HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RFA No. 76/2025

Reserved on: 11th August, 2026.
Pronounced on: 17th August, 2026
Uploaded on: 17th August, 2026
Whether operative part or full
judgment has been pronounced: **Full**

Sheikh Ghulam Hassan (Aged:50 years) **…Appellant(s)**
S/O: Sheikh Ghulam Rasool
R/O: Rajbagh, District Srinagar.

Through: Mr. Wajid Mohammad Haseeb, Advocate.

Vs.

Mohammad Amin Dar **...Respondent(s)**
S/O: Mohammad Qasim Dar
R/O: Wahabpora, District Budgam.

Through: Mr. Mohd. Ibrahim Wani, Advocate.

CORAM:

Hon'ble Mr. Justice Shahzad Azeem, Judge.

JUDGMENT

1) Heard learned counsel for the parties and perused the record.

2) This Civil First Appeal is directed against judgment and decree dated 12.08.2025 passed by learned Additional District Judge, Budgam (Trial Court) in a summary suit titled "Sheikh Ghulam Hassan vs Mohammad Amin Dar", whereby the plaint was rejected.

3) For the sake of clarity, it is noted at the outset that the appellant was the plaintiff and the respondent was defendant before the Trial Court. The parties shall, therefore, be referred to as the appellant and respondent, respectively.

4) Briefly put, the case of the appellant is that he extended a friendly loan of ₹ 5.00 lakhs to the respondent for the performance of Hajj by his father.

5) In discharge of the said liability, the respondent is stated to have issued a cheque for ₹4.00 lakhs in December 2024 with a promise to pay the balance ₹1.00 lakh in cash. It is further the case of the appellant that the respondent, through the intervention of some respectable persons, requested the appellant not to present the cheque for encashment and assured payment in cash. The appellant, trusting the said assurance, did not present the cheque. Consequently, the said cheque expired and the respondent thereafter refused to repay the amount.

6) Left with no other option, the appellant filed a suit under Order XXXVII of CPC for recovery of ₹4.00 lakhs.

7) The respondent filed an application seeking leave to defend the suit on the ground *inter alia*, that the parties were business partners in a brick kiln; that the appellant owed the respondent a sum of ₹24,76,000/- in respect of which a recovery suit was already pending before the learned Principal District Judge, Budgam; That the appellant was in possession of certain post-dated cheques on account of fiduciary relationship; and that the signature on the cheque in question was not genuine.

8) Before the application for leave to defend could be considered, the respondent raised an objection to the maintainability of the suit on the ground that the suit was based on a stale and unrepresented cheque and, therefore, did not disclose any cause of action.

9) The Trial Court held that the cheque in question was never presented to the banker, a fact admitted by the appellant himself, who had taken the plea of assurance of cash payment. The Trial Court further held that once the cheque was not presented, no cause of action arose for maintaining a suit under Order XXXVII CPC. Accordingly, the plaint was rejected under Order 7 Rule 11 of CPC.

10) The principal contention of the appellant is that even if the cheque is stale, the underlying debt survives; That non-presentation of the cheque does not extinguish the liability; and that the plaint discloses a cause of action for recovery of money. It is further contended that Order 7 Rule 11 CPC could not have been invoked at the stage of appearance in a summary suit; That the Trial Court mixed up the requirements of a summary suit with those of a regular suit.

11) The key observations of the Trial Court while rejecting the plaint under Order 7 Rule 11 CPC were, that the cheque was never presented for encashment and the appellant did not present it because of the assurance of cash payment given by the respondent. It was further held that the cheque had a validity of three months and having not been presented within that period, became a stale cheque. It is also held that the cause of action pleaded in the plaint was ambiguous and did not arise from any dishonour of cheque.

12) Relying upon the judgments passed in ***Rajesh Madanlal Anand Vs. Rakesh Madanlal Anand & Anr bearing CR No. 30/2018"*** passed by a Coordinate Bench of this Court; and ***"Baldev Singh v. Rare Fuel Automobile Technologies (P) Ltd 119 (2005) DLt44"***, the Trial Court held that ***"No suit on the basis of cheque under Order 37 of CPC, would lie unless the cheque has been presented to the banker and has been bounced for one or the another reason and the payment represented by the cheque remains unpaid."***

13) There can be no quarrel with the legal proposition that a suit under Order XXXVII CPC based on a cheque is maintainable only when the cheque has been presented and dishonored. The Trial Court has correctly followed the law laid down by this Court in ***Rajesh Madanlal Anand*** (supra) on this aspect.

14) However, the Trial Court, while rejecting the plaint under Order 7 Rule 11 of CPC on the ground that the suit was not maintainable under Order XXXVII CPC, appears to have overlooked the fact that the plaint, read as a whole, discloses a complete cause of action for a regular money recovery suit on the underlying loan transaction, the issuance of the cheque as an acknowledgement of debt, and the subsequent refusal to repay.

15) It is well settled that where a civil wrong is alleged, the court should ordinarily not leave the aggrieved party remediless, especially when the plaint discloses a cause of action for an ordinary suit. Rejection of suit under Order 7 Rule 11 of CPC in such circumstances is a drastic course and should be resorted only when no cause of action whatsoever is disclosed.

16) Even if the finding of the Trial Court that the suit is not maintainable under Order XXXVII is accepted, the appropriate course was to convert the suit into an ordinary money recovery suit rather than to reject the plaint outright. The plaint clearly discloses:

(i) Advancement of a loan of ₹5.00 lakh;

(ii) Issuance of a cheque of ₹4.00 lakh by way of part payment/ acknowledgment of the debt; and

(iii) Subsequent refusal by the respondent to repay the amount.

These averments constitute a complete cause of action for a regular suit for recovery of money.

17) Once the respondent had appeared and filed an application for leave to defend raising serious triable issues, including partnership, a counter claim of ₹24.76 lakh, and allegation of forgery of signature, the Trial Court ought to have held that the suit was not maintainable under Order XXXVII CPC and directed that same be tried as an ordinary suit, instead of rejecting the plaint under Order 7 Rule 11 CPC. Rejection of the plaint extinguishes the claim and forces the plaintiff to institute a fresh suit subject to limitation. Conversion preserves the suit and enables adjudication on merits.

18) From a plain reading of Order XXXVII CPC, it is discernible that the special procedure is available only upon fulfilment of prescribed conditions. Where the conditions are not satisfied or where defendant raised triable issues, the court is not precluded from treating the suit as an ordinary suit and proceeding accordingly.

19) Having regard to the above discussion, this Court is of the considered view that even if the suit is held not maintainable under Order XXXVII CPC, the learned Trial Court ought to have converted it into an ordinary money recovery suit, particularly when the plaint discloses an underlying debt of ₹ 5.00 lakhs and refusal to repay the same.

20) In view of the foregoing discussion and in order to do complete justice, this Court finds the case on hand a fit one for the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

The impugned judgment and decree dated 12.08.2025 passed by the Trial Court is accordingly set aside. The suit titled “Sheikh Ghulam Hassan vs Mohammad Amin Dar” is restored to its original number and shall be tried as an ordinary suit for recovery of money. The respondent is granted four weeks’ time to file the written statement from the date of appearance before the Trial Court. The parties are directed to appear before the Trial Court on 07.09.2026.

21) The appeal stands **disposed of** on the above terms.

(Shahzad Azeem)
Judge

<u>SRINAGAR:</u>
17.08.2026
“HAMID”

❖ *Whether Judgment is Reportable?* *Yes*