

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

CM(M) 325/2025 CM 5021/2025

Reserved on : 02.07.2026

Pronounced on : 13.07.2026

Uploaded on : 13.07.2026

**Whether the operative part or full
judgment is pronounced: Full**

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

- 1. Bashir Ahmad Bhat, aged 68 years**
- 2. Mohammad Shafi Bhat, aged 60 years**
- 3. Mohammad Yousuf Bhat, aged 50 years**
All sons of Late Mohammad Akbar Bhat
R/O Hyderpora, Srinagar

Through: Mr. G.R Tantray, Advocate

Vs.

- 1. Adnan Mir**
S/O Parvaiz Ahmad Mir
R/O Nigeenbagh Hazratbal, Srinagar
- 2. Irfan Ahmad Wani**
S/O Ghulam Ahmad Wani
R/O A29 Sector 1 Mustafaabad Zainakote
Srinagar
A/P 33/FR ENV/LL/05, PDD-20114/2020CC
Friends Colony, Humhama near Airport
190021
C/O 9811900234/7006822256

...Respondent(s)

Through: Mr. Q.R Shamas, Advocate for R-1
Mr. Sikander Hayat, Advocate for R-2

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.

JUDGMENT

- By this petition, filed in terms of Article 227 of the Constitution of India, the petitioners are seeking setting aside of order dated 23.06.2025 passed by the Court of learned Additional District Judge (Bank Cases) Srinagar (Designated Commercial Court), [hereinafter called the 'trial court'], in terms whereof, the learned trial court has declined the prayer of the

petitioners to pass a compromise decree on the basis of the alleged compromise between the parties.

Factual Matrix:

2. The petitioners are stated to have filed a civil suit under the provisions of the Commercial Courts Act for recovery of the outstanding license fee as well as mesne profits from the defendants/respondents herein with whom the petitioners had entered into an agreement of license in the year 2015, for a period of five years. Prior to the filing of the suit, the petitioners had initiated a pre-litigation mediation under Section 12A of the Commercial Courts Act with defendant No. 1, pursuant to the failure to liquidate the arrears of license fee. The said pre-litigation mediation did not yield any positive results, constraining the petitioners to file a civil suit under the Commercial Courts Act, praying for the below mentioned reliefs:

- a) *A decree for recovery of Rs. 2,60,54,574/- as outstanding arrears of license fees and mesne profits in respect of the licensed premises along with the pendent lit interest at bank rate and interest after the passing of the decree @18% may be passed in favour of the plaintiffs and against the defendants.*
- b) *A decree for attachment of kitchen ware and the furniture and furnishings belonging to the defendant No. 1 may be passed before the passing of final judgment against the defendant No. 1 and the attached articles put to auction for the purpose of realization of the outstanding arrears of license fee and mesne profits.*
- c) *A decree of declaration to the effect that the defendant No. 1 was the licensee of the licensed premises till 31.12.2020 and thereafter the defendant No. 1 has been a mere trespasser holding over the property of the plaintiffs illegally to the detriment of the plaintiffs.*

- d) *A decree of perpetual injunction restraining the defendants from causing any forcible entry into the suit building overtly or covertly and remove the sign board captioned M/S Grills Bistro & Kitchen fixed to the suit building.*
 - e) *A decree of perpetual injunction restraining the defendants from causing any impediment into the free access of plaintiffs to the suit building and utilize the same for their own benefit.*
3. During the pendency of the said suit, a compromise was recorded on 04.01.2025, on the basis of statement made by the defendant No. 2 in presence of his counsel. The terms of the said compromise were not complied with, though the petitioners prayed for passing of a decree in their favour in terms of Order 23 Rule 3 CPC, which was declined by the trial court.
4. The claim of the petitioners/plaintiffs was resisted by the respondents herein by filing the written statement, however, later on as would the order dated 04.01.2025 of the trial court reflect the plaintiffs and defendant No. 2 had arrived at a consensus/amicable settlement that the license fee of Rs. 2,60,54,574/- would be paid by the defendants and defendant No. 2 agreed to pay the same in the manner as envisaged in the said order. Subsequent thereto, the trial court in terms of order dated 08.02.2025 records that the defendants neither turned up, nor have made the payment as agreed in terms of the agreement dated 04.01.2025. The order further records that an advocate namely Mr. Dawood Ahmad had undertaken on behalf of defendant No. 2, to do the needful by the next date. The said advocate was directed to bring the keys of the premises with him, if the needful is not done as undertaken by him. For facility of

reference, the relevant paragraph of the order dated 08.02.2025 is reproduced herein below:

