HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO No. 20/2026

Reserved on: 12.10.2026
Pronounced on: 29.10.2026
Uploaded on: 29.10.2026
Whether the operative part or
full judgment is pronounced: **FULL**

Ghulam Mohammad Dhobi **...Applicant(s)/Petitioner(s)**
S/o Mohd Rajab Dhobi,
Proprietor, A-One Dry Cleaners,
R/o Guzarbal Chattabal, Srinagar.
Age- 70 years

Through: - Mr. Adil Aismi, Advocate

v/s

Abdul Hamid Malla **...Respondent(s)**
S/o Late Ghulam Qadir Mall,
R/o Guzarbal Chattabal, Srinagar

Through:- Mr. Zahoor Ahmad Shah, Advocate with
Mr. Sibghatullah Shah, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

1. The present appeal is directed against an order passed by the learned Additional District Judge, Srinagar, in a civil suit titled ***"Abdul Hamid Malla v. Ghulam Mohammad Dhobi"*****,** whereby the appellant-defendant has been directed to deposit an amount of Rs. 56,250/- towards alleged arrears of rent and to continue depositing occupational charges at the rate of Rs. 5,000/- per month during the pendency of the suit. The Trial Court has further granted liberty to the respondent-plaintiff to seek execution of the order in the event of default.

2. Before adverting to the controversy involved in the present appeal, it would be appropriate to notice that the respondent-landlord has instituted two separate suits for ejectment, possession and mesne profits against two different tenants. The first, being O/S No. 2921/2025, titled ***"Abdul Hamid Malla v. Mushtaq Ahmed Zarkab",*** and the second, being O/S No. 2922/2025, titled ***"Abdul Hamid Malla v. Ghulam Mohammad Dhobi",*** are pending adjudication before the same Trial Court. In both suits, substantially similar interlocutory directions requiring payment of arrears and occupational charges came to be issued.

3. The order passed in O/S No. 2921/2025 was challenged by the defendant therein through FAO No. 19/2026. A Coordinate Bench of this Court, by judgment dated 08.07.2026, dismissed the appeal as not maintainable, holding that the order under challenge did not fall within the category of appealable orders contemplated by Sections 96 and 104 of the Code of Civil Procedure, read with the relevant provisions governing appeals. While declining to entertain the appeal, the Coordinate Bench expressly reserved liberty to the aggrieved tenant to avail of an appropriate remedy, including invocation of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

4. The appellant in the present case has assailed the order of the Trial Court principally on the ground that the direction to deposit alleged arrears and pay occupational charges is arbitrary, legally unsustainable and beyond the jurisdiction exercisable by the Trial Court at an interlocutory stage. It is contended that the Trial Court has, in effect, granted a substantial part of the final relief claimed in the suit without recording evidence or

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adjudicating the disputed questions concerning the relationship between the parties, the alleged termination of tenancy, the agreed rate of rent and the respondent's entitlement to mesne profits.

5. Learned counsel for the appellant has vehemently contended that the judgment rendered by the Coordinate Bench in FAO No. 19/2026 does not govern the maintainability of the present appeal. According to learned counsel, the order impugned herein is, in substance and effect, one referable to Order XXXIX Rule 10 CPC or, alternatively, to the principles underlying Rules 1 and 2 thereof and, consequently, is appealable under Section 104 read with Order XLIII CPC. It is submitted that the mere omission of the Trial Court to specify the provision of law under which the impugned direction was issued cannot determine the true legal character of the order or defeat a statutory right of appeal, where such right otherwise exists. Learned counsel further submits that the judgment of the Coordinate Bench does not operate as *res judicata* against the present appellant, who was not a party to those proceedings.

6. Learned counsel has also drawn the attention of this Court to the interim order dated 08.07.2026 passed in the present proceedings, whereby, while entertaining the appeal, this Court observed that the order under challenge appeared to have been passed in exercise of powers under Order XXXIX Rule 10 CPC and stayed its operation. It is argued that the direction to deposit money during the pendency of the suit is manifestly interlocutory in character and, therefore, amenable to appellate scrutiny under Order XLIII CPC.

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7. Per contra, learned counsel for the respondent has opposed the maintainability of the appeal. It is contended that Order XXXIX Rule 10 CPC operates within a limited statutory field and can be invoked only where the requisite admission regarding money or property belonging or due to another party is established. The provision, it is argued, cannot be employed to adjudicate disputed monetary claims or to impose a liability which has neither been admitted nor determined. Learned counsel submits that the respondent's entitlement to ejectment and mesne profits is yet to be established at trial. Equally, the quantum of mesne profits claimed in the suit remains a matter requiring evidence and adjudication. It is pointed out that no reliable material, including any valuation report or comparative market-rental data, was placed before the learned Trial Court to establish the prevailing rental value of the suit premises.

