Serial No.25
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RFA No. 31/2024

Reserved on: ***05.11.2026***
Pronounced on: ***13 .11.2026***
Uploaded on: ***13.11.2026***
Whether the operative part or full judgment is pronounced: Full

1. **UNION TERRITORY OF J & K Th. Commissioner Secretary to Govt. GAD, Civil Secretariat, Srinagar/Jammu.**
2. **Director Estates Civil Secretariat, Jammu/Srinagar.**
3. **Executive Engineer Division Estates Division Srinagar. (Now R&B) Project Division 3rd Srinagar.**

……...Petitioner(s)

Through:
Mr. Illyas Nazir Laway, GA

Versus

1. **Shabir Ahmad Dar S/o Ghulam Mohammad Dar R/O 2nd Bridge, Habakadal, Srlnagar.**
2. **Fayaz Ahmad Mir S/o Abdul Ahad Mir Vo Brein Nishat Srinagar.**
3. **Sajad Naseer Bhat S/o Naseer Ahmed Bhat R/o Brein Nishat Srinagar.**
4. **Farooq Ahmad Dar S/o Ghulam Mohammad Dar R/o: 2nd Bridge, Habakadal Srinagar.**
5. **M/S New Bhat Electric through Naseer Ahmad Bhat S/o Ghulam Rasool Bhat R/o: 2nd Bridge, Habakadal Srinagar.**
6. **Farooq Ahmad Dar (M/S Farooq Electronics) S/o: Ghulam' Mohammad Dar R/O: 2tr Bridge, Habakadal, Srinagar.**
7. **Mr. Khursheed A Wani, the then Executive Engineer, Estates Division, Habib Colony, H. No. 1' 5-Bhagaat, Srinagar.**

.……Respondent(s)

Through:
Mr.Manzoor Ahmad Dar, Adv.
Mr. Javaid, Adv.

***CORAM*:**
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

01. The instant Civil First Appeal has been preferred by the appellants against the judgment and decree dated 12.08.2023 passed by the learned Additional District Judge (Bank Cases), Srinagar, in a summary suit titled *Shabir Ahmad Dar and others vs. Commissioner-cum-Secretary and others*, under and in terms of Order XXXVII of the Code of

Civil Procedure, decreeing in favour of the respondents for an amount of Rs. 57.23 lacs, along with interest and costs.

Factual Matrix:

02. The respondents/plaintiffs are claimed to have executed electrical works at the MLA Hostel, Srinagar, to the tune of Rs. 37.82 lacs. The funds in this regard were stated to have been contributed by the Legislative Assembly Secretariat, J&K, and released in favour of the Directorate of Estates, Civil Secretariat, J&K, to be placed at the disposal of the Executive Engineer, Estates Division, Srinagar, for meeting the expenditure incurred in this behalf. It is, however, stated that no public tenders were invited for execution of the aforesaid works.

03. The respondents/plaintiffs instituted a suit before the Court of learned Additional District Judge (Bank Cases), Srinagar, under Order XXXVII CPC against the appellants/defendants, seeking recovery of an amount of Rs. 57.32 lacs on account of the aforesaid works allegedly executed by them at the behest and under the directions of the appellants. The reliefs claimed in the suit were as follows:

(i) *A decree for recovery of an amount of Rs. 57.32 lacs on account of the works executed by the plaintiffs at the behest and under the directions of the defendants;*

(ii) A decree for payment of interest on account of alleged illegal retention of the amount from the date the same became due until its final realization; and

(iii) Any other relief or decree which the Court may deem just and proper in the facts and circumstances of the case, including costs of the suit.

05. The Estates Department filed an application before the learned trial Court seeking leave to defend the suit.

06. Upon consideration of the rival submissions, the learned trial Court, vide order dated 21.12.2022, allowed the

application seeking leave to defend, subject to the appellants depositing an amount of Rs. 37.82 lacs before the Court. The relevant portion of the order is reproduced hereunder:

> "*For the reasons discussed hereinabove and taking strength from the case law referred, with all humility, Court having been satisfied that the defendants have a substantial defence to raise and the defence intended to be put up by the defendants is not frivolous or vexatious, the application of defendant Nos. 2, 3 and 4 for leave to defend are allowed subject to depositing amount of Rs. 37.82 lacs before this Court, which stands released by Legislative Assembly, Secretariat in favour of Estate Department as alleged by the defendants. The defendants shall file written statement within 30 days of this order*."

07. The appellants, being aggrieved of the order dated 21.12.2022 passed by the learned Additional District Judge (Bank Cases), Srinagar, challenged the same before this Court by way of a petition registered as CM(M) No. 39/2023, which came to be dismissed vide order dated 11.05.2023. Following dismissal of the aforesaid petition, the Executive Engineer, Estates Division, Srinagar, vide communication dated 14.06.2023, sought to deposit an amount of Rs. 37.82 lacs, stated to have been released by the Legislative Assembly Secretariat in favour of the Estates Department, so as to enable the appellants to defend the suit in terms of the conditional leave granted by the learned trial Court.

