

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

Reserved on: 28.11.2025

Pronounced on: 05.12.2025

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

CM(M) No.75/2025

MOHAMMAD SHAIF BHAT ALIAS WANI & ANR.

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Showkat Ali Khan, Advocate.

Vs.

RAFI AHMAD BHAT ALIAS WANI AND ORS. **...RESPONDENT(S)**

Through: - None.

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

JUDGMENT

1) The petitioners, through the medium of present petition, have challenged order dated 19.12.2024 passed by the learned 2nd Additional District Judge, Srinagar, whereby their application seeking leave to file the written statement has been rejected.

2) It appears that respondent No.1 had filed a suit against the petitioners and the predecessor-in-interest of respondent Nos.2 to 5 before the Court of learned 2nd Additional Munsiff, Srinagar. In the said suit, respondent No.1 (hereinafter referred to as "the plaintiff") had sought a declaration relating to his ownership to the extent of his share in land measuring 05 kanals and 10 marlas and two residential houses situated at Mandi Bagh, District

Srinagar, near Ratan Rani Hospital. He had also sought a decree for partition of the suit property by meets and bounds, with a further prayer for putting him into actual physical possession of his share in the suit property. The plaintiff had further sought a decree of permanent prohibitory injunction against the petitioners/defendants restraining them from alienating or transferring any or whole part of the suit property.

3) The petitioners/defendants filed their written statement and also filed a counter claim. On the basis of the pleadings of the parties, the learned 2nd Additional Munsiff, Srinagar, framed issues vide order dated 27-03-2019. Issue No. 18 was treated as preliminary issue. The same reads as under:

“18. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? (OPD)”

4) Vide order dated 19.04.2022, learned 2nd Additional Munsiff, Srinagar, held that the suit has not been properly valued as per the share of the plaintiff sought to be partitioned. It was further held that the relief of injunction and jurisdiction have not been valued separately. Accordingly, the plaintiff was directed to value the suit for the purposes of possession to the extent of share sought to be partitioned and surrendered in his favour as also the relief of injunction and affix the court fee within a period of two weeks, failing which the plaint was directed to be rejected in terms of Order 7 Rule 11 of CPC.

5) On 03.08.2022, another order came to be passed by the learned 2nd Additional Munsiff, Srinagar, in which it was recorded that in compliance with order dated 19.04.2022, the plaintiff has valued the suit at Rs.1.00 crores to the extent of her share which is being sought to be partitioned and has affixed an amount of Rs.3000/ as court fee. The Court observed that since the suit has been valued at Rs.1.00 crores, as such, the said court lacks pecuniary jurisdiction to hear and determine the suit. Accordingly, the plaint in original was submitted to the Principal District Judge, Srinagar, and the parties were directed to appear before the said Court on 25.08.2022. The learned 2nd Additional Munsiff, Srinagar, also observed that the suit is returned for want of pecuniary jurisdiction.

6) It appears that pursuant to the aforesaid order passed by the learned 2nd Additional Munsiff, Srinagar, the learned Principal District Judge, Srinagar, vide his order dated 25.08.2022, transferred the case to the court of learned 2nd Additional District Judge, Srinagar (for short “the trial court”).

7) Upon appearance of the parties before the learned trial court, the defendants/petitioners filed an application seeking permission to file a fresh written statement. The said application came to be dismissed by the trial court vide order dated 19.12.2024, by observing that even if it is assumed that the defendants had appeared before the trial court on the date when the suit came up for consideration before the said Court on CM(M) No.75/2025

20.09.2022, still then, in view of the provisions contained in Order VIII Rule 1 of CPC, the defendants cannot be allowed to file the written statement as the maximum period of 120 days from the date of service of summons upon them had expired by the time they made an application before the learned trial court seeking permission to file the written statement.

8) The petitioners have challenged the impugned order, primarily, on the ground that once the plaint was returned by the learned 2nd Additional Munsiff, Srinagar, by observing that the subject matter of the suit was beyond his pecuniary limits, they had a right to file a fresh written statement before the trial court. It has been further contended that the bar to filing of written statement beyond 120 days from the date of service of summons would not be attracted to the facts of the present case.

9) I have heard learned counsel for the petitioner and perused record of the case.

10) So far as the contention of the defendants/petitioners that they were within their right to file a fresh written statement after the plaint was returned by the learned 2nd Additional Munsiff, Srinagar, on the ground that the subject matter of the suit was beyond his pecuniary jurisdiction, is concerned, there can be no dispute to the legal position in this regard. The Supreme Court has, in the case of **Exl Careers and another vs. Frankfinn Aviation Services Pvt. Ltd**, (2020) 12 SCC 667, categorically

held that after the return of plaint by the court lacking jurisdiction, the suit has to proceed *de novo* before the competent court, even if evidence of the parties stood concluded before the court which returns the plaint. It was further held that Order 7 rule 10 read with Rule 10A cannot be interpreted as providing any discretion to the court to proceed in the suit from the stage from which the plaint was returned.

11) The aforesaid legal position has been noted by the learned trial while passing the impugned order. However, the trial court has, while refusing to permit the defendants to file a fresh written statement, taken resort to the provisions contained in Order VIII Rule 1 of CPC, which provide a maximum limit of 120 days for filing of written statement from the date of service of summons on the defendant.

12) In the present case, a perusal of the minutes of the proceedings of the trial court would reveal that the defendants had caused their appearance before the said court through their counsel on 20.09.2022, whereafter the case was put up for recording evidence of the plaintiff, meaning thereby that the learned trial court proceeded from the stage that had reached when the plaint was returned by the court of learned 2nd Additional Munsiff, Srinagar. When the parties appear before the court of competent jurisdiction, after the court lacking jurisdiction has fixed a date of appearance of the parties before it, the competent court has to proceed in the suit *de novo*. The procedure

adopted by the learned trial court by straightaway directing the plaintiff to produce evidence without calling upon the defendants to file written statement is palpably illegal and cannot be countenanced in law. In fact, the defendants were not even required to file an application seeking permission to file written statement and it was the duty of the trial court to proceed in the suit as if the plaint had been filed before it afresh and the defendants had entered their appearance before the said court. Instead of doing so, the learned trial court has proceeded to hold trial of the case from the stage that had reached when the plaint was returned. As has been clearly held by the Supreme Court in **Exl Careers** case (supra), after presentation of the suit before the trial court, it had to proceed *de novo* and not from the stage that had already reached when the plaint was returned. The learned trial court, despite noticing this legal position, has proceeded to deny permission to the defendants to file written statement.

13) Once it is concluded that the initial proceedings were held before a court that lacked jurisdiction, the written statement and other evidence that may have been led by the parties before the said court become non-est in the eyes of law and the defendants are within their rights to file their written statement before the transferee court. This aspect of the matter has been ignored by the learned trial court while passing the impugned order.

14) In view of the above, the petition is allowed and the impugned order dated 19.12.2024 passed by the learned 2nd Additional District Judge, Srinagar, is set aside. The petitioners are permitted to file their written statement before the learned trial court within a period of thirty days from the date of their appearance before the said court. The parties shall appear before the trial court on **26.12.2025**.

(Sanjay Dhar)
Judge

Srinagar
05.12.2025
“Bhat Altaf-Saqey”

Whether the order is reportable: **Yes/No**

