

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
CM(M) 47/2026
CM(675/2026**

Ghulam Nabi Pandit

...Petitioner(s)

Through: Mr. Sahil Parvez Kachroo, Advocate

Mohammad Saleem Sheikh

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

17.02.2026

1. The petitioner figures as a defendant in a civil suit preferred by the respondent/plaintiff in terms of Order 37 of the Code of Civil Procedure, 1908 before the Court of learned 3rd Additional District Judge, Srinagar.

2. In said suit, the respondent/plaintiff is seeking recovery of an amount of Rs. 30.00 lacs which the respondent/plaintiff alleges to be recoverable from the petitioner/defendant on the basis of a demand promissory note said to have been executed by the petitioner/defendant, thereby promising to pay to the

respondent/plaintiff on demand an amount of Rs. 30.00 lacs for the consideration received.

3. In addition, the respondent as plaintiff, has also pressed into service an agreement with the petitioner/plaintiff to said effect.

4. The petitioner upon being served with notice to appear, entered appearance and then upon service of summons for judgment came forward with an application for leave to defend, which came to be allowed by virtue of order dated 22.01.2026 with a condition of deposit of 10% of suit amount of Rs. 30.00 lacs.

5. Thus, the trial court of learned 3rd Additional District Judge, Srinagar has come to grant conditional leave to defend in favour of the petitioner/defendant which has left him aggrieved to come up with present petition before this Court under Article 227 of the Constitution of India seeking supervisory jurisdiction for examination of legality and validity of the condition imposed by the trial court of learned 3rd Additional District Judge, Srinagar in granting leave to defend in favour of the petitioner/defendant.

6. Learned counsel for the petitioner/defendant comes forth with heavy reliance on the fact that leave to defend ought to have been unconditional in favour of the petitioner/defendant in view of position of law settled by the Hon'ble Supreme Court of India in the case titled **“B.L. Kashyap and Sons Ltd. Vs. M/S JMS Steels and Power Corporation and Anr.”**, **2022 Live Law (SC) 59.**

7. The Hon'ble Supreme Court of India in paragraph 17.1 of its said judgment has laid down four situations in the context whereof leave to defend is governed. For facility of reference, paragraph 17.1 of the aforesaid judgment is reproduced below:-

“17.1. As noticed, if the defendant satisfied the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by

unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.”

8. The grant of leave to defend with a condition imposed is envisaged in 4th eventuality where the proposed defence appears to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also payment into the Court or furnishing security or both.

9. Of course, the Hon'ble Supreme Court of India says that where a defendant comes up with a substantial defence to Order 37 suit put up against him/her, then grant of leave is meant to be unconditional and that is completely in consonance with elementary principle of adjudication of a civil suit that he who alleges is supposed to prove fact and not the one who defends is supposed to disprove the averments against him.

10. When seen in the context of the present case, as to the reason for the imposition of condition of 10% deposit of the suit amount, the trial court in paragraph 10 comes forth with a reference that as per the defendant there is an admission that he had taken the loan from the respondent but the same is said to have been repaid.

11. When this Court confronted the learned counsel for the petitioner/defendant to show as to how said loan availed and repaid by reference to the respondent/plaintiff came to take place, it came to be responded that an amount of Rs. 20.00 lacs as a loan was repaid to the respondent/plaintiff that too in cash in one installment.

12. In para 9 of his application for leave to defend, the petitioner/defendant was meaning to be believed that he made return of more than 40.00 lacs as otherwise availed as a loan from the respondent/plaintiff in cash without insisting at any point of time taking receipt for the payment so returned.

13. In the backdrop of this scenario, the trial court, acted on the side of prudence and taking the defence of the petitioner/defendant worth examining but with

a condition of deposit of 10% of suit amount and that is meant to test bonafide of the petitioner/defendant that he is sincere in pursuing his defence to the hilt and not for the sake of availing leave to defend without any rider and then rendering Order 37 suit into an ordinary mode of adjudication as a regular suit.

14. This Court finds no illegality in the order of the leave to defend so passed by the Court of 3rd Additional District Judge, Srinagar and, as such, is not inclined to entertain this petition at the instance of the petitioner/defendant. Accordingly, this petition is **dismissed.**

15. However, this Court makes it clear that nothing observed herein in any manner be construed as a reflection on the merits or demerits of the case of either of the parties to the civil suit.

16. Copy of this order be forwarded by the Registrar Judicial, Srinagar to the Court of learned 3rd Additional District Judge, Srinagar for the sake of notice.

(RAHUL BHARTI)
JUDGE

SRINAGAR:

17.02.2026

"Mir Arif"