

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

CFA No 109/2011

Reserved on: 09.07.2026
Pronounced on: 13.07.2026
Uploaded on: 13.07.2026
Whether the operative part or full
judgment is pronounced: *Full*

Abdul Gani Ganie & Anr.

...Petitioner(s)/Appellant(s)

Through: Mr. Saqib Amin Parray, Adv.

Abdul Gani Bhat

Through: None

...Respondent(s)

CORAM:

HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

J U D G M E N T

1. This Civil First Appeal is directed against the judgment and decree dated 25 July 2011, passed by the learned District Judge, Budgam (“the Trial Court”) in File No. 16/Suit titled Abdul Gani Bhat Vs. Abdul Gani Ganie and Anr. whereby a suit instituted under Order XXXVII of the Code of Civil Procedure (CPC) for recovery of 1.50 lacs was decreed in favour of the plaintiff (hereinafter referred to as “respondent”) and against the defendants, (hereinafter referred to as “appellants”).

Factual Background:

2. Briefly stated, the respondents, engaged in the fruit business claimed to have paid 1.50 lacs to appellant No. 1 in 2004 towards supply of fruits for the season 2004-2005. In respect of this transaction, a notarized agreement and a Demand Promissory Note (DP Note/Hundi) dated 9 August 2004,

were executed between the parties. Appellant No. 2 stood as guarantor and undertook to repay the amount in the event appellant No. 1 failed to effect the agreed supply.

3. Alleging breach by appellant No. 1, the respondent demanded repayment. On failure to pay, the respondent instituted the present suit under Order XXXVII CPC on the strength of the said agreement and DP Note. Summons for appearance of the appellants were issued. The appellants filed an application seeking leave to defend, which was deficient in material particulars. Appellants then moved an application for amendment of the leave application. Vide Order dated 17 March 2010, the trial court allowed the amendment application and directed the appellants to file a fresh application incorporating the proposed amendments within 15 days, failing which appropriate orders would follow.

4. Despite the opportunity and the rider, the appellants failed to file the fresh application within the stipulated period. Consequently, vide order dated 12 April 2010, the trial court required the respondent to satisfy it that the suit strictly fell within the Order XXXVII CPC. Being satisfied on the basis of the pleadings, agreement and the DP Note, that the suit was maintainable under summary procedure, the trial court decreed the suit in favour of the respondent.

Submissions and Challenge:

5. The appellants have challenged the impugned judgment and decree on the ground; that the application for leave to defend was filed and granted; the appellants subsequently filed the written statement, but an application for its amendment could not be pursued owing to a medical emergency, during

which period the impugned judgment and decree came to be passed. Appellants have also thrown challenge on the ground that the suit was not instituted in accordance with the provisions of Order XXXVII Rule (2) (b) and (c) CPC. It is further contended that notice was not served in terms of said provision.

Analysis and Discussion:

6. The challenge is pitched on vague and omnibus grounds without particularizing the precise nature of the contravention of Order XXXVII CPC. Even if any procedural irregularity in the institution of the suit under the summary procedure is assumed, the suit could at best be treated as an ordinary suit. However, a perusal of the plaint shows that under the heading **“in the matter of”** the respondent explicitly described it as a, *“suit under Order 37 CPC for recovery of sum of Rs. 1,50,000/- (Rupees one Lakh and fifty thousand only) plus interest thereon at the rate of 15% from the date of execution of Hundie till the liquidation of the amount”* It was further specifically pleaded that the appellants had committed breach of contract by failing to supply the fruits and were therefore liable to pay the amount of the Hundi together with the agreed penalty.

7. These averments make it clear that the claim is founded on written agreement and DP Note (Hundi) squarely attracting Order XXXVII. The cause title and body of the plaint sufficiently indicate that the suit is brought under the summary procedure. The provisions of Order XXXVII Rule 2 being procedural, what is required is procedural compliance, not pedantic adherence to form. It is enough that the plaint contains sufficient averments

showing that the suit is based on written contract/Hundi for a liquidated demand. The respondent has amply satisfied this requirement.

8. It is significant that the appellants despite being expressly permitted to amend their application for leave to defend and granted adequate time to file fresh application, failed to do so. The record further reveals that the appellants have made a serious misrepresentation in the memorandum of appeal by stating that leave to defend was granted, that a written statement was filed and that an application to amend the written statement could be pursued due to medical emergency, which is factually incorrect statement. This amounts to suppression and misrepresentation of material facts. On this ground alone, the contention advanced on behalf of the appellants are liable to be rejected.

9. The learned counsel for the appellants has canvassed at bar that the trial court was duty-bound to consider the unamended leave application, but its failure to do so has caused failure of justice, and resultant denial to defend the suit.

10. This plea is without substance, once an application for amendment is allowed and a direction is issued to file a fresh application within specified time, the unamended pleading loses its efficacy for adjudication. To permit reliance on the unamended version would defeat the very purpose of granting amendment. This principle has been affirmed by the Allahabad High Court in **Jagnarain and Others vs. Radhey Shyam Singh and Anr.** **2003 SCC Online All 1474**, wherein it was held that once plaint is allowed to be amended, the unamended portion cannot be taken into consideration. The Himachal Pradesh High Court followed the same view in **Vishwa Nath**

vs. State of H.P and Anr. 2016 SCC Online HP 4353, wherein, it has been held that once pleadings are amended, then that which stood before amendment, was no longer material.

11. Therefore, once amendment is permitted, adjudication must proceed on the amended pleadings. Otherwise, the very object of amendment stands frustrated.

12. The ratio of the aforesaid decisions applies with full force to the present case by analogy. The trial court was justified in declining to fall back upon the unamended leave application after having allowed amendment and afforded opportunity to file fresh application, which opportunity was not availed of. Therefore, the appellants cannot be allowed to capitalize on their own default.

13. In the light of above, the learned trial court has neither found to have contravened the provisions of Order XXXVII CPC nor committed any procedural illegality or perversity warranting interference in appeal.

14. For the foregoing reasons, the Civil Fist Appeal is dismissed. The impugned judgment and decree passed by the trial court is hereby affirmed.

15. There shall be no order as to costs.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR:
13.07.2026
Altaf

Whether approved for reporting? Yes