

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(04.06.2025)

01. The petitioner is a sole defendant in a civil suit which was commenced by Madan Mohan, the plaintiff who is now deceased, before the court of Munsiff (Additional Special Mobile Magistrate), Udhampur seeking eviction of the petitioner as defendant from a suit shop situated at Gole Market, Udhampur.

02. It seems that at the fag end of the trial when the suit came to be posted for final arguments, the plaintiff Madan Mohan expired which resulted in an application being filed by his wife, two sons & daughter as being legal representatives to be brought on record in terms of Order 22 of the Code of Civil Procedure, 1908.

03. The said application was resisted by the petitioner but the trial court of Munsiff (Additional Special Mobile Magistrate), Udhampur by virtue of an order dated 28.04.2025 has allowed the application by bringing on record the legal representatives to pursue the suit to its logical end holding that right to sue survives in the matter in terms of Order 22 of the Code of Civil Procedure, 1908.

04. Order 22 Rule 1 of the Code of Civil Procedure, 1908 says that death of a plaintiff or defendant in a civil suit shall not cause the suit to abate if a right to sue survives.

05. Order 22 rule 3 of the Code of Civil Procedure, 1908 provides that where a sole plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative/s of the deceased plaintiff to be made a party and shall proceed with the suit. This is where, the trial court of Munsiff (Additional Special Mobile Magistrate),

Udhampur has come to respond an application so made by the legal representatives of the sole plaintiff-Madan Mohan.

06. Right to sue and personal necessity of a suit shop are not synonymous, infact personal necessity may be a component of the right to sue, but not the right to sue itself.

07. This Court needs not to stretch itself to go into the context and contour of the personal necessity even if set up by a sole plaintiff for himself. The petitioner intended to steal a default decree in his favour by letting the suit abate by imposing his own judgment that since in the civil suit the personal necessity by the sole plaintiff was set up so with his death the said personal necessity has also lapsed.

08. This is for the trial court to adjudge in the final adjudication of the civil suit and that cannot be allowed to happen in the matter related to adjudication of an application filed in a pending civil suit in terms whereof the legal representatives of a sole plaintiff intend to bring themselves on record as is in the present case.

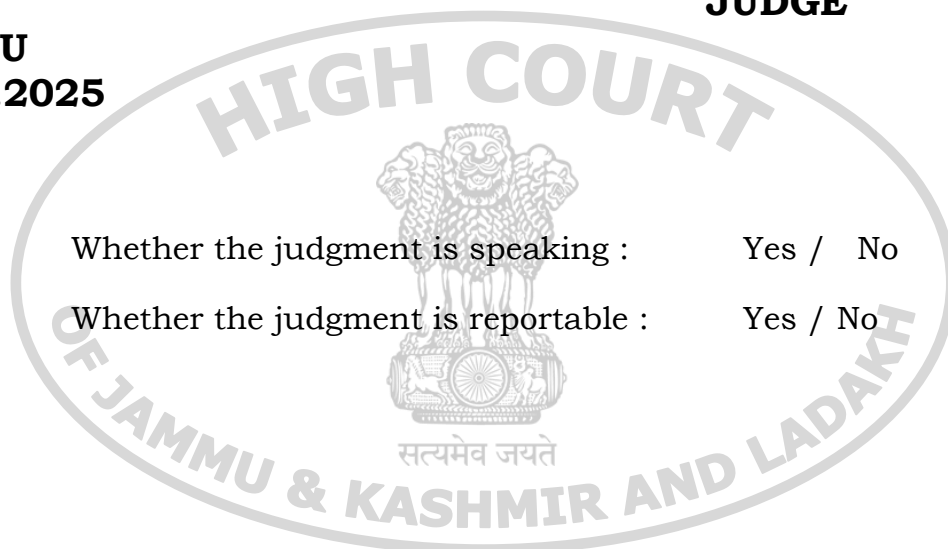
09. Learned counsel for the petitioner draws reliance from the judgments of this Court in case titled as “**Mst. Noora Bibi vs. Sujan Singh Rally reported in 2023(3) S.L.J (HC) 1397** and in case titled as “**Kanwar Singh vs. Om Kant & Ors.” reported in 1978 AIR (J&K) 22.**

10. The facts of both cases do not fit in with the facts of the present case, therefore, the same may not hold good.

11. In view of this, the petition is found to be without merit and **dismissed** without prejudice to the right of the petitioner to canvass the submission relatable to the death of the sole plaintiff vis-à-vis the requirement for the suit shop in the final hearing of the civil suit.

(RAHUL BHARTI)
JUDGE

JAMMU
04.06.2025
SUNIL



Whether the judgment is speaking : Yes / No

Whether the judgment is reportable : Yes / No