

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

WP(C) 2326/2025

Date of Pronouncement: 01.12.2025

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Ghulam Hassan Shah

S/o Abdul Ghani Shah

R/o Devar Lolab District Kupwara

...Petitioner(s)

Through: Mr. F.A. Wani, Advocate

Vs.

1. The Jammu & Kashmir Bank Limited Through

its Authorized Officer B/U Old Chowk

Kupwara;

...Respondent(s)

2. District Magistrate, Kupwara;

3. Tehsildar, Lal Pora Kupwara;

Through: Mr. Shafqat Nazir, Adv. with

Ms Heena Baqal, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT (ORAL)

01.12.2025

1. In this petition filed by the petitioner under Article 226 of the Constitution of India, the petitioner seeks a Writ of Mandamus commanding the respondent-Bank to de-seal a single storey house ["subject house"] of the petitioner comprised in Survey No. 1075 situated at Dever Anderbagh Lolab, Kupwara, under the SARFAESI proceedings.

2. The short grievance projected by the petitioner is that the subject house is not a secured asset and, therefore, cannot be proceeded under Sections 13 & 14 of the SARFAESI Act.

3. Before we proceed to appreciate the submissions of learned counsel for the petitioner, we deem it appropriate to give a brief summary of the litigation filed by the petitioner to avoid the sale of

the secured assets, as also to avoid repayment of the loan amount borrowed from the Bank.

4. The petitioner had taken a loan from the respondent-Bank, which, due to the defaults committed in repayment, was declared NPA. The Bank, with a view to proceed against the secured asset, issued a demand notice under Section 13(2) of the SARFAESI Act, 2002, to which the petitioner responded by filing a representation. The representation was found devoid of merit by the Bank and, accordingly, action in terms of Section 14 of the SARFAESI Act was resorted to.
5. Feeling aggrieved, the petitioner challenged the order passed under Section 14 of the SARFAESI Act in WP(C) 1520/2024. The petitioner did not deny his liability to pay back the loan, nor did he dispute the mortgage executed by him in respect of the secured asset. He, however, challenged the action of the respondent on the ground that the secured asset was agricultural land and, therefore, not amenable to action under the SARFAESI Act in view of Section 31 thereof. The matter was considered by this Court at length and vide order and judgment dated 29.11.2024, the writ petition was dismissed lacking merit. Paragraph 7 of the judgment is relevant and is set out below:

“7. Therefore, in view of what has been argued before us and considered hereinabove, the main crux of the petitioner’s argument is that the land that was sought to be proceeded against in terms of SARFAESI Act, to be an agricultural land was not amenable in law to be so proceeded against, does not hold water in the factual circumstances of this particular case which is not disputed with regard to the construction of a

residential house and a business unit on the said land, and therefore, this court holds the property that was so pledged to the bank, would come under the definition of a “residential property” applying the law laid down by the Supreme Court in the aforementioned case.”

6. The petitioner still felt aggrieved by a Division Bench judgment *supra* and filed review petition i.e. RP No. 14/2025 reiterating the similar contention that the secured asset was purely agricultural land and, therefore, was not amenable to attachment and sale under Section 31 of the SARFAESI Act, 2002. This Court considered the review petition and found the same grossly misconceived and, accordingly, dismissed it vide order dated 15th July, 2025 with costs of Rs. 50,000/- to be deposited by the petitioner before the Registry of this Court within a period of two weeks.
7. The observations of this Court while disposing of Review Petition No. 14/2025, contained in paragraphs 9 & 10, are noteworthy and are produced herein below:

“09. It seems that the petitioner, right from very beginning, was in knowledge of the fact that the land which he mortgaged with the Bank might not be amenable to attachment and sale by the Bank in the event he makes a default of the payment and, therefore, deliberately committed an act which is, prima facie, tantamount to commission of offence of cheating.

