

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) No. 138/2024

CM No. 2509/2024

CM No.5544/2025

Reserved on: 11.09.2026

Pronounced on: 18.09.2026

Uploaded on: _____

Operative part or full judgment - Full

Zahoor Ahmad Dar

S/O Ghulam Mohammad Dar,

R/O Munawara Abad, Srinagar

...Petitioner(s)

Through: Adv. Irshad Ahmad with
Adv. Umaiya Zehra.

Vs.

1. **Mymoona**

W/O Shakeel Ahmad Dar

R/O Munawara Abad, Srinagar

2. Shahid Ahmad Dar

3. Suhail Ahmad Dar

4. Masrat Jan

S.No. 2 & 3, Sons/LRs of Shakeel Ahmad Dar

S.No.4, Daughter/LR of Shakeel Ahmad Dar

All residents of Munawara Abad, Srinagar.

...Respondent(s)

Through: Adv. A.M.Mir.

CORAM: HON'BLE MR. JUSTICE M. A.CHOWDHARY, JUDGE
JUDGMENT

1. The instant petition under Article 227 of the Constitution of India has been filed by the petitioner herein assailing order dated **12.02.2024** passed by the learned 3rd

Additional Munsiff, Srinagar in a civil original suit titled *Shakeel Ahmad Dar (dead) through legal heirs Vs. Zahoor Ahmad Dar*, whereby the application filed by the respondent as plaintiff under Order VI Rule 17 CPC seeking amendment of the plaint, has been allowed.

2. Briefly stated, the case of the petitioner is that the respondent/plaintiff instituted a suit for ejectment of the petitioner from the suit shop and for permanent injunction; that the petitioner had taken the shop measuring 8' x 17' situated at Munawarabad, Srinagar on rent pursuant to a rent deed executed on **27.08.2011** and registered on **04.10.2011**; that the petitioner was put into exclusive possession of the shop pursuant to the said rent deed and acquired rights and interest in respect thereof; that during the pendency of the suit, the respondents/plaintiff filed an application seeking amendment of the plaint; that the amendment, inter alia, sought incorporation of the relief of monthly mesne profits at the rate of Rs.50,000/-, besides consequential amendments in various paragraphs of the plaint, the valuation clause and the prayer clause.
3. The said application was opposed by the petitioner/defendant on the ground that the written statement had already been filed; that the plaintiff was seeking to introduce a new case by way of amendment; that the application was intended to delay the proceedings;

that the plaintiff was not entitled to seek eviction in view of the defense set up by the petitioner as defendant in the written statement.

4. The learned Trial Court, after considering the rival submissions, allowed the application. The Trial Court noticed that the application for amendment had been filed when the trial had not commenced; that the proviso to Order VI Rule 17 CPC was, therefore, not attracted; and that the proposed amendment was necessary for determining the real questions in controversy between the parties.
5. Learned counsel for the petitioner herein, while assailing the impugned order, reiterated the grounds taken in the petition and would argue that the amendment sought by the plaintiff-respondent was not a mere formal amendment but sought to materially enlarge the scope of the suit. It was argued that the plaintiff, having instituted the suit and having allowed the proceedings to progress, could not subsequently introduce a claim which was otherwise available to him from the very inception. Learned counsel would further argue that the proposed amendment would cause prejudice to the petitioner and that the learned Trial Court had failed to properly appreciate the objections raised by the petitioner.
6. Learned Counsel appearing for the respondents, ex-adverso, opposed the petition and supported the impugned

order. Learned counsel would submit that the petitioner had not approached this Court with clean hands and had attempted to mislead the Court by suppressing and misrepresenting material facts. It was submitted that the factual aspects of the suit, the pleadings and the documents relied upon by the parties were before the learned Trial Court and had been duly considered; that no ground, whatsoever, is made out for invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

7. It was specifically submitted that the trial of the suit had not commenced, as the issues were yet to be framed, and consequently the proviso to Order VI Rule 17 CPC had no application; that the learned Trial Court had rightly proceeded to examine whether the proposed amendment was necessary for determining the real questions in controversy between the parties. Furthermore, the learned Trial Court had exercised the jurisdiction vested in it under Order VI Rule 17 CPC after hearing both sides and recording reasons for allowing the amendment.
8. Learned Counsel for the respondents further argued that the proposed amendment does not alter the basic nature or character of the suit. The suit continues to be one for ejectment of the petitioner from the suit premises and for consequential reliefs. It was pointed out that the plaintiff had already referred in the plaint to the notices issued to

the petitioner and to the demand of mesne profits, but had inadvertently not incorporated an express prayer in that regard. The proposed amendment, therefore, according to learned counsel, merely seeks to bring the consequential relief in conformity with the factual pleadings already forming part of the suit. Learned counsel also submitted that no prejudice would be caused to the petitioner by allowing the amendment, as he would have full opportunity to file an amended written statement and contest the claim on merits.

9. The question as to whether the plaintiff is actually entitled to mesne profits, the rate thereof and the period for which such profits may be claimed, according to learned counsel, are matters to be determined by the Trial Court on the basis of evidence and cannot be adjudicated at the stage of considering the amendment application. It was further contended that the petitioner himself has taken a stand with regard to expiry of the period stipulated under the rent deed and, therefore, the question whether the petitioner is entitled to continue in possession is itself a matter which has to be adjudicated upon in the suit. Learned counsel submitted that such disputed questions cannot be made the basis for refusing an otherwise permissible amendment.