“LC for the parties present. The plaintiff present in person as well. The defendants have neither turned up in the court nor made the payment to the plaintiff as agreed by them by virtue of agreement dated 04.01.2025. Advocate Dawood Ahmad, LC for the defendant No. 2 undertook to do the needful by next date and in case the defendants are not able to make the payment he is directed to bring the keys of the premises in the court on next date. LC for the defendants has also filed objections, same are taken on record.”

5. Thereafter, order dated 03.04.2025 passed by the trial court would show that defendant No. 1 had appeared in person, the learned counsel for defendant No. 2 had filed a composite application for setting aside ex-parte proceedings and for restoration of counter claim. The said measure was taken by the defendant No. 2 on the ground that he could not manage the promised amount from the prospective buyers.
6. Subsequently, respondent No. 1 filed another application seeking setting aside ex-parte proceedings initiated against him in terms of order dated 21.02.2025.
7. Eventually, the trial court heard the learned counsel for the parties and upon consideration of the matter passed the impugned order. The relevant paragraph of the impugned order dated 23.06.2025 is reproduced herein below:

“In the matter in hand, though with the intervention of the court the plaintiff and one of the defendant agreed for some settlement, yet there is no written agreement to that extent and the defendant No. 1 has not even consented for the same. As such, the compromise decree as contended by the LC for plaintiff cannot be passed in the case.

Since the applicant/defendant No. 1 has filed the application showing his desire to participate in the proceedings of the case and has already filed the written statement and as per the submission for LC for defendant No. 1 great prejudice shall be caused to the defendant No. 1 in case ex-parte proceedings initiated against him are not set-aside. Therefore, in the interest of justice and for allowing the defendant No. 1 to participate the proceedings in future, the ex-parte proceedings initiated against the defendant No. 1 vide order dated 21.02.2025 are set aside subject to the payment of costs of Rs. 4000/-.”

8. Aggrieved of the order, the petitioners have approached this Court with the petition in hand, seeking setting aside of the impugned order being bad in law and for directing the trial court to draw the decree on the basis of compromise dated 04.01.2025 recorded by the trial court.
9. The writ petition is accompanied by an application for interim relief, wherein the petitioners have prayed that, pending consideration of the main petition, the operation of the order dated 23.06.2025, passed by the trial court be stayed.
10. This court in terms of order dated 12.08.2025, while issuing notice to the respondents, summoned the scanned record from the trial court, which has been received and is on the file. Upon notice, respondents have appeared and sought time for filing reply.
11. Learned counsel for respondent No. 1 has submitted that the compromise in question is in no way binding upon respondent No. 1, as he has not signed the same, despite being a contesting party to the dispute.
12. Learned counsel for respondent No. 2 has submitted that in view of Section 13 of Commercial Courts Act, the petitioners have a remedy of appeal and in view of availability of an express remedy provided by the

statute, the petition in hand filed in terms of Article 227 of Constitution of India is not maintainable. He has relied upon judgment/order dated 24.04.2025 passed by the Hon'ble High Court of Delhi in case titled "*Pankaj Arora Vs. Mr. Anil Kumar Bansal & Ors.*"

