HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on 29.10.2026
Pronounced on .11.2026
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Whether the operative part or full judgment is pronounced: Full

CSA No. 8/2004

Farooq Ahmad Sofi and another

...Petitioner /Appellant(s)

Through: - Mr. Z. A. Qureshi, Sr. Advocate with
Mr. Anurag Verma, Advocate

vs.

Ghulam Mohammad Bhat **...Respondent(s)**

Through: - Mr. Mir Majid Bashir, Advocate

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

JUDGMENT

01. On 25.06.1992, Ghulam Mohammad Bhat (the original respondent in the present appeal and plaintiff in the suit), instituted a suit for the eviction of the appellants from Shop No. 10 situated in the Shopping Complex on the main road, Buta Mohalla, Lal Bazar, Srinagar and for the recovery of arrears of rent. The eviction was sought on three grounds: (i) default in payment of rent by appellant No. 1; (ii) bona fide personal necessity of the original plaintiff and his sons; and (iii) unlawful subletting of the shop by appellant No. 1 to appellant No. 2.

02. The aforesaid suit came to be decreed in terms of judgment and decree dated 21.12.2002 passed by the learned 2nd Addl. Munsiff, Srinagar (for short 'the Trial Court'). The civil first appeal bearing No. 40/Appeal

came to be preferred by the appellants against the aforesaid judgment and decree dated 21.12.2002 before the Court of the learned Additional District Judge, Srinagar (for short the 'Appellate Court') on 25.03.2003, and the same was dismissed in terms of judgment and decree dated 10.06.2004.

03. Aggrieved by the judgments and decrees passed by the appellate court as well as the trial court, the appellants filed the present Civil Second Appeal. During the pendency of this appeal, the original respondent, Ghulam Mohammad Bhat, passed away in March 2013 and his legal heirs have been brought on record.

04. In terms of order dated 12.10.2004, this Civil Second Appeal was admitted for final hearing on the following substantial questions of law:

(i) Whether without serving notice in terms of the proviso to section 11(i) of the J&K Houses and Shops Rent Control Act the tenant can be held to be defaulter?

(ii) Whether the notice which is the subject matter of issue No. 7 conforms to the requirement of proviso to section 11(i) of the Act? and

(iii) Whether creation of partnership amounts to subletting?

05. Mr. Z. A. Qureshi, learned Senior Counsel appearing for the appellants has argued that the notice seeking eviction of the appellants and recovery of arrears of rent was issued on 06.05.1992. However, without waiting for the mandatory statutory period to expire under Section 11 of the Jammu and Kashmir Houses and Shops Rent Control Act (now repealed), the respondent instituted the suit prematurely on 25.06.1992.

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Consequently, both the learned trial court and the first appellate court erred in law by decreeing the suit on the ground of default in payment of rent, rendering their judgments and decrees liable to be set aside. Learned senior counsel further contended that the mere execution of a partnership deed by the original tenant with a third party does not, by itself, constitute subletting, and thus, both courts below committed a glaring illegality in decreeing the suit.

06. Per contra, Mr. Majid Bashir, learned counsel appearing for the respondent submits that appellant No. 1 failed to prove payment of rent to the respondent or valid deposit thereof in accordance with the provisions of the Jammu and Kashmir Houses and Shops Rent Control Act. Both courts, therefore, rightly decreed the respondent's suit on the ground of default in payment of rent. Learned counsel further argued that the trial court and the appellate court have returned a concurrent finding of fact that appellant No. 1 sublet the shop to appellant No. 2, which cannot be assailed in a civil second appeal.

07. Heard learned counsel for the parties and perused the record of the case.

08. The facts necessary for the disposal of the present appeal are that the respondent filed a suit for eviction and arrears of rent against the appellants by asserting that appellant No. 1 had violated the terms and conditions of the rent agreement by subletting the shop to appellant No. 2, and that he required the shop for the personal use and occupation of his sons and himself. Besides, it was also pleaded by the respondent that appellant No. 1 has failed to pay arrears of rent from October 1991

till date, regarding which the notice was served upon the appellants by registered post on 11.05.1992.

