

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

Reserved on: 06.10.2026

Pronounced on: 14.10.2026

Uploaded on: 14.10.2026

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

CM(M) No.586/2025

MUSHTAQ AHMAD RAFIQEE

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

Through: - Mr. Danish Majid Dar, Advocate.

Vs.

MOHAMMAD AMIN WANI & ANR.

...RESPONDENT(S)

Through: - None.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioner has invoked Article 227 of the Constitution of India for quashing of order dated 30.05.2025 passed by the Court of learned 3rd Additional District Judge, Srinagar (for short "the Trial Court") in original suit bearing No. 2398/2024 (file No. 60/N), titled "Mushtaq Ahmad Rafiqee vs. Mohammad Amin Wani and others", whereby the learned Trial Court has granted unconditional leave to the respondents to defend the suit filed by the petitioner under Order XXXVII of Civil Procedure Code for recovery of an amount of Rs.1,35,00,000/.

2) The order dated 30.05.2025 has been impugned on the grounds that the learned Trial Court has erred in law as it failed to apply the statutory presumption under Section 118(a) and 139 of the Negotiable Instruments Act, despite the admitted issuance, signatures, presentation and dishonour of the cheques. Once these foundational facts stood admitted, the law mandatorily presumed the existence of a legally enforceable debt or liability and the entire burden shifted upon the respondents to rebut such presumption by cogent material, which they miserably failed to do. It is also contended that the defence set up by the respondents that the cheques were issued merely as security for some vague, undefined arrangement to identify the prospective purchasers, is inherently contradictory, unsupported by any contemporaneous document, therefore, the respondents were not entitled to any leave to defend. It is also urged that the Trial Court has completely failed to notice, consider or even advert to the decisive agreement to sell dated 02.03.2022, despite the fact the same was expressly brought to its notice during arguments, and the said agreement conclusively establishes that the respondent No. 1 was fully aware of the litigation, revenue issues and competing claims concerning the Rawalpura land well prior to the issuance of cheques, and despite that, had voluntarily undertaken to

resolve such disputes at their own cost. The non-consideration of this vital document constitutes non-application of mind, perversity and judicial infirmity. It is further contended that the learned Trial Court erred in law in treating the alleged revenue entries and mutation cancellations of the year 2001 as constituting triable issues, without appreciating that mutation entries neither confer nor extinguish title, nor do they override registered sale deeds or settled possession.

3) Learned counsel for the petitioner has submitted that the order impugned is not sustainable in the eyes of law as the learned Trial Court has failed to take note of the fact that there is presumption of liability once the issuance of cheques is admitted by the drawer of cheque. He has further argued that the agreement to sell dated 02.03.2022 clearly demonstrates that the respondents were well aware about the litigation and despite that, they had undertaken to resolve such disputes at their own cost and had issued cheques in question. He has placed reliance upon the judgments of the High Court of Bombay in **Rajesh Laxmichand Udeshi @Bhatia vs. Pravin Hiralal Shah**, 2012 SCC OnLine Bom. 2181 and **Lawrence Crasta vs. Vasant Upendra Kamat**, 2015 SCC OnLine Bom 7542.

4) Heard and perused the record.

5) The record reveals that the petitioner filed a summary suit under Order XXXVII of CPC for recovery of an amount of Rs.1,35,00,000/- on the ground that he is one of the joint owners in possession of land measuring 13 kanals and 11 marlas comprising Survey No.145/1 min (4 kanals), 148-min (6 kanals 13 marlas), 166-min (2 kanals 18 marlas) situated at Rawalpura, Srinagar and in the month of April 2022, the respondents approached him and other joint owners with an offer to purchase 04 kanals of land out of the aforesaid land. The said offer was accepted by the petitioner and other co-sharers, subject to consideration of Rs.4.00 crores. In pursuance thereof, on 14.05.2022, the respondents issued several cheques amounting to Rs.4.00 crores. However, barring few, all the cheques were dishonoured. Thereafter, the petitioner informed the respondents about the bouncing of cheques, but the respondents requested him not to initiate any legal proceedings and assured him that an amount of Rs.1,35,00,000/- would be paid by them within few months. Acting on the assurances of the respondents, the petitioner did not initiate any legal proceedings. Finally, when the amount was not paid to the petitioner, he filed the said suit.

After the summons in terms of Order XXXVII of CPC was served upon the respondents, they filed an application seeking leave to defend, asserting that the petitioner and his brothers represented to them that they were desirous of selling their land measuring 13 kanals 11 marlas situated at Rawalpura, Srinagar, and, accordingly, the petitioner sought help of the respondents in arranging the buyers for the said land. As per the verbal agreement, the respondents were authorized to negotiate and receive payment/consideration from prospective buyers after negotiating the details of the deal. The petitioner was required to furnish revenue extracts as per the instructions of the respondents. Respondent No. 2 was required to issue post-dated cheques as security, to be encashed upon the execution and registration of sale deeds from time to time. The respondent No.2 faithfully observed his part of agreement and handed over 27 cheques to the petitioner by way of security. The respondents even arranged a buyer for a part of the land and requested the petitioner to provide revenue extracts (Fard), but the petitioner failed to provide revenue extracts and started citing lame excuses. When the respondents enquired from the revenue officials about the delay in issuing the revenue extracts (Fard), they were shocked to find that the land in question was actually the State land (Shamlat Kahcharai)

and the petitioner had no subsisting right or interest in the same.