13. At the outset, the foremost question that arises for consideration is whether the petition in hand, filed in terms of the Article 227 of the Constitution of India, is maintainable or not. It needs no reiteration that the jurisdiction vested with this Court in terms of Article 227 is not an ordinary jurisdiction, but an inherent supervisory jurisdiction. The inherent supervisory jurisdiction vested with this court in terms of Article 227 of the Constitution of India is to be exercised for limited purposes only, when the order called in question falls within the exceptions as envisaged in case titled "*Shalini Shyam Shetty & Anr Vs Rajendra Shankar Patil*" reported as (2010) 8 SCC 326. The relevant paragraph of the said judgment is reproduced herein below:

62. *On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*

- a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.*
- b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.*
- c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or*

Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

- d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*
- e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.*
- f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.*
- g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.*
- h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.*
- i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.*
- j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure*

Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

- k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*
- l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*
- m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.*
- n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*
- o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.*

15. The petition in hand, in view of the law laid down and taken note of herein above, on the face of it, is not maintainable, however, the court deems it appropriate to deal with the issues raised by the petitioners.

16. Learned counsel for the petitioners has primarily challenged the impugned order on the ground that, although a compromise had been

recorded by the trial court itself between the parties, the respondents failed to act upon it. Despite this, the trial court declined to pass a compromise decree based on the said compromise, which is illegal. To deal with the submission made by the learned counsel, the court deems it appropriate to reproduce the Order 23 Rule 3 of CPC, which covers the subject herein:

“3. Compromise of suit—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, [in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit.

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[Explanation- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]”

17. A plain reading of the provision of law as taken note of herein above would make it amply clear that, a compromise decree cannot be passed merely on the willingness of the parties to settle the dispute, but only upon strict compliance of the conditions prescribed under Rule 3. It provides that when a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the

court shall record the compromise and pass a decree in accordance therewith. So, the essential ingredients required to be fulfilled by this provision of law make a compromise, a lawful agreement of the compromise, which are mentioned herein below:

- a) It must be lawful agreement or compromise.
- b) It must be in writing.
- c) It must be signed by the parties or their duly authorized representatives.
- d) The court must be satisfied that the compromise is lawful and voluntary.

18. It goes without saying that failure to satisfy all these four conditions would render the agreement/compromise incapable of being made basis of a compromise decree.

19. I am fortified in my view by the judgment of the Hon'ble Supreme Court in case titled "**Krishna Kumar Ojha & Ors. Vs. Jitendra Chaudhary & Ors.**", reported as **2026 SCC OnLine SC 1255**. The relevant paragraph of the judgment is reproduced herein below:

"5.2. A perusal of various decisions of this Court reveals the following aspects regarding compromise decree:

- (a) Prior to the 1976 Amendment to the CPC, a compromise could be either oral or written, and the Court could decide the same on the basis of general evidence by the parties, *Gurpreet Singh v. Chatur Bhuj Goel*.
- (b) After the amendment, it has been clarified that a compromise must be in writing and must be signed by the parties, *Som Dev v. Rati Ram*.
- (c) The objective of the amendment is to prevent false and frivolous pleas of compromise having been entered into between the parties; (*Gurpreet Singh supra*).
- (d) A compromise decree being signed by all parties is a mandate of the law; (*Gurpreet Singh supra*).
- (e) It has to be voluntarily accepted by parties and once such acceptance is recorded by the Court, it acquires the sanctity of the judicial order, *Banwari Lal v. Chando Devi*.

- (f) A counsel/duly authorised representative/GPA holders is permitted to sign a compromise decree on behalf of those he represents, granted there is express authorisation or exigency of circumstance (*Byram Pestonji Gariwala v. Union Bank of India; Pushpa Devi Bhagat v. Rajinder Singh*)
- (g) In accepting a compromise decree, while it is true that the court merely put a seal of approval, but its role cannot be reduced to being only a recorder. It has to apply its judicial mind to the terms to ensure that they are lawful;(Banwari Lal supra)
- (h) A consent decree which is the conclusion of a compromise, does not operate as a resjudicata for it does not meet Section 11 (CPC) requirements; (*Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd.*)
- (i) The only remedy available against a compromise decree is a recall application. A fresh suit or an appeal is not maintainable against this kind of decree; (*Navratan Lal Sharma v. Radha Mohan Sharma*)

