

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

WP (C) No. 2545/2024

Reserved on: 18.02.2026
Pronounced on: 04.03.2026
Uploaded on: 04.03.2026
Whether the operative part or full
judgment is pronounced: FULL

Yasmeen Jan Wani Age: 46
W/o Nissar Jan Wani
R/o Sanat Nagar Srinagar 190014;
M. No: C/o 9797711778

...Petitioner(s)/Appellant(s)

Vs.

1. Secretary, Ministry of Finance
Govt of India, Jeevan Deep Building
Sansad Marg New Delhi 110001
secyfs@nic.in Ph: 011-23340222
2. Chief General Manager
Reserve Bank of India.
Central Office Building
Shahid Bhagat Singh Road
Mumbai-400001
3. Banking Ombudsman
C/o Reserve Bank of India,
Rail Head Complex, Jammu-180012;
Tel: 019-2477617
Email: bojammu@rbi.org.in
4. General Manager, Axis Bank Ltd
Sahara City Center, IG Road
Opp Exhibition Ground Near
Jahangir Chowk Srinagar J&K
5. Branch Manager, Axis Bank,
Khasra No: 1287, Brari-Nambal,
Munawarabad Chowk, Srinagar, 190010,
M.No. 7006275889.

...Respondent(s)

WP (C) No. 2547/2024

CCP (D) Nos. 51/2025 & 52/2025

Mohammad Hatim, Age 47
S/o Nissar Jan Wani
R/o Sanat Nagar, Srinagar 190014
M