09. The appellants/defendants filed their written statement stating therein that the respondent was in Government service and could not have filed the suit on the ground of personal necessity, and appellant No. 1 had not sublet the shop but had been running the business in partnership in the said shop. The appellants further urged that appellant No. 1 had not violated the terms of the rent deed and had duly tendered the rent to the respondent, who intentionally and willfully refused to accept it. It was also urged that appellant No. 2 was not a trespasser but a partner in the firm M/s Selection Centre Stores, Lal Bazar. It was also pleaded that the appellants had sent the rent to the respondent on many occasions through the brother of appellant No. 2 and through respective persons.

10. Following issues were framed by the learned trial court:

(1) Whether the defendant No.1 has committed default in payment of rent, if so, is he liable for ejectment? …OPP
(2) Whether the suit shop was sub-leted by the defendant No. 1 to defendant No. 2 and if so is it a ground of ejectment? OPP
(3) Whether the plaintiff requires the suit shop for his personal use and occupation? OPP
(4) Whether the comparative advantages and dis-advantages of the parties in case of ejectment? …OPP
(5) Whether partial eviction of the defendant from the suit shop can suffice requirement of the parties. ….OPP
(6) Whether the defendant has violated the rent deed if so whether he has any right to remain in occupation of the suit shop in violation of rent deed? …OPP

(7) Whether the notice for termination of tenancy has been served to the defendant.?...OPP

(8) Whether the defendant No. 2 is in illegal occupation of the suit shop and thus a trespasser? …OPP

(9) Whether the suit is not maintainable? …OPD

(10) Relief.

11. In addition to testifying themselves, the appellants/defendants examined four witnesses, i.e. Mehraj-ud-din Baba, Dr. Showkat Ahmed Makhdoomi, Nazir Ahmed, and Hilal Ahmed Munshi. The respondent/plaintiff examined himself and three witnesses i.e. Ghulam Nabi Wani, Shakeel Ahmed Wani, and Syed Murtaza, in support of his case.

Analysis:

12. **Substantial questions of law Nos. 1 & 2.**

(1) Whether without serving notice in terms of the proviso to section 11(i) of the J&K Houses and Shops Rent Control Act the tenant can be held to be defaulter?

(2) Whether the notice which is the subject matter of issue No. 7 conforms to the requirement of proviso to section 11(i) of the Act?

13. Both these substantial questions of law are related to each other and as such, are taken up together for the purpose of their adjudication. In order to answer these substantial questions of law, it would be appropriate to extract Section 11(i) of the Act, which is as under:

> (1) Notwithstanding anything to the contrary in any other Act or law, no order of decree for the recovery of possession of any house or shop shall be made by any Court in favour of the landlord against a tenant, including a tenant whose lease has expired:

Provided that nothing in this sub-section shall apply to any suit for decree for such recovery of possession ?

(a) against a tenant who has transferred his tenancy right in whole or in part with possession otherwise than by sub-lease;

(b) against such transferee;

(c) against a tenant who has sub-let the whole or a major portion of the house or shop for more than seven consecutive months:

Provided that if a tenant, who has sub-let major portion of the house or shop, agrees to possess as a tenant the portion of the house or shop not sub-let on payment of rent fixed by the Court, the Court shall pass a decree for ejectment from only a portion of the house or shop sub-let and fix proportionately fair rent for the portion kept in possession of such tenant, which portion shall thenceforth constitute house or shop under clause (3) or clause (5) of section 2 and the rent so fixed shall be deemed fair rent fixed under section 8

[Provided further that no order or decree for the recovery of possession shall be made in favour of the landlord if the tenant has sub-let the house or shop or portion thereof with the written consent of the owner;]

(d) where the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act, 1977;

(e) where the tenant has been using the house or shop or any part or allowing the house or shop or any part to be used for immoral or illegal purposes

[(ee) where the tenant fails to use or occupy the house or shop for a period of not less than seven consecutive months;]

