

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

Reserved on: 04.11.2025

Pronounced on: 08.11.2025

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

CM No.5665/2025

in

RP No.74/2025

c/w

RP No.7/2025

ZAHIDA SHAH & ANR.

DR. SHAM-SU-NISA & OTHERS

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

*Through: - Mr. Aswad Attar Advocate, with
Mr. Sheikh Anan Hussain, Advocate.*

Vs.

BILAL AHMAD DAR & ORS.

...RESPONDENT(S)

*Through: - Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Suhail Mehraj, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

CM No5665/2025

1. Heard and considered.
2. This is an application filed by review petitioner in RP No.74/2025 2025, namely, Zahida Shah and Athar Shabir Shah, seeking condonation of delay in filling the review

petition. In the application, it has been submitted that the limitation period for filing the review petition had expired on 02.02.2025, but the same came to be filed after a delay of 200 days. The reason assigned for delay in filing the review petition, as projected in the application, is that the review petitioners had preferred Special Leave Petition No.14302 of 2025 against the order sought to be reviewed before the Supreme Court, which she was actively pursuing in good faith. It has been submitted that during the pendency of Special Leave Petition, it came to the knowledge of the review petitioner that the applicants in MP No.5 of 2018 had already filed a review petition before this Court, challenging the very same order dated 3rd of January, 2025, therefore, the review petitioners decided to withdraw the Special Leave Petition and to file a review petition before this Court. It has been submitted that the Special Leave Petition has been dismissed as withdrawn in terms of order dated 14.08.2025, whereafter the present review petition came to be filed on 22.08.2025.

3. In view of the aforesaid reasons assigned by the review petitioners, the delay in filing the review petition is condoned. The application stands disposed of.

RP Nos.74/2025 and 7/2025;

4. RP Nos.74/2025 has been filed by Zahida Shah and Athar Shabir Shah seeking review of order dated 03.01.2025

passed by this Court, whereby three applications, one filed by Zahida Shah and Athar Shabir Shah (MP No.1/2016), seeking recall of compromise agreement dated 15.12.2015 and consequent order dated 15.12.2025 passed on the basis of the said compromise, another application filed by the same petitioners seeking review of order dated 24.08.2018 and third application (MP No.5/2018) filed by Mrs. Sham-su-nisa, Dr. Tasnim Yaqoob, Tanveer Ahmad Dhar and Naseer Ahmad Dhar seeking their impleadment as parties to the proceedings, were disposed of by extending the following directions:

- I) *An enquiry in the light of the observations made hereinbefore shall be conducted by the learned Additional District Judge, Srinagar, before whom the suit for eviction filed by the petitioners and respondent No.14 against respondent No.1 is pending.*
- II) *The learned Additional District Judge, Srinagar, shall give opportunity to the petitioners as well as to respondent No.1 and respondent No.14 herein to produce oral/documentary evidence in support of their respective claims/versions and to cross-examine each other's witnesses, whereafter a report shall be prepared by the learned Additional District Judge and the same shall be forwarded to this Court in a sealed cover.*
- III) *The Registrar Judicial shall forward attested Xerox copy of the entire record to the learned Additional District Judge, Srinagar, for facilitating the holding of enquiry.*
- IV) *Till such time the report of enquiry is received and considered by this court, the parties shall maintain status quo with regard to the possession and ownership of the building in question and the compromise agreement dated 15.12.2015 shall not be given effect to.*

- V) *In view of the direction for enquiry as per Para (I) as above, the review petition filed by the petitioners shall stand disposed of as their grievance for opportunity to cross-examine the advocates, stands addressed.*
- VI) *The application of applicants Ms. Sham-su-nisa, Dr. Tasneem Yaqoob, Tanveer Ahmad Dhar and Naseer Ahmad Dhar, is dismissed with liberty to them to take recourse to appropriate legal remedy.*
- VII) *Upon receipt of the report of enquiry, the case shall be listed before the Court.*

5. Review Petition No.7/2025 seeking review of the same very order has been filed by Dr. Tasnim Yaqoob, Tanveer Ahmad Dhar and Naseer Ahmad Dhar, the applicants in MP No.5/2018. Since both these review petitions arise out of the same order, therefore, it would be apt to decide the same together.

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

7. At the very outset, Mr. Jahangir Iqbal Ganai, learned Senior Counsel, appearing for contesting respondent No.1, has raised a preliminary objection with regard to maintainability of the review petition filed by Mrs. Zahida Shah and Athar Shabir Shah. He has contended that the said review petitioners had challenged the order under review before the Supreme Court by filing a Special Leave Petition, which stands dismissed as withdrawn as per her own admission, without reserving any leave or liberty to file a review petition before this Court, as such the review petition

is not maintainable. He has further contended that the review petitioners, in their Special Leave Petition, raised identical grounds for assailing the order under review and when they failed to convince the Supreme Court even for issuance of a notice in the Special Leave Petition, they conveniently chose to withdraw the Special Leave Petition and now they are trying to have another bite at the cherry which is not permissible in law.