20. The Hon'ble High Court of Delhi in case titled "*Pankaj Arora Vs. Mr. Anil Kumar Bansal & Ors.*", while referring to the Division Bench judgment in case titled "***Black Diamond Track Parts (P) Ltd. v. Black Diamond Motors (P) Ltd***" has held that exercise of jurisdiction by the High Court shall not negate the legislative intent and purpose behind the Commercial Courts Act and shall not come in the way of expeditious disposal of commercial suits.
21. Having said that, it needs to be stated that the petitioners on their own showing have stated that the compromise, which is sought to be enforced by a compromise decree was not signed by the defendant No. 1, who is a party to the dispute but by defendant No. 2 only, so, the essential condition prescribed by Order 23 Rule 3 of CPC that the compromise

must be signed by the parties is not satisfied by the compromise in question.

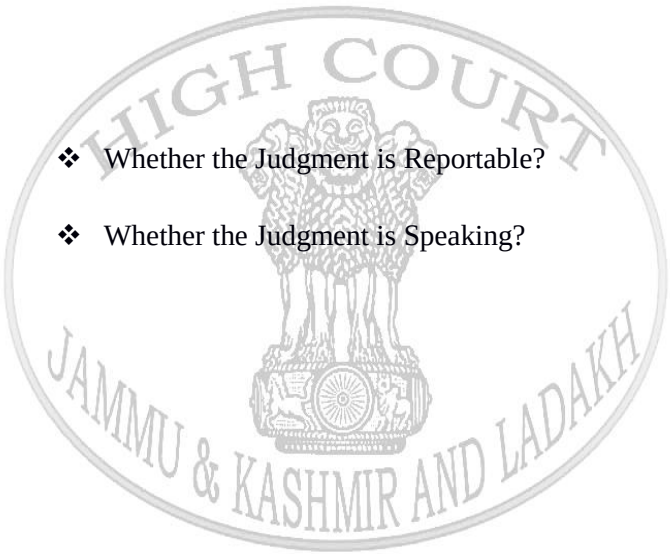
22. In that view of the matter, the trial court has rightly declined to pass a compromise decree in favour of the petitioners.
23. Moreover, since the agreement/compromise was not signed by all the parties to the dispute, it cannot be regarded as a lawful agreement or compromise, as required under Order XXIII Rule 3 of the Code of Civil Procedure. Since the compromise was only signed by respondent No. 2, who also choose to file an application, along with respondent No. 1 for setting aside the ex-parte proceedings initiated by the court in terms of order dated 21.02.2025, the court has rightly set-aside the ex-parte proceedings.
24. Last but not the least, the Court must be satisfied that the compromise is lawful and voluntary, which too is missing in the case in hand. I am fortified in my view by the ratio laid down in the judgment of the Hon'ble Supreme Court in case titled "***Amro Devi & Ors. Vs. Julfi Ram (Deceased) Th. LRs. & Ors.***", reported as ***(2024) SCC OnLine SC 1715***, which laid down that when a compromise is to be recorded and a decree is to be passed, Rule 3 of Order 23 of the Code requires that the terms of compromise should be reduced to writing and signed by the parties.
25. In the instant case, the defendant No. 1 admittedly did not consent and there was no written compromise involving all the disputing parties, therefore, the compromise in question does not qualify as a valid and lawful compromise within the meaning of Order XXIII Rule 3 of the Code of Civil Procedure. Accordingly, the order dated 23.06.2025

passed by the court of learned Additional District Judge, (Bank Cases), Srinagar, is upheld.

26. For all what has been said herein before, the petition in hand is found to be without any merit, therefore, dismissed along with the connected application(s), leaving the petitioners free to pursue their suit before the trial court, which is still pending before the said court. The trial court is expected to expedite the disposal of the suit.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR:
13.07.2026
“Adil Ismail”



- | | |
|---------------------------------------|-----|
| ❖ Whether the Judgment is Reportable? | No |
| ❖ Whether the Judgment is Speaking? | Yes |