(f) where the condition of the house or shop has materially deteriorated owing to acts of waste by, or negligence or default of the tenant, or of any person residing with the tenant or for whose behaviour the tenant is responsible;

(g) where the tenant has been guilty of conduct which is a nuisance or annoyance to occupiers of adjoining or neighbouring houses or shops, including the landlord;

(h) where the house or shop is reasonably required by the landlord either for purposes of building or re-building, or for his own occupation or for the occupation of any person for whose benefit the house or shop is held:

Provided that all sub-tenants in the house or shop are made parties to the suit and allowed opportunity of contesting claim to decree for ejectment.

Explanation- The Court in determining the reasonableness of requirement for purposes of building or re-building shall have regard to the comparative public benefit or disadvantage by extending or diminishing accommodation, and in determining reasonableness of requirement for occupation shall have regard to the comparative advantage or disadvantage of the landlord or the person for whose benefit the house or shop is held and of the tenant:

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the house or shop and allowing the tenant to continue occupation of the rest, and the tenant agrees to such occupation, the Court shall pass a decree accordingly and fix a proportionately fair rent for the portion in

occupation of the tenant, which portion shall henceforth constitute the house or shop within clause (3) or clause (5) of section 2 and the rent fixed shall be deemed to be the fair rent fixed under section 8;

(i) **subject to the provisions of section 12, where the amount of two months rent legally payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract, or in the absence of such contract by the fifteenth day of the month next following that for which the rent is payable or by not having been validly deposited in accordance with section 14:**

Provided that no such amount shall be deemed to be in arrears unless the landlord on the rent becoming due serves a notice in writing through Post Office under a registered cover on the tenant to pay or deposit the arrears within a period of thirty days from the date of the receipt of such notice and the tenant fails to pay or deposit the said arrears within the specified period;

(j) where the house was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased to be in such service or employment: Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment- in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord;

(k) where the house or shop is required for the immediate purpose of demolition ordered by any local authority or other competent authority.]

14. A perusal of the aforesaid provisions makes it crystal clear that the landlord is statutorily required to serve a notice in writing through the post office under registered cover on the tenant, requiring him to pay or deposit the arrears within thirty days of receipt of such notice. Both the trial court and the appellate court held that the notice was issued by the original respondent/plaintiff. The appellate court has held that the notice was served upon the appellant through registered post. However, the trial court simply returned a finding with regard to the issuance of the notice and not regarding its service.

15. While scanning the record, this Court finds that the notice dated 06.05.1992 was issued by respondent to both the appellants but the

postal receipts are not appended with the suit. One R/C allegedly containing notice issued to appellant No. 2 is on record, but no such R/C of the appellant No. 1 is on record. The appellants have denied the receipt of notice allegedly issued by the respondent through his counsel. The respondent did not place on record the postal receipts and in fact, has not led any evidence with regard to issuance and receipt of notice. Appellant No. 1 in his cross-examination, denied the receipt of notice. The finding returned by the learned Appellate Court that the respondent had served notice upon the appellants through registered cover is perverse as there is nothing on record to substantiate this finding that the notice was served upon the appellants through registered covers, as neither the postal receipts are on record, nor postman was examined to prove the fact of receipt of notice. The observations of the Full Bench of this Court in **Kewal Krishen Versus Harish Kumar 2010 (7) JKJ[HC] 207,** are very relevant and the relevant paras are extracted as under:

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> "On our interpretation, therefore, of the amended proviso referred to above, the following propositions emerge:-
>
> 1. A landlord can bring a suit for ejectment in case of a single default if he proves that the tenant had defaulted in payment of two months rent which is due, of which notice as provided by proviso to sub-section (i) of Sec. 11 has been given. But such a suit will be subject to the provisions of sub-sections 1, 2 and 3 of Section 12 of the Act.
>
> 2. That where even one notice as contemplated by the proviso to sub-section (i) of Sec. 11 has been given and three successive defaults have been committed despite the said single notice, the landlord has an absolute right to eject the tenant and on proof of these circumstances, the tenant will not be entitled to the protection given to him by Section 12 (1), (2) and (3). In such cases, the application of provisions of Section 12 (1), (2) and (3) would be completely excluded.
>
> 3. That the amended proviso to sub-section 12 (1) of the Act does not contemplate the giving of notice on each successive default

> and the provisions of this proviso would be complied with if the notice for the first default has been given by the landlord."

