

**HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR**

(Through Video Conference)

Reserved on      19.10.2020  
Pronounced on    27.11.2020

**(i) CM(M) No. 62/2020 (O&M)**

Bashir Ahmad Najar ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors. .....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(ii) CM(M) No. 57/2020 (O&M)**

Mushtaq Ahmad Gabri (Malla) and ...Petitioner/Applicant(s)  
another

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors. .....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(iii) CM(M) No. 63/2020 (O&M)**

Ayaz Yaqoob Darvesh ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors. .....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(iv) CM(M) No. 64/2020 (O&M)**

Arshid Ahmad Sofi

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate**(v) CM(M) No. 65/2020 (O&M)**

Sehar Imran

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate**(vi) CM(M) No. 66/2020 (O&M)**

Durdana Qadri

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate**(vii) CM(M) No. 67/2020 (O&M)**

Fayaz Ahmad Malik

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(viii) CM(M) No. 68/2020 (O&M)**

Ghulam Mohammad Patloo

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate**(ix) CM(M) No. 69/2020(O&M)**

Jameed Ahmad Lone

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate**(x) CM(M) No. 70/2020(O&M)**

Mohammad Afzal Nekro and others

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate**(xi) CM(M) No. 71/2020(O&M)**

Tabinda

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xii) CM(M) No. 72/2020(O&M)**

Tahir Ahmad Lone ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate  
V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xiii) CM(M) No. 73/2020(O&M)**

Ubaid Bashir Wani and another ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate  
V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xiv) CM(M) No. 74/2020(O&M)**

Tariq Ahmad Lilee ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate  
V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xv) CM(M) No. 75/2020(O&M)**

Syed Ahmad ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate  
V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xvi) CM(M) No. 77/2020(O&M)**

Adnan Parvez Mir and another ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xvii) CM(M) No. 78/2020(O&M)**

Samir Ahmad Shah ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xviii) CM(M) No. 79/2020(O&M)**

Mohammad Shafi Mir ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xix) CM(M) No. 80/2020(O&M)**

Baba Saqib ...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate

V/s

Abdul Rashid Wani and ors. ....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate

**(xx) CM(M) No. 81/2020(O&M)**

Atif Sahto

...Petitioner/Applicant(s)

Through :- Mr. Showkat Ali Khan, Advocate  
V/s

Abdul Rashid Wani and ors.

.....Respondent (s)

Through :- Mr. Jehangir Iqbal Ganie, Sr. Advocate with  
Ms. Humaira Shafi, Advocate**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**  
*(through Video Conference from residence in Jammu)***JUDGMENT**

1. Both the counsels have stated that in all these petitions the common issues have been raised by the petitioners and the orders impugned in all these petitions are identical. In all the suits, the plaintiffs are same but the tenants are different and the suit properties in all the suits are located in one building, only the rent and the period of commencement of tenancy are different. All the suits have been filed on the same grounds and the reliefs sought are also identical. The suits have been objected by all the tenants on similar grounds. As the order impugned is common in all the petitions and the facts necessary for the disposal are also common, so this Court deems it proper to dispose of all the petitions through common judgment.

2. Through the medium of these petitions, the petitioners have sought to invoke the supervisory jurisdiction of this Court by throwing a challenge and praying for the setting aside the order dated 18.08.2020 (hereinafter to be referred to as order impugned) passed by the learned Principal District Judge, Srinagar (for short the trial court).

3. The facts necessary for disposal of the present petitions are that a civil suit for possession/eviction and recovery of unpaid rent till 31.12.2018 i.e. the date of the determination of the tenancy was filed by the respondents and in the said suit, recovery of arrears of rent from 01.02.2018 till 31.12.2018 was also sought. The respondents herein filed the said suit on the ground that the suit property was leased out to the petitioners initially for a period of eleven months with 5% annual increase in the rent as per the said agreement. It is further pleaded that the petitioners paid the enhanced rent as per the agreement to the respondents till 31.01.2018 and thereafter did not pay any rent to the respondents despite notice. The petitioners filed their written statements in which they did not deny the execution of rent agreement. However, a plea was taken by the petitioners that there was dispute between the parties and it was decided by the parties that the respondents would reduce the rent by 25 per cent on the basic rent with effect from February, 2018 i.e. the date the respondents stopped taking the rent from the petitioners. It was further stated that the petitioners have paid the rent till May, 2019 to the respondents after deducting the amount, that was deposited by them with the Rent Controller, Srinagar. During the pendency of the suit vide order dated 02.11.2019, with the consent of the parties, it was ordered that the petitioners shall deposit the agreed amount of rent within two weeks and it was further ordered that the depositing of the agreed rent shall not cause any prejudice to the rights of the parties. Thereafter, an application was filed by the respondents for directing the petitioners to deposit the rent as per the rent agreement and not otherwise. The said application was responded to by the petitioners by stating that admitted rent would mean the rent that the petitioners had accepted as outstanding rent only i.e. from the month of June, 2019 onwards @ less by 25% from the

basic rent. The learned trial court vide order dated 18.08.2020 clarified that the agreed rent in the instant case would *prima facie* mean and include the rent governed by the agreement i.e. admitted by the petitioners in their written statements subject of course to the plea of oral amicable settlement, the heavy burden of proof of which is upon the petitioners. By virtue of this order, the petitioners were directed to deposit the outstanding rent till date in terms of rent agreement entered into by the parties along with 5 per cent increase and in order to protect the interests of the petitioners, it was ordered that if the petitioners succeed in proving the reduction of the rent, the respondents shall reimburse the same to the petitioners and further respondents were directed to file an undertaking within a week's time and after the furnishing of undertaking the petitioners were ordered to deposit the rent with the trial court. The petitioners have impugned order dated 18.08.2020 and have raised the following issues:

Issue No.1

Whether admitted/agreed rent would mean the rent agreed to be outstanding in written statement or the rent as prayed for by the plaintiff in his plaint?