10. Without saying much on this aspect of the matter, we only hold this Review Petition grossly misconceived and the same is, accordingly, dismissed with costs of Rs. 50,000/- (rupees fifty thousand only) to be deposited by the petitioner before the Registry within a period of two weeks. In case of failure to deposit the costs within the stipulated time on the part of the

petitioner, the Registry shall frame a Robkar and place the same before this Court after two weeks.”

8. On 21st November, 2025, having regard to the conduct of the petitioner in repeatedly raising the same pleas before the Court by filing successive writ petitions, this Court not only directed the tagging of records of WP(C) No. 1520/2024, RP No. 14/2025 & WP(C) No. 1910/2025 but also sought a report as to whether the petitioner had paid the costs in terms of order dated 15th July, 2025 passed in RP No. 14/2025. The report of the Registry indicates that the petitioner has not complied with the order dated 15th July, 2025 even after five (5) months of the passing of the said order.

9. On one hand, the petitioner brazenly defied the order of costs passed by this Court and on the other hand, decided to rake up the same issue once again and this time creating a false narrative of mistaken identity of the secured asset. He claimed that the house which has been sealed by the respondent-Bank as a secured asset is a house situated in Survey No. 1075 and is not part of the secured asset. He has appended revenue records of Survey No. 1075 to indicate that this is an 18 marlas of land situated on Abadi-deh which is not a part of a secured asset which is land measuring 1 kanal 18 marlas falling in Survey No. 1074. The revenue record appended, issued by the revenue authorities in the year 2025, does not indicate any construction thereon.

10. Be that as it may, the fact remains that this is perhaps the last attempt by the petitioner to hoodwink not only the Bank but this Court as well.

11. The Bank has filed its reply and its stand is quite clear and unequivocal. It is submitted that land measuring 1 kanal & 18

marals alongwith a double-storeyed house constructed therein in Survey No. 1074 is a secured asset and it is the said property which has been attached and is being put to auction. The Bank is very specific in its reply that they have not attached anything other than the secured asset, in particular, the house claimed by the petitioner constructed in Survey No. 1075.

12. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that this writ petition lacks bonafides and, therefore, deserve to be dismissed with exemplary costs.

13. The petitioner may have submitted in this petition that he has a single-storeyed house compromising in Survey No. 1074, but does not indicate anywhere in the petition that he owns two houses one a double-storeyed house constructed on a land measuring 1 kanal & 18 marlas in Survey No. 1074 and the other single-storeyed house constructed in Survey No. 1075 on a land measuring 18 marlas. That apart, the petitioner, whose earlier review petition was dismissed with the costs of Rs. 50,000/-, has failed to deposit the said costs and the Robkar stands framed by this Court.

14. The learned counsel appearing for the petitioner, on the last date of hearing, was asked as to whether the petitioner had complied with the order of payment of costs. His reply was that he was appearing in this case and was not aware whether his client had deposited the costs or not. He would even argue that such a question does not arise in these proceedings and is, therefore, irrelevant. We need to place on record that in all the litigations which we have referred to above, the learned counsel representing the petitioner is the same

and shall be deemed to be aware of what has transpired in the earlier petitions.

15. From the above, it is evident that the petitioner, with a view to avoid the repayment of the loan as also to save the secured assets mortgaged with the Bank, has been manipulating the process of law one way or the other. He was not even deterred when his review petition was dismissed with the costs of Rs. 50,000/-. He seems to be law unto himself. He decided not to pay the costs and filed another petition in an attempt to hoodwink the Court by concocting a story that the house which is attached by the respondents is not the one mortgaged to the Bank. We could have appreciated this argument had he taken this plea when he challenged the notice under Section 14 of the SARFAESI Act issued by the Bank and the house was sealed and taken possession of, which happened a year back.

16. Viewed from any angle, this petition is also found to be utterly misconceived and frivolous and an attempt to misuse the process of law. This petition is accordingly **dismissed** with costs of Rs. 1,00,000/- to be deposited by the petitioner with the Registry of this Court within a period of two weeks, failing which the Registry shall prepare a Robkar and place the same before this Court for appropriate orders.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

01.12.2025

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Whether the order is reportable? Yes/No