8. It is further submitted that the impugned order, having regard to its substance and the circumstances in which it was passed, is traceable, if at all, to the inherent powers of the Court under Section 151 CPC. Such an order, according to learned counsel, does not attract the appellate jurisdiction of this Court under Section 104 read with Order XLIII CPC. The appropriate remedy against an order of this nature, if otherwise permissible in law, would be to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

9. Heard learned counsel for the parties and perused the record.

10. The controversy requiring determination at this stage is confined to the maintainability of the present appeal. The question is whether the order directing deposit of alleged arrears of rent and payment of monthly

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occupational charges can, having regard to its substance and legal foundation, be regarded as an appealable order under the Code of Civil Procedure.

11. The material facts necessary for determining the aforesaid question may be noticed briefly. The appellant claims to have been in continuous possession of the suit premises as a tenant since the year 1975. The respondent-landlord has instituted a suit seeking ejectment, recovery of possession and mesne profits, alleging, inter alia, that the appellant has continued in unauthorized occupation of the premises since the year 2005. The appellant, on the other hand, disputes the allegation of unauthorized occupation and maintains that he has consistently been ready and willing to pay rent at the agreed rate of Rs. 1,250/- per month. His specific case is that the respondent refused to accept rent with a view to treating him as an unauthorized occupant. It is further asserted that, in order to avoid any allegation of default, the appellant deposited the rent with the Shopkeepers' Committee.

12. By the order impugned, the learned Trial Court directed the appellant to deposit Rs. 56,250/- towards arrears of rent and to continue paying occupational charges at the rate of Rs. 5,000/- per month, with liberty to the respondent-landlord to seek execution of the order in the event of non-compliance. The learned Trial Court appears to have proceeded on the premise that the appellant had admitted enhancement of rent to Rs. 15,000/- per annum and that such admission furnished sufficient justification for directing payment of the amount considered payable. The

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appellant, however, seriously disputes the existence, scope and effect of the alleged admission.

13. At this juncture, it would be apposite to examine the scope of Order XXXIX Rule 10 CPC. The provision empowers the Court to direct deposit or delivery of money or any other thing capable of delivery where a party admits that such money or thing is held by him as trustee for another party or that it belongs or is due to that party. The jurisdiction contemplated by the provision is thus founded upon an admission of the requisite liability or entitlement. Such admission must be clear, unequivocal and ascertainable from the pleadings or other material properly forming part of the record. A disputed liability cannot ordinarily be converted into an admitted obligation merely by drawing inferences from isolated statements divorced from their context.

14. In the present case, the alleged admission relied upon by the Trial Court does not appear to satisfy the aforesaid requirement. The appellant has consistently disputed his liability to pay occupational charges at the rate determined by the Trial Court. His stand is that the agreed rent was Rs. 1,250/- per month and that the rent payable by him had already been deposited with the Shopkeepers' Committee. Whether such deposits were actually made, whether they constitute valid discharge of the appellant's rental obligations, and whether any amount remains outstanding are questions involving disputed facts. These matters cannot, without the necessary adjudication, be treated as conclusively established merely on the basis of an alleged admission whose existence and extent are themselves contested.

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15. There is also a material distinction between contractual rent payable during the subsistence of a tenancy and mesne profits or occupational charges claimed on the premise that possession has become unauthorized. The two concepts rest upon different legal foundations and cannot be employed interchangeably without regard to the status of the occupant and the nature of the liability sought to be enforced. In ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*****, (2005) 1 SCC 705,** the Hon'ble Supreme Court examined the principles governing compensation for use and occupation of premises by a tenant continuing in possession after an eviction decree, particularly in the context of conditions imposed while granting stay of execution. The said decision does not dispense with the requirement of identifying the legal foundation for imposing occupational charges in a pending suit where the relevant questions remain disputed.

16. In the case at hand, the Trial Court, while referring to the subsisting relationship of landlord and tenant and the alleged admitted rent, has simultaneously proceeded to impose occupational charges at a substantially higher rate. The order does not clearly disclose the legal basis on which the admitted contractual rent, if any, has been distinguished from or substituted by the amount directed to be paid as occupational charges. Whether the tenancy has been validly terminated, whether the appellant's continued possession is unauthorized, and whether the respondent is entitled to mesne profits, including the quantum thereof, are matters which fall for adjudication in the suit in accordance with law. The applicability and effect of Section 106 of the Transfer of Property

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Act, 1882, insofar as relevant, would likewise require consideration in the context of the pleadings, governing law and evidence.

17. However, the question presently before this Court is not whether the Trial Court was justified in directing payment of the aforesaid amounts. The anterior and determinative question is whether the impugned direction is appealable under the statutory framework. It is well settled that a right of appeal is a creature of statute. Such a right cannot be assumed merely because an order is interlocutory, affects the rights of a party or imposes a monetary obligation. Unless the order is covered by an express statutory provision conferring a right of appeal, appellate jurisdiction cannot be invoked.