8. Learned Senior Counsel for Respondent No.1 may or may not be factually correct in his submission that the review petitioners, after having failed to persuade the Bench of the Supreme Court to issue even a notice in the Special Leave Petition, had chosen to withdraw the same but mere dismissal of Special Leave Petition without expression of opinion by the Supreme Court on merits and without granting leave to file the appeal may not foreclose the right of the review petitioners to file review petition before this Court. The legal position in this regard has been enunciated by the Supreme Court in the case of **Kunhayammed v. State of Kerala**, (2000) 6 SCC 359. Para (27) of the said judgment is relevant to the context and the same is reproduced as under:

“27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-

speaking order, i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the apex court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.”

9. In the later judgment delivered in the case of **V. Senthur and another vs. M. Vijay Kumar and another**, (2022)17

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SCC 568, the Supreme Court has, after placing reliance upon the ratio laid down by it in **Kunhayammed's** case (supra), held that if the order of dismissal of SLPs is supported by reasons, then also the doctrine of merger would not be attracted. The Court further observed that the reasons stated by the court would attract applicability of Article 141 of the Constitution of India, if there is a law declared by the Supreme Court which obviously would be binding on all the courts and the tribunals in India and certainly, the parties thereto.

10. From the foregoing analysis of legal position, it is clear that an order dismissing an SLP would not attract the doctrine of merger though the reasons stated by the Supreme Court would certainly attract applicability of Article 141 of the Constitution as it would amount to declaration of law by the Supreme Court. However, mere dismissal of an SLP, with or without reasons, would not attract the doctrine of merger.

11. In the present case, admittedly, leave was not granted to the review petitioners to file appeal against the order sought to be reviewed before the Supreme Court and even if it is assumed that the Supreme Court was not inclined to entertain the Special Leave Petition of the review petitioners, still then, because no leave was granted to the review

petitioners to file appeal against the order under review and no reasons have been assigned by the Supreme Court for declining to grant leave to them, the same would not attract the doctrine of merger so as to foreclose the right of the review petitioners to file review petition against order dated 03.10.2025. The contention of learned Senior Counsel appearing for contesting respondent No.1 is, therefore, misconceived.

12. That take us to the merits of the review petitions. The first ground that has been urged by learned counsel appearing for review petitioners Zahida Shah and Athar Shabir Shah is that while passing the order under review this Court has not determined the core issue whether respondent No.14 actually possessed a valid attorney or authority in his favour on behalf of the review petitioners.

13. In the above context, it is to be noted that while passing the order under review, this Court has not returned any finding on the issue and the said issue has been left to be determined by the learned Additional District Judge, Srinagar, who, as per directions quoted in paras (I) and (II) of the order under review, has been asked to hold an enquiry in this regard after giving an opportunity of hearing as well as producing evidence to the parties concerned. Since no finding

has been returned by this Court on the issue raised by the review petitioners, as such, there is no question of there being an error apparent on the face of the record, as has been claimed by the review petitioners.

14. The second ground that has been urged by the aforementioned two review petitioners is that contesting respondent No.1 was not a party to the revision petition filed against order dated 17.08.2002 passed by the Chief Judicial Magistrate, Srinagar. It has been contended that the observation of this Court recorded in the order under review that respondent No.1 was a party to the revision petition arising out of order dated 17.08.2002 passed by the CJM is erroneous constituting an error apparent on the face of record, as such, the observation of this Court that respondent No.1 is not a stranger to the dispute, is wholly perverse. To support this contention, the review petitioners have placed on record copy of the revision petition arising out of order dated 17.08.2002 passed by the CJM which is stated to be pending before the Court of 3rd Additional Sessions Judge, Srinagar.

15. The contention raised by the review petitioners, when considered in the light of the material on record, is factually incorrect. The review petitioners have placed on record copy of the revision petition that was filed by their predecessor-in-

interest at the initial stage and at that time, respondent No.1 was not a party to the revision petition and even the review petitioners were also not parties to the revision petition at that time. Ironically, the review petitioners have placed on record a copy of the application filed by them before the Court of learned 3rd Additional Sessions Judge, Srinagar, in the revision petition arising out of the order passed by the Chief Judicial Magistrate, Srinagar, which came to be disposed of in terms of order dated 29.12.2015. Vide the said application, the review petitioners have sought recall of order dated 29.12.2015 and in the updated memo of parties, the name of respondent No.1 is clearly mentioned. Therefore, the stand of the review petitioners that respondent No.1 is not a party to the revision petition before the learned 3rd Additional Sessions Judge, Srinagar, is belied from their own documents.

16. Besides this, there is no dispute to the fact that respondent No.1 has been impleaded as defendant No.1 in the suit for eviction relating to the property which is subject matter of case. The said suit is presently pending before the Court of learned Additional District Judge, Srinagar. It is on the basis of these documents that this Court had concluded that respondent No.1 is not a stranger to the lis and that the compromise sought to be recalled not only covers the subject matter of revision petition No.43 of 1998 but it also pertains

to the subject matter of lis in other cases going on between the parties. Thus, there is no error apparent on the face of the record that would persuade this Court to review its order dated 03.01.2025.

