Sr. No. 01

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)

WP (C) No. 3167/2023

Date of pronouncement: 29.07.2026

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1. **Mohammad Ishaq Pampori (Age 73 years)**
   S/o Haji Abdul Gani
2. **Mrs. Fahmida (Age 65 years)**
   W/o Mohammad Ishaq Pampori
3. **Danish Hussain Pampori (Age 37 years)**
   S/o Mohammad Ishaq Pampori

   Residents of Umer Colony, Lal Bazar, Srinagar .....Applicant(s)/Petitioner(s)

Through :- Mr. M.M. Dar, Advocate

v/s

1. **Jammu and Kashmir Bank, Ltd., through its Chairman, Corporate Headquarters, M.A. Road, Srinagar, Kashmir.**
2. **Authorized Officer, Jammu and Kashmir Bank Ltd., Zonal Office, M.A. Road, Srinagar Kashmir.**
3. **Manager, Jammu and Kashmir Bank, Branch University Campus, Hazratbal, Srinagar.**
4. **Zonal Head Estates & Central Srinagar, Jammu and Kashmir Bank Ltd., Srinagar.**
5. **Tehsildar, Tehsil North, Srinagar** .....Respondent(s)

Through :- Ms. Shafqat Nazir, Advocate
Ms. Hina Baqal, Advocate

CORAM: HON'BLE THE CHIEF JUSTICE (ACTING) ***(Through virtual mode)***
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER (ORAL)

1. The petitioners invoke the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India for seeking a writ of certiorari quashing notice dated 06.01.2023 issued by the

respondent-Bank under Section 13 (4) of the SARFAESI Act, 2002 ["**the Act**"] read with Rule 8(1) of the Security (Enforcement) Interest Rules, 2002 ["**the Rules**"]. The petitioners also seek a mandamus to the respondent-Bank not to give effect to the impugned notice or dispossess the petitioners from the commercial cum residential building constructed upon land measuring 01 kanal and 05 marlas falling under khasra no. 430, khewat no. 321 situated at Moza Habbak Tehsil North District, Srinagar ["**the mortgaged property**"].

2. Briefly stated, the facts pleaded by the petitioners in this petition are that the petitioner nos. 1 and 2 are the owners of two storeyed commercial structure space in the multi-storeyed building popularly known as Karra Building situated at M.A. Road, Lal Chowk, Srinagar ["**the leased property**"].

3. It is submitted that the respondent-Bank entered into a lease agreement for taking on rent the leased property known by the name of Kara Building on 09.08.2008 on the terms and conditions enumerated in the rent agreement executed on the same day.

4. As per Clause 1 of the lease agreement, the leased premises were to remain on rent with the Bank for a period of fifteen years w.e.f. 01.08.2008 with an option to the tenant to renew the same for any further period. The Clause 4 of the rent agreement, however, provided that the tenant-Bank shall have an option to terminate the tenancy of the leased premises by giving the landlord (the petitioner herein) a prior notice of one month in writing expressing therein their

intention to do so or on payment of one month's rent in *lieu* thereof. This was a different arrangement between the petitioners and the respondent-Bank, though, the rental payable to the petitioners on account of leased premises was being adjusted by the Bank towards loan taken by the petitioners against the mortgaged property. It is not disputed by the petitioners that there was a default in repayment of the loan amount which was granted to the petitioners to the tune of Rs. 48.00 Lakhs against the mortgaged property kept as collateral security. There is also no dispute with regard to the fact that the Bank having found that the loan account of the petitioners had turned NPA due to failure of the petitioners to adhere to the repayment schedule, had to initiate proceedings under SARFAESI Act. A notice under Section 13 (2), followed by a notice under Section 13 (4) of the SARFAESI Act of 2002 were issued and the mortgaged property was taken possession of.

5. The petitioners submit that the Bank, acting in breach of the commitment made to the petitioners, terminated the lease prematurely on 14.02.2020, thus, depriving them the means to repay the loan. It is submitted that against the apprehended termination of the tenancy prematurely by the Bank, the petitioners approached the Civil Court wherein the Civil Court initially granted an order of *status quo* which was later on vacated. The appeal also failed and order of trial Court was not interfered with by the appellate Court on the ground that having regard to the nature of main relief claimed, the relief prayed for turned infructuous.

6. The short grievance projected by the petitioners before us is that till the issue, with regard to legal termination of the lease *qua* the leased property which is pending adjudication before the Civil Court, is determined, the petitioners should not be harassed for repayment of the loan. This is the sum and substance of the grievance projected by the petitioners.

7. Having heard learned counsel for the parties and perused the material on record, we see no nexus or direct relation between the two transactions. Lease agreement *qua* the leased property is a distinct and independent contract entered into between the petitioners and the respondent-Bank. We could not find out any clause in the lease agreement which links the payment of rental with the loan amount borrowed by the petitioners against different security, i.e., mortgaged property. There may have been arrangement with the Bank for the purpose of appropriation of the rental towards the loan account, but that alone cannot make the lease agreement, executed between the petitioners and the Bank, a part of a loan documents. The petitioners may have a grievance against the Bank for premature termination of the lease agreement and such grievance, as noted above, is already a subject matter of adjudication before the Civil Court.

8. We, therefore, deem it appropriate not to comment on the issue on merits lest it may prejudice the rights of the parties pending determination in the Civil Court. Suffice it to say, that loan transaction is quite different and completely independent of the lease agreement. The loan has been secured by the Bank against the

'mortgaged property' owned by the petitioners. In case of default in making the payment and the loan account having turned NPA, the Bank is well within its rights to proceed under the provisions of the SARFAESI Act. This is exactly what has been done by the respondent-Bank.

9. The defence put forth by the petitioners that the respondent-Bank is liable to retain the possession of the leased property for up to 2023 or 2028, as is reflected in the lease agreement, is not tenable for the reasons we have explained above. There is no other ground urged by Mr. M.M. Dar, Advocate which would convincingly demonstrate that the notice issued by the respondent-Bank under Section 13 (4) of the SARFAESI Act and the consequent taking over the possession of the lease property is vitiated in law in any manner.

10. For all these reasons, we find no merit in this petition and the same is, accordingly, dismissed. We make it clear that nothing said by us in this order shall prejudice the rights of the parties which are subject matter of adjudication before the Civil Court.

(Mohd. Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (A)

JAMMU
29.07.2026
Manik

Whether this order is speaking: Yes/No

Whether this order is reportable: Yes/No.