10. Lastly, learned counsel for the respondents contended that the impugned order neither suffers from any

jurisdictional error, nor perversity or patent illegality, warranting interference under Article 227 of the Constitution. This Court, in exercise of supervisory jurisdiction, cannot substitute its own view for that of the Trial Court merely because another view may also be possible. Dismissal of the petition was accordingly prayed for.

11. Heard learned counsel for the parties, perused the material available on record and considered the matter.
12. The controversy which falls for consideration is whether the learned Trial Court was justified in allowing the application for amendment of the plaint under Order VI Rule 17 CPC.
13. Order VI Rule 17 CPC confers power upon the Court to allow either party to alter or amend his/her pleadings at any stage of the proceedings, in such manner and on such terms as may be just, and all such amendments are required to be allowed as may be necessary for the purpose of determining the real questions in controversy between the parties. The proviso places a restriction on allowing an amendment after commencement of trial unless the Court is satisfied that, despite due diligence, the party could not have raised the matter before commencement of trial. In the present case, the learned Trial Court has recorded a categorical finding that the trial had not commenced. The record, as noticed by the Trial Court, showed that the

matter was still at the stage preceding commencement of trial as the issues had not been framed. In such circumstances, the embargo contained in the proviso to Order VI Rule 17 CPC would not come into play.

14. The next question is whether the proposed amendment is necessary for determining the real controversy between the parties. A perusal of the pleadings, as noticed by the learned Trial Court, shows that the main dispute between the parties relates to the petitioner's occupation of the suit shop unauthorizedly, after expiry of the period of lease/rent deed and the respondent/plaintiff's claim for recovery of possession thereof. The plaintiff had already referred to the notices issued to the petitioner and had asserted his entitlement to claim mesne profits on account of the alleged continued occupation of the premises. The proposed incorporation of the relief of mesne profits, therefore, cannot at this stage be said to introduce an altogether new and foreign 'cause of action'. The relief sought, by way of amendment, arises out of the same transaction and the same subject matter which already forms the basis of the suit.

15. Equally, the merits of the claim for mesne profits cannot be examined while deciding an application under Order VI Rule 17 CPC. Whether the plaintiff is entitled to mesne profits, whether the claimed rate of Rs.50,000/- per month is justified, and the period for which such relief can legally

be granted are all questions which would remain open for adjudication by the learned Trial Court in accordance with law.

16. The objection regarding prejudice to the petitioner also does not appear to have any substance. The petitioner would have an opportunity to file an amended written statement and contest the amended pleadings. Any defense available to him in law would remain open. The amendment, therefore, does not appear to cause such prejudice as cannot be compensated or addressed by granting appropriate opportunity to the petitioner.

17. It is also relevant that the power under Article 227 of the Constitution is supervisory in nature. The High Court does not ordinarily interfere with an interlocutory order merely because it may take a different view from the one taken by the subordinate Court. Interference is warranted where the subordinate Court has acted without jurisdiction, failed to exercise jurisdiction vested in it, or has acted in a manner resulting in manifest illegality or perversity.

18. It is an admitted case that issues were yet to be framed in the case, when the respondent as plaintiff moved the Trial court seeking permission to amend his suit. Plaintiff being 'dominus litis' has control over his claims and choice of parties, however, the right to amend the plaint, not being an absolute right remains subject to judicial discretion under Order VI Rule 17 of the CPC. Continuous cause of

action allows amendment of plaint, without fresh suit. It would be profitable to extract the governing provisions of **Order VI Rule 17 of CPC**, for the sake of understanding, as under:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties : Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

19. The Apex Court in **Rajesh Kumar Aggarwal Vs. K.K.Modi** reported as **(2006) 4 SCC 385**, observed that this **Rule 17 of Order VI of CPC** declares that the court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The provision enacts that no application for amendment should be allowed, after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence the party could not have raised the matter, for which amendment is sought before the commencement of the trial.

20. As already noticed hereinabove, the trial of the suit between the parties had not commenced, as issues were yet to be settled in the case, therefore, it was the stage where amendment could be allowed. Moreover, the petitioner as defendant has not been able to point out that with the amendment having been allowed, in the plaint, the nature of the suit shall not be changed, so as to prejudice the rights of the defendant (petitioner herein).

21. In the present case, the learned Trial Court has considered the application, the objections filed by the petitioner and discussing the provisions of Order VI Rule 17 CPC, recorded reasons for allowing the amendment. The view taken by the learned Trial Court cannot be said to be one which is either without jurisdiction, perverse or illegal.

22. For the foregoing reasons, this Court finds no ground to warrant any interference in exercise its supervisory jurisdiction under Article 227 of the Constitution of India. The impugned order dated **12.02.2024** passed by the learned 3rd Additional Munsiff, Srinagar, in the aforestated backdrop, does not suffer from any jurisdictional error, perversity or patent illegality warranting interference.

23. Accordingly, the instant petition along-with pending application(s) is **dismissed** and the order dated

12.02.2024 is upheld. Interim direction dated **03.05.2024** shall also stand vacated.

24. It is, however, made clear that the observations made herein are confined strictly to the question of amendment. Nothing contained in this order shall be construed as an expression of opinion on the merits of the respective claims and defenses of the parties. The petitioner shall be at liberty to file an amended written statement, if so required, and all questions relating to the plaintiff's entitlement to ejectment, mesne profits, the rate and period thereof, and all other issues arising between the parties shall be decided by the learned Trial Court independently and in accordance with law.

25. The learned Trial Court shall proceed with the suit expeditiously.

26. A copy of this order shall be forwarded to the Trial court, for information.

(M. A. CHOWDHARY)
JUDGE

Srinagar
18.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No