17. That takes us to the review petition filed on behalf of Dr. Tasnim Yaqoob, Tanveer Ahmad Dhar and Naseer Ahmad Dhar, the applicants in MP No.05/2018 seeking their impleadment as party in MP No.01/2016 filed by the review petitions in RP No.74/2025. Their application came to be dismissed by this Court in terms of the order under review by observing that compromise agreement dated 15.12.2015 is not binding upon them nor will it affect their rights in respect of the building in question. They have been given liberty to take recourse to appropriate proceedings in an independent manner by filing a suit for declaration of their rights or for eviction of respondent No.1 from the portion of building which, according to them, belongs to them.

18. The ground urged for seeking review of order dated 03.01.2025, as has been projected by the review petitioner in RP No.7/2025, is that this Court, while declining to apply the ratio laid down by the Supreme Court in **Triloki Nath Singh vs. Anirudh Singh**, 2020 (4) Civil Court Cases 0069, has erroneously observed that their ownership of part of the

building, which is subject matter of the compromise, has not been admitted by any of the parties and that the same is required to be established by the review petitioner and his co-applicants in a separate proceeding. It has been contended that in the synopsis filed by the review petitioners in RP No.74/2025 as also by respondent No.14, they have admitted that the review petitioners in RP No.7/2025, the applicants in MP No.1/2016, are co-owners of the building.

19. In the above context it is to be noted that in their application bearing MP No.1/2016 seeking recall of compromise agreement dated 15.12.2015 and the consequent order passed by this Court, Mrs. Zahida Shah, Athar Shabir Shah and Owais Shabir Shah, have stated that the building which is subject matter of the compromise belongs to them.

It would be apt to quote para (2) of the said application:

“2. The petitioners and the respondents have been litigating since long, over the possession of a shop marked as B/2 in the site plan appended with this petition as Annexure A, in a building known as "HARKER BUILDING", situated at residency road Srinagar, belonging to the petitioners and Respondent no. 14 Owais Shabir Shah. The said building actually belonged to Late Shabir Ahmad Shah, father of Owais Shabir, Athar Shabir and husband of Zahida Shah upon whose death his legal representatives were arrayed as party. A decree of ejectment came to be passed against the tenants of the said shop

here represented by Respondents 2 to 13, on 26-13-84. First appeal was dismissed on 23-05-1998. A revision, Annexure B was filed by the ejected tenants, civil revision 43 of 1998 and the same was settled by impugned Compromise Agreement and consequently by order of 15-12-2015.”

20. Even in the suit for eviction filed by Mrs. Zahid Shah, Athar Shabir Shah and Owais Shabir Shah before the learned District Judge, Srinagar, it has been categorically pleaded by the plaintiffs therein that they are owners of the building in question. In this regard, para (1) of the plaint is quoted below:

“1. That the plaintiffs are the owners of a building situated at Residency Road Srinagar, first and attic floors whereof was rented out to Pt. Arjun Nath for running of a hotel business under the name and style of M/S Metro Polis Hotel (hereinafter to be referred to as the suit property). The rent was fixed at Rs 140/- per month and in pursuance of the lease deed, the lease started from 1st of September 1955 for a period of one year. The space was rented out to Pt. Arjun Nath in the year 1955 by the erstwhile owners of the building. The suit property is described and delineated in the site plan which is annexed herewith S1.”

21. Application bearing MP No.1/2016 is supported by the affidavits of the applicants therein and the pleadings filed before the learned Additional District Judge, Srinagar, have been verified by them. In the face of this position, stand of Mrs. Zahida Shah, Athar Shabir Shah and Owais Shabir Shah, in the written arguments or synopsis filed by them

before this Court during the course of arguments would not amount to admission on their part with regard to co-ownership of the building in question by the review petitioner in RP No.7/2025. Therefore, said review petitioners have to establish his claim and right with respect to the portion of the building in question by way of independent proceedings and, thus, the ratio laid down in **Triloki Nath Singh's** case (supra) would not apply to their case.

22. In any case, this Court has not foreclosed the right or remedy available to the review petitioners as in para (33) of the order under review, it has been made clear that the review petitioners are at liberty to take recourse to appropriate proceedings in an independent manner by filing a suit for declaration of their rights or for eviction of respondent No.1 from the portion of the building, which, according to them, belongs to them. Filing of review petition by the review petitioners is, therefore, wholly misconceived.

23. In view of the foregoing discussion, it is clear that the review petitioners have not been able to point out any error, much less an error apparent on the face of the record, in the order sought to be reviewed. What the review petitioners have, by filing the present review petitions, tried to do is to re-open the case by projecting the contentions which have already

been considered by this Court in the order sought to be reviewed. The same is impermissible in law.

24. For the foregoing reasons, I do not find any ground to review order dated 03.01.2025 passed by this Court. Both the review petitions are bereft of any merit. The same are dismissed accordingly.

(SANJAY DHAR)
JUDGE

Srinagar
08.11.2025
“Bhat Altaf”

Whether the Judgment is speaking:	Yes/No
Whether the judgment is reportable:	Yes/No