16. Issuance of notice is a sine qua non for seeking eviction of the tenant on the ground of default in making payment of rent. Learned counsel for the respondent was called upon to justify the concurrent findings returned by the trial court and the appellate court, but he failed to satisfy this Court as to their legality in the absence of any evidence of service of notice, specifically, the absence of postal receipts and the non-examination of the postman.

17. Accordingly, this Court is of the considered view that the respondent did not serve notice upon the appellants (though he was required to serve the notice only upon the appellant No.1) and as such, the decree of eviction could not have been passed against the appellants in absence of valid notice in terms of proviso to Section 11(i) of the Act. Both these questions are answered accordingly.

18. **Substantial question No. 3:**

Whether creation of partnership amounts to subletting?

In fact, the Hon'ble Supreme Court in **Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217,** has answered the abovementioned substantial question of law in para 25 of the judgment and the same is extracted as under:

> **"**25**.** The legal position that emerges from the aforesaid decisions can be summarised thus:
>
> (*i*) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been

done without the consent of the landlord and in lieu of compensation or rent.

(*ii*) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(*iii*) **The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.**

(*iv*) **If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.**

(*v*) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(*vi*) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."

19. Now, it is required to be examined whether the findings returned by the trial court and the appellate court are in consonance with the aforesaid judgment of the Hon'ble Supreme Court of India.

20. Learned trial court has observed that the appellants executed partnership deed just before the filing of the suit i.e. on 17.04.1992, whereas the suit was filed on 25.06.1992 i.e. just two and half months before the filing of the suit. In his cross-examination, appellant No. 2 stated that he had been running the partnership business with appellant No. 1 for the preceding eleven years, and that the rent deed had been executed between appellant No. 1 and the respondent three years prior

to the partnership. Appellants' witness, Mehraj-ud-din Baba, deposed that appellant No. 2 came to the shop in the year 1989-90, when the learned that appellant No. 2 was a partner in the business. He further stated that appellant No. 2 was running the shop while appellant No. 1 visited it only occasionally. Appellant No. 1 also admitted that three to four years after taking the shop on rent, he entered into the partnership without informing the respondent.

21. Notably, the partnership deed is unregistered, and the learned trial court treated it as a sham document. The learned appellate court observed that the deed expressly stipulates that appellant No. 2 alone shall conduct, maintain, and run the entire business and pay rent to the landlord. Proceeding on this basis, the Appellate Court held that appellant No. 1 had effectively parted with possession of the entire premises and handed over the business to appellant No. 2, thereby subletting the shop. Both courts below have recorded a concurrent finding of fact after due appreciation of the evidence, and it is well settled that such concurrent findings warrant no interference in a Second appeal. In para-12 of the judgment of the case titled ***Kashibai v. Parwatibai*****, (1995) 6 SCC 213,** the Hon'ble Apex Court has observed that **"**Further, it may not be out of place to mention that sub-section (1) of Section 100 of the Code of Civil Procedure explicitly provides that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 provides that when the High Court is

satisfied that a substantial question of law is involved in any case it shall formulate that question. But surprisingly enough the High Court seems to have ignored these provisions and proposed to re-appreciate the evidence and interfere with the findings of fact without even formulating any question of law. *It has been the consistent view of this Court that there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, based on appreciation of the relevant evidence. There is a catena of decisions in support of this view".* There is no perversity in the findings on the issue of subletting and third substantial question of law is answered accordingly.