Issue No. 2

Whether the court in suit for recovery of arrears of rent can direct payment of whole of the outstanding rent while passing an order in interim application more particularly when issue to that extent has been framed?

4. The respondents have filed their response in which they have raised the preliminary objection with regard to maintainability of the present petition under Article 227 of the Constitution of India and it is further stated that the agreed rent would never mean 75 per cent of the basic rent as there was no such



settlement between the parties with regard to the reduction of the 25 per cent of the monthly rent.

5. Mr. Showkat Ali Khan, learned counsel appearing for the petitioners has vehemently argued that the agreed rent would mean the rent as pleaded by them in the written statements that is 75 per cent of the basic rent. He further argued that the trial court has travelled beyond its jurisdiction and has granted the relief during the pendency of the suit which could not have been granted particularly when there was an issue with regard to the entitlement of the rent.

6. Mr. Jehangir Iqbal Ganie, learned senior counsel appearing for the respondents has vehemently argued that the instant petition is not maintainable and has placed reliance of the judgment of the Apex Court in **Shalini Shyam Shetty v. Rajendra Shankar Patil**, reported in (2010) 8 SCC 329. He has also argued that the rent would mean the rent as mentioned in the rent agreement with clause of enhancement as well. He further submits that the trial court has passed the order well within the parameters of law.

7. Heard and considered the rival contentions of the parties and perused the record meticulously.

8. The scope of interference under Article 227 of the Constitution of India is limited. The Apex Court has laid down the parameters for exercising the powers under Article 227 of the Constitution of India in **Shalini Shyam Shetty's case (supra)** and the relevant paras are reproduced as under:

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a).....

(b) .....

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) .....

(e) .....

(f) .....

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) .....

(j) .....

(k) .....

(l) .....

(m) .....

(n) .....

(o) ....."

9. Thus, it is evident from above that this Court cannot act as a court of Appeal or Revision while exercising powers under Article 227 of the Constitution of India and the interference of this Court is not warranted to merely correct the errors of law as well as of facts merely because view other than taken by a

subordinate court or Tribunal is possible. The jurisdiction as conferred by Article 227 of the Constitution of India upon the High Court is to ensure that the Courts or Tribunals subordinate to it, remain within the bounds their authority so that they may not travel beyond the jurisdiction vested in it.

10. Now it is to be seen as to whether the contentions raised by the petitioners fall within the parameters of the law as laid down by the Apex Court and mentioned above, so as to warrant interference by this Court under article 227 of Constitution of India.

Issue No: 1.

Whether admitted/agreed rent would mean the rent agreed to be outstanding in written statement or the rent as prayed for by the plaintiff in his plaint?

11. From the perusal of written statement it is evident and is rightly observed by the learned trial court that the execution of the rent agreement has not been denied by the petitioners meaning thereby that the parties are bound by the terms and conditions of the agreement. A further plea has been taken in the written statements that there was dispute between the parties and as per the subsequent settlement between the parties, the parties had agreed for reduction of monthly rent by 25 per cent of the basic rent and the 75 per cent of the basic monthly rent shall be payable only. The perusal of issues framed by the trial court reveals that issue has been framed with regard to this fact and the onus to prove this issue has been placed upon the petitioners. More so, the learned trial court has protected the interest of the petitioners by specifically providing that in the event they successfully proved the said issue, the respondents would reimburse of the whole of the amount so there is no illegality in the order passed by the learned

trial court with regard to the payment of the agreed rent is concerned. Otherwise also, this contention raised by the petitioners does not fall within the purview of the parameters laid down by the Apex Court in case (supra), as such, this deserves to be rejected.

Issue No: 2.

Whether the court in suit for recovery of arrears of rent can direct payment of whole of the outstanding rent while passing an order in interim application more particularly when issue to that extent has been framed?

12. The perusal of the suit reveals that the relief of recovery of arrears of rent from 01.02.2018 till 31.12.2018 has been sought by the respondents, to which there is clear stand of the petitioners that they have paid the rent till May 2019 and issues too in this regard have been framed by the learned trial court. The trial court vide order dated 02.11.2019 with the consent of both the parties directed the respondents to pay the agreed rent. Both the learned counsels are interpreting the term “outstanding rent” used by the trial court in the order impugned, in a manner so as to include the arrears of rent those are the subject matter of the suit as well as the arrears of rent accrued during the pendency of the suit. The learned trial court could have avoided the present controversy by clearly providing in the order impugned the period for which the rent has been ordered to be paid. This Court under Article 227 of the Constitution of India cannot furnish any meaning to the order passed by the learned trial court, particularly when period for which the rent has been ordered to be paid has not been specified by the trial court in the order impugned. It is for the parties to approach the trial court to get clarification with regard to the period for which the rent has been

ordered to be paid and then only either of them can throw any challenge to the said finding, if they feel aggrieved of the same. The petitioners have no cause to be aggrieved of, in absence of any finding with regard to the period for which the rent has been ordered to be paid as such the order impugned does not call for any interference at this stage on this ground as well.

13. In view of above, all these petitions are dismissed. However, the parties are left free to approach the trial court for clarification with regard to the period for which the rent has been ordered to be paid.

14. Copy of this judgment be placed on the record of each file.

**(RAJNESH OSWAL)**  
**JUDGE**

JAMMU:  
27.11.2020  
Rakesh

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No