18. Order XLIII Rule 1 CPC specifies the orders against which an appeal lies under Section 104 CPC. An order passed under Order XXXIX Rules 1, 2, 2A, 4 or 10 is appealable by virtue of Order XLIII Rule 1(r). The essential inquiry, therefore, is whether the order impugned can legitimately be brought within any of the aforesaid provisions. The mere fact that the Trial Court has not expressly mentioned the provision of law under which it exercised jurisdiction is not, by itself, decisive. Equally, the nature of an order cannot be determined solely by the description assigned to it by either party. It is the substance of the order, the nature of the power exercised and the statutory conditions governing that power which must determine its appealability.

19. Applying the aforesaid principles, this Court is unable to accept the contention that the impugned order is one passed under Order XXXIX Rule 10 CPC. The essential foundation for exercise of jurisdiction under

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the said provision, namely, a clear and unequivocal admission of the liability sought to be enforced, is not discernible from the material referred to in the order. The appellant has not admitted any liability to pay occupational charges at the rate of Rs. 5,000/- per month. On the contrary, his consistent stand is that he is liable to pay only the agreed contractual rent, the amount and discharge whereof are themselves matters of controversy between the parties. The order, therefore, cannot be characterized as one under Order XXXIX Rule 10 merely because it directs deposit of money during the pendency of the suit.

20. Nor can the impugned order be brought within the ambit of Order XXXIX Rules 1 and 2 CPC. Those provisions are concerned with the grant of temporary injunctions in the circumstances specified therein. The direction presently under consideration is not, in its substance, an order granting or refusing temporary injunctive relief of the nature contemplated by those rules. The argument that every interlocutory direction involving deposit of money must necessarily be treated as appealable under Order XLIII CPC is, therefore, legally untenable. Interlocutory character and statutory appealability are distinct considerations.

21. Having regard to the nature of the application moved before the Trial Court, the absence of any clear statutory foundation under Order XXXIX Rules 1, 2 or 10 CPC, and the substance of the direction issued, the impugned order appears to have been passed in exercise of the inherent jurisdiction of the Trial Court under Section 151 CPC. It order passed in exercise of inherent powers under Section 151 CPC is not, merely by

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reason of such exercise, rendered appealable under Section 104 read with Order XLIII CPC. The correctness, legality or propriety of such an order may be examined in appropriate proceedings, subject to the requirements and limitations governing the remedy invoked, but the absence of a statutory right of appeal cannot be overcome by attributing to the order a provision which does not, in substance, govern it.

22. The aforesaid view is also consistent with the judgment rendered by the Coordinate Bench of this Court on 08.07.2026 in FAO No. 19/2026, arising out of substantially similar directions passed by the same Trial Court in the connected suit instituted by the same landlord against another tenant. It is true that the said judgment does not operate as *res judicata* against the present appellant, who was not a party to those proceedings. Nevertheless, the legal principle laid down therein on the question of maintainability is entitled to due regard, particularly when the orders arise out of materially similar circumstances and involve an identical question of law. No distinguishing feature has been demonstrated which would warrant a different conclusion in the present case.

23. The reliance placed by counsel for the appellant upon the interim observation recorded by this Court on 08.07.2026 is equally misconceived. An observation made at the stage of granting interim protection, to the effect that the impugned order appeared to have been passed under Order XXXIX Rule 10 CPC, was necessarily tentative and prima facie in character. Such an observation cannot confer appellate jurisdiction where none is provided by statute, nor can it preclude the

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Court from determining the question of maintainability upon fuller consideration of the record and the rival submissions.

24. It must also be clarified that the conclusion reached herein is confined to the maintainability of the appeal. This Court has not adjudicated upon the legality or sustainability of the direction requiring deposit of Rs. 56,250/- towards arrears or payment of Rs. 5,000/- per month as occupational charges. Nor has this Court expressed any final opinion on the existence or termination of tenancy, the agreed rate of rent, the alleged deposits made with the Shopkeepers' Committee or the respondent's entitlement to mesne profits. All such questions, insofar as they arise for determination, shall remain open to be examined by the competent forum in accordance with law.

25. For the reasons recorded hereinabove, this Court is of the considered view that the impugned order cannot be brought within the purview of Order XXXIX Rules 1, 2 or 10 CPC so as to attract the appellate jurisdiction under Section 104 read with Order XLIII CPC. The appeal, therefore, is not maintainable. The appellant shall, however, be at liberty to avail of such appropriate remedy as may be permissible under law, including invocation of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Any such proceedings, if instituted, shall be considered on their own merits and in accordance with law, uninfluenced by any observations made herein except insofar as they relate to the question of maintainability of the present appeal. Accordingly, the appeal is **dismissed as not maintainable**, without prejudice to the appellant's

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right to pursue an appropriate remedy available under law. All connected CM(s) shall also stand disposed of.

26. Dismissed.

(Sanjay Parihar)
Judge

SRINAGAR
29.10.2026
Akhil Dev

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes

HIGH COURT
सत्यमेव जयते
OF JAMMU & KASHMIR AND LADAKH