22. Learned Senior Counsel for the appellants tried to impress upon this Court that the learned trial court and the appellate court failed to properly determine the issue of personal necessity, it must be noted that although the appellate court observed at page 3 of its judgment that only the issues of default and subletting were argued before it, it nonetheless examined the issue of personal necessity as well. The respondent and his witnesses-Ghulam Nabi Wani, Shakeel Ahmad, and Syed Murtaza, deposed in one voice that the respondent's two sons were unemployed. Moreover, appellant No. 1 himself admitted that Manzoor Ahmad was his partner and that he was engaged in another business as well, which necessitated entering into the partnership.

23. Pertinently, the suit was filed in 1992, and the plaintiff's personal necessity must be adjudged as on the date of its institution. Moreover, no subsequent events have been pleaded or proved in accordance with law to establish the eclipse of such personal necessity. Both the courts

have rightly determined the issue of personal necessity, comparative advantage/disadvantages and partial eviction. Notably, while admitting the present appeal in the year 2004, this Court confined its consideration to the aforementioned substantial questions of law and found no substantial question of law to arise with regard to the issue of personal necessity. Even at the stage of final adjudication, this Court finds that no substantial question of law arises on that count. It would be appropriate to take note of the observations made by the Hon'ble Apex Court in "**Devendra Nath Mishra & Ors. Vs. Ravi Bajpai", 2026 LiveLaw (SC) 1134,** which are extracted as under:

> "9. This Court has considered the statutory provision of Section 21 of the Act, 1972 and the principles laid down by this Court in Ravi Khandelwal vs. Taluka Stores.
> Para 16 of the aforesaid judgment reads as under:
> "16. **When we turn to the facts of the present case, what stares us in the face is that while the suit may have been defectively instituted within five years of the tenancy, more than 38 years have now elapsed since the suit was filed. We opine that this passage of time beyond the period of five years would wash away the initial impediment against the suit. We cannot lose sight of the fact that we stare at a factual scenario where the vagaries of litigation have prolonged the suit proceedings for a period of 38 years. The plea of the respondent is that the appellant should be asked to file a fresh suit – perhaps their confidence stems from the fact that if the tenant has already been able to prolong the proceedings for 38 years, a similar scenario would again follow. We are not able to countenance such an interpretation which would defeat the very purpose of creating an initial restriction on the filing of the suit. To say that the landlord should now, once again, restart the proceedings because the initial period of five years had not elapsed, even as now 38 years have elapsed, would be a travesty of justice.**"
>
> 10. In the said precedent, this Court held that **where litigation has dragged on for several decades (38 years in that case), the passage of time washes away initial technical impediments, and prolonged litigation cannot defeat the legitimate need of the landlord."**

24. However, the outcome of these substantial questions of law would not have any effect on the relief of payment of arrears of rent granted by

the trial court and upheld by the appellate court in favour of the respondent. Respondent in the suit claimed arrears of rent with effect from November 1991 to June 1992 and the positive stand of the appellants in their written statement was that they personally went to respondent for payment of rent, but he refused to accept the same. There is absolutely no evidence on the part of appellants that they had paid the rent to respondent or deposited the same with Rent Controller in accordance with provisions contained in J&K House and Shops Rent Contact Act.

25. In view of the above discussions, and analysis, this Court is of the considered view that while the learned trial court erred in passing the decree of ejectment on the ground of default in payment of rent, the trial court rightly decreed the suit for eviction on the grounds of subletting and personal necessity, as well as for the recovery of arrears of rent. The appellate court too committed similar error, but it would not have any bearing on the final outcome of the suit/appeal. The appellant No.1 is directed to clear the arrears of rent within 30 days from today and six months' time is granted to appellants to vacate the shop in question. With the aforesaid observations, the appeal is **dismissed.**

26. Decree sheet be prepared accordingly. No order as to costs.

27. Record of the trial court as well as appellate court be sent back.

(RAJNESH OSWAL)
Judge

Jammu:
27.11.2026
Karam Chand

Whether the order is reportable: Yes/No

KARAM CHAND
2026.11.27 18:32
I attest to the accuracy and
integrity of this document