

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

Date of pronouncement: 17.12.2025

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CM(M) 559/2025
CM(8455/2025)

SHEERAZ AHMAD RAINA

..... Petitioner (s)

Through: Mr. Aabid Ahmad Pandith, Adv.

V/s

GHULAM NABI WANI

..... Respondent(s)

Through:

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER

17.12.2025

1. The petitioner through the medium of present petition has challenged order dated 16.10.2025 passed by the learned Principal District Judge, Budgam whereby in a suit filed by the respondent under Order XXXVII of Code of Civil Procedure for recovery of an amount of Rs. 1.00 lac, conditional leave to defend the suit has been granted to the petitioner/defendant.
2. Heard learned counsel for the petitioner and perused the record of the case.
3. It appears that the respondent/plaintiff has filed a suit under Order XXXVII of Code of Civil Procedure against the

petitioner/defendant before the court of learned Principal District Judge, Budgam (hereafter the trial court) in which the defendant filed his application for leave to defend the suit after putting in his appearance before the said court. In his application, the defendant has projected his defence that there was no business transaction between the parties and that he had lost the cheque which has been misused by the plaintiff by filing the suit against him. It has also been averred in the application for leave to defend the suit that the defendant had lost the cheque which is subject matter of the suit and in this regard, he had published a notice in the newspaper on 31.03.2022 and he had also asked the concerned Bank to stop the payment.

4. The learned trial court, after analyzing the pleadings of the parties and after hearing the parties, came to the conclusion that leave to defend the suit deserves to be granted to the defendant but on the condition of deposition of Rs. 30,000/- in court. The petitioner, has challenged the impugned order to the extent of imposition of condition relating to deposit of Rs. 30,000/- on the ground that he has explicitly raised triable issues before the learned trial court and therefore, there was no occasion for the said court to impose condition of deposition of the amount. It

has been contended that the defendant had raised plausible defence, as such, unconditional leave to defend the suit was required to be granted in his favour.

5. If we have a look at the application for leave to defend the suit filed by the petitioner/defendant before the learned trial court, in the said application he has nowhere disputed his signature on the cheque which according to him, had been lost. Once the cheque on the basis of which the suit has been filed by the plaintiff against the defendant is admitted to have been drawn under the signature of the defendant, the presumption arises in favour of the plaintiff in terms of Section 139 of Negotiable Instruments Act and it casts an obligation upon the defendant to rebut the said presumption by establishing that the cheque issued by him was not in respect of any legally enforceable debt. Since the defendant has denied any transaction between the parties in his application to leave to defend, the learned trial court, has rightly granted him leave to defend the suit with a view to afford opportunity to the defendant to prove his defence, but because the presumption under Section 139 of Negotiable Instruments Act operates against the defendant, as such, the condition imposed by the learned trial court, while granting leave to defend

the suit to the defendant, cannot be termed as illegal or improper exercise of jurisdiction.

6. It is a settled law that this Court while exercising its jurisdiction under Section 227 of the Constitution of India, cannot sit as a Court of Appeal over the orders of the inferior courts and it is only if a gross illegality is committed by an inferior court that this Court would step in to prevent failure of justice. I do not find that the present case falls in such a category. Therefore, the petition being without merit is **dismissed** accordingly.

(Sanjay Dhar)
Judge

SRINAGAR
17.12.2025
Aasif

Whether the order is speaking Yes/No

Whether the order is reportable Yes/No