

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

**FAO No. 19/2026
CM No. 4115/2026**

Mushtaq Ahmad Zarkab

...Petitioner(s)

Through: Mr. Adil Asimi, Advocate

Vs.

Abdul Hamid Malla

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**ORDER
08.07.2026**

1. The respondent is the plaintiff in a civil suit against the petitioner whereby a decree of eviction of the petitioner from a suit shop is being sought along with the decree of mesne profits for an amount of Rs. **12,00,000/-** and also with a mandatory injunction though not said so upon the petitioner to pay mesne profits till actual delivery of suit shop in terms of its possession.
2. In the suit laid on File No. **O.S. 2921/2025** before the court of Additional District Judge, Srinagar,

the respondent has referred to the use and occupation of the suit shop by the petitioner originally on the basis of rent agreement inducting him as a tenant wayback in October, **2003** but then meaning to say that said relationship of landlord and tenant was put to determination on account of expiry of original eleven months of tenancy period, whereafter the petitioner continued to be in illegal possession of the suit shop.

3. So long as **Jammu and Kashmir Houses and Shops Rent Control Act, 1966** was holding the field which includes the period in which the petitioner came to be inducted in the suit shop and also post expiry of eleven months' period of tenancy, the petitioner qua the suit shop was a statutory tenant in the eyes of law and by that reference continued with status as a tenant as against the averment of the respondent in his plaint that the petitioner is in unauthorized and illegal possession of the suit shop having no right to remain.

4. Be that as it may, the respondent solicited an order from the court of Additional District Judge, Srinagar, with a direction unto the petitioner for deposit of mesne profits to the extent of Rs. **12,00,000/-** which application came to be disposed of by virtue of impugned order dated **13.05.2026** with a different outcome then what was prayed for by the respondent himself.

5. The court of learned Additional District Judge, Srinagar has come up with the following direction:

“...Accordingly, the defendant is directed as under:

- (i) The occupational/rental charges of the suit shop from January 2022 upto October 2025 shall be calculated at the admitted rate of Rs. 17,000/- (Rupees Seventeen Thousand only) per annum and total amount is quantified at Rs.63,744/-
- (ii) With effect from November 2025, the defendant shall pay occupational/user charges at the rate of Rs. 5000/- (Rupees Five Thousand only) per month till final disposal of the suit or till further orders of this court.
- (iii) Arrears accrued till date shall be deposited before this court within a period of six weeks from the date of passing of this order for which the plaintiff is at liberty to seek execution in accordance with the relevant provisions of law.
- (iv) The defendant shall continue to deposit further occupational charges regularly on or before the 10th day of each succeeding month during pendency of the suit.
- (v) It is clarified that the present arrangement is purely interim in nature and shall remain

subject to final adjudication of rights and liabilities of the parties upon conclusion of trial. Any amount deposited by the defendant shall be subject to adjustment at the time of final disposal of the suit.”

6. Said adjudication with a direction coming upon the petitioner has rendered him agreed to come up with a self-conceived right of appeal available at his disposal against the impugned order when under the aegis of **Code of Civil Procedure, 1908 in terms of section 96 and/or section 104 of Code of Civil Procedure, read with order 41 and 43**, an order of this nature has not been identified as an appealable order. Therefore, this Court cannot entertain the appeal and is rejected but by reserving liberty in favour of the petitioner to invoke appropriate remedy at his disposal which of course includes supervisory jurisdiction of this Court under **article 227** of the Constitution of India in case of a grievance of a litigant by reference to a adjudication made in a civil suit which is not appealable under the scheme of the Code of Civil Procedure but amounting to abuse of process of law.

7. Mr. Adil Asmi learned counsel for the appellant submits that the **Order 39 of the Code of Civil Procedure-1908** is the root provision whereunder the impugned order has been generated.

8. This Court would have no issue with Mr. Adil Asmi's submission if the court of learned Additional District Judge, Srinagar would have observed so that for the purpose of passing the impugned order the court is resorting to jurisdiction under **order 39 of the Code of Civil procedure-1908** but even that is not the scenario. In fact, even the respondent as a plaintiff being the mover of the application did not refer to any provision of the Code of Civil Procedure, 1908 whereby a direction was being solicited by him.

9. Thus, Mr. Adil Asmi's submission that this court shall self-read impugned order as an appealable order by reference to **Order 39 rule 10 read with order 41 of the Code of Civil Procedure-1908** is very far-fetched expectation and, as such cannot be entertained.

10. Hence the appeal is dismissed without prejudice to the petitioner's right to have appropriate legal remedy invoked.

11. Dismissed along with connected CM.

(RAHUL BHARTI)
JUDGE

SRINAGAR:
08.07.2026
Imtiyaz