08. Since against the total allotment of Rs. 37.82 lacs, only an amount of Rs. 19.01 lacs was made available under MH-8743 (DCW) in the Sadder Treasury, Srinagar, accordingly, an amount of Rs. 19.01 lacs was deposited before the learned trial Court through Cheque No. 893458 dated 26.03.2023. In respect of the remaining amount, the erstwhile Estates Department, Srinagar, vide communications dated 15.06.2023 and 04.07.2023, requested the Treasury Officer, Sadder Treasury, Srinagar, to

furnish details of the funds available under the aforesaid head so that the balance amount could also be deposited before the learned trial Court in compliance with the order dated 21.12.2022. Since the appellants failed to satisfy the condition imposed by the learned trial Court for grant of leave to defend, the learned trial Court, vide judgment and decree dated 12.08.2023, decreed the suit in favour of the plaintiffs/respondents for an amount of Rs. 57.23 lacs, along with interest and costs, in terms of Order XXXVII CPC. The relevant portion of the judgment is reproduced hereunder:

> "*As such this Court has left with no option but to draw presumption that the defendants especially defendants 1, 2 and 4 failed to fulfill the pre-condition set for leave to defend. Thus in absence of non-fulfillment of pre-condition set for grant of leave to defend, the plaintiff is found entitled to decree in his favour to the tune of Rs. 57.23 lacs along with interest under Order 37 CPC. The suit of the plaintiff under Order 37 CPC is allowed along with cost in absence of leave to defend. Decree sheet be prepared accordingly. The suit is accordingly disposed of and be consigned to records after its due completion. However the plaintiff is at liberty to withdraw the amount of Rs. 19,01,000/- from the Court after lapse of appeal period*."

09. The appellants have called in question the aforesaid judgment and decree primarily on the ground that a substantial portion of the amount directed to be deposited by the learned trial Court had already been deposited, but the said fact was not taken into consideration by the learned trial Court while passing the impugned judgment and decree, whereby the suit came to be decreed for the entire amount of Rs. 57.23 lacs, along with interest. It is further contended that the learned trial Court failed to take into account the peculiar circumstances which occasioned in the delay to deposit the remaining amount and decreed the suit.

10. Heard learned counsel for the parties and perused the material available on record.

11. Perusal of the record reveals that the appellants had filed an application seeking leave to defend the suit instituted by the plaintiffs/respondents, in the said application, it was contended that the plaintiffs/respondents had allegedly executed works at the MLA Hostel, Srinagar, during the years 2019-2020, involving a total expenditure of Rs. 57.32 lacs, at the verbal instructions of defendant No. 3. It was further stated that an amount of Rs. 18.35 lacs was allegedly incurred pursuant to the verbal directions of the District Magistrate, Srinagar, during the year 2019, for facilitating the political leaders who had been confined at the MLA Hostel following the abrogation of Article 370. The appellants also asserted that the regular tendering process had not been followed and that the works had been undertaken at the request of the Deputy Commissioner, Srinagar. So far as the works amounting to Rs. 37.82 lacs are concerned, it was pleaded that the requisite funds had been contributed by the Legislative Assembly Secretariat and released in favour of the Directorate of Estates for being placed at the disposal of the Executive Engineer, Estates Division, Srinagar, and, accordingly, no public tenders had been invited.

12. The learned trial Court, upon consideration of the aforesaid application, granted leave to defend the suit to the appellants, subject to deposit of an amount of Rs. 37.82 lacs and filing of the written statement within a period of 30 days from the date of order viz. 21.12.2022. In compliance with the said direction, the appellants deposited an amount of Rs. 19,01,000/- on 26.03.2023. The remaining amount of Rs. 18,81,000/- came to be deposited on 25.07.2025.

13. It is an admitted position that the suit instituted by the respondents under Order XXXVII CPC came to be decided and decreed in their favour on 12.08.2023, much prior to the deposit of the balance amount of Rs. 18,81,000/- on 25.07.2025. The learned trial Court, having regard to the

non-fulfillment of the condition imposed vide order dated 21.12.2022, proceeded to decree the suit for an amount of Rs. 57.23 lacs, along with interest and costs, in favour of the plaintiffs/respondents.

14. Mr. Illyas Nazir Laway, learned GA appearing for the appellants, has vehemently contended that the entire amount of Rs. 37.82 lacs, as directed by the learned trial Court, now stands deposited, out of which an amount of Rs. 19,01,000/- has already been released in favour of the respondents. It is, accordingly, argued that the learned trial Court ought to have permitted the appellants to file their written statement and afforded them an opportunity to substantiate their defence. Instead, the suit was decreed without affording due consideration to the defence sought to be raised by the appellants.

15. Per contra, Mr. Manzoor Ah. Dar, learned counsel appearing for the respondents, has contended that the appellants, in their application seeking leave to defend, had admitted that the works in question, to the extent of Rs. 37.82 lacs, had been executed by the respondents. It is further contended that the appellants failed to comply with the condition imposed vide order dated 21.12.2022 and, consequently, the suit was rightly decreed on 12.08.2023. The learned counsel submits that the balance amount was deposited only in the year 2025, much after passing of the impugned judgment and decree, and, therefore, the present appeal is devoid of merit and is not maintainable.

16. Indisputably, the appellants failed to comply with the condition imposed by the learned trial Court vide order dated 21.12.2022, within the stipulated period. The deposit of the balance amount of Rs. 18,81,000/- on 25.07.2025, much after passing of the impugned judgment and decree dated 12.08.2023, cannot be construed as compliance with the

direction retrospectively so as to revive the right to defend the suit. The appellants have also failed to place on record any cogent explanation justifying their failure to deposit the balance amount within the time granted by the learned trial Court. In such circumstances, the learned trial Court cannot be said to have committed any illegality in decreeing the suit on account of non-fulfilment of the condition imposed while granting leave to defend the suit in terms of order dated 12.08.2023.

17. For the foregoing reasons, this Court finds no perversity or illegality in the order impugned which is upheld. Consequently, the instant Civil First Appeal, being devoid of merit, is hereby ***dismissed***.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar
.11.2026
"Sakeena"

Whether the order/Judgment is reportable: Yes/No
Whether the order/Judgment is speaking: Yes/No

HIGH COURT
JAMMU & KASHMIR AND LADAKH