6) It was also averred in the application that the preliminary investigation was carried out by Police Station Crime Branch, Kashmir, regarding connivance of the revenue officials clandestinely changing the nature of the State land and selling/disposing of the same in Hyderpora and adjoining areas as proprietary land at throwaway prices. After the conclusion of the preliminary investigation, FIR No.18 of 2001 was also registered by Police Station Crime Branch, Kashmir. After completion of the investigation, charge-sheet was filed against 57 accused, including 7 revenue officials, in the court of learned Special Judge Anti-Corruption, Srinagar. In the meanwhile, Divisional Commissioner, Kashmir, invoked *suo-motu* revisional powers under law and cancelled all the fraudulent mutations in respect of kahcharai/khalsa State land, which includes the land of the petitioner and his brothers. It was also pleaded that the encroached land was retrieved by the government agencies from the occupation of the illegal occupants, including the petitioner, his brothers and father. Besides the above factual aspects, certain legal issues with regard to maintainability of the suit were also raised.

7) The learned Trial Court, in terms of order impugned, after taking note of the factual aspects of the case, more particularly with regard to contention of the respondents that they have raised triable issues, permitted the respondents to defend the suit unconditionally.

8) Learned counsel for the petitioner has vehemently argued that the respondents were well aware about the litigation of the land in question, and despite being aware, they issued the cheques, therefore, they cannot be permitted to take a U-turn to assert that the petitioner and his co-sharers were not having any right or interest in the property.

9) Perusal of the plaint filed by the petitioner reveals that in paragraph (3) of the plaint, it is stated that in the month of April 2022, the respondents approached the petitioner and his joint owners with an offer to purchase 04 kanals out of 13 kanals and 11 marlas of land situated at Rawalpura, Srinagar, which offer was accepted by the petitioner and his co-sharers and, accordingly, cheques amounting to Rs.4.00 crores were issued in favour of the petitioner and his co-sharers. Interestingly, in paragraph (e) of this petition, it is stated by the petitioner that respondent No.1 was personally and contractually associated with the disputes regarding the property, as is evident from the agreement to sell dated

02.03.2022 executed between respondent No.1 and the Qazi/Peer group of Rajbagh. In the suit, there is no whisper of this agreement to sell. Further, perusal of the agreement to sell would reveal that reference has been made to the land comprising Survey No.112, 113, 112/1, 113/1 situated at Umarabad, Sector B in estate Rawalpura, whereas the land which formed the basis for issuance of cheques measuring 13 kanals and 11 marlas comprises Survey No.145/1 min, 148 min and 166 min situated at Rawalpura, Srinagar. Thus, the petitioner cannot, in any manner, bank upon the agreement to sell to assert that the respondents were aware about the dispute regarding the land which formed the basis for issuance of the cheques.

10) It needs to be noted that the respondents have taken a specific defence in their application seeking leave to defend that the land was a State land, and the petitioner and his co-sharers had no right whatsoever to sell the State land.

11) In view of above, this Court is of the considered view that the contention raised by the petitioner is misconceived and the same is rejected.

12) It was further submitted that the learned Trial Court failed to consider the statutory presumptions under the

Negotiable Instruments Act, despite the respondents admitting to the issuance of the cheques. It is worthwhile to mention here that the suit is not solely based on the cheques, but the factual foundations have been laid by the petitioner himself for filing the suit for justifying the issuance of cheques in his favour by asserting that the respondents agreed to purchase 04 kanals of land out of 13 kanals and 11 marlas situated at Rawalpura, Srinagar, for sale consideration of Rs.4 crores. In their application seeking leave to defend, the respondents disputed the ownership of the petitioner and his co-sharers over the land against which the cheques were issued, contending that the property was, in fact, State land. Once the foundational basis for the issuance of the cheques, as asserted by the petitioner, is challenged and disputed through cogent material, whether the cheques were issued in discharge of a legally enforceable debt or liability becomes a triable issue.

13) In B.L. Kashyap and Sons Ltd. v. M/S JMS Steels and Power Corporation, (2022) 3 SCC 294, the Hon'ble Supreme Court has observed as under:

17. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers' case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII but, **on the core theme, the principles remain the**

same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.

17.1. As noticed, if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

17.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of

leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

17.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious.

14) When the case projected by the petitioner is evaluated against the parameters laid down by the Hon'ble Apex Court in the judgment *supra*, this Court finds that the respondents have raised a substantial defence, one that can by no means be characterized as doubtful or fanciful. Consequently, as the respondents have raised genuine triable issues, they are entitled to unconditional leave to defend.

15) This Court has examined the impugned order passed by the learned Trial Court. The view taken by the learned Trial Court while granting the respondents unconditional leave to defend the suit is unexceptionable. This petition is found to be without any merit and, accordingly, the same is dismissed.

(Rajnish Oswal)
Judge

Srinagar,
14.10.2026

“Bhat Altaf-Sherzad”

Whether the **judgment** is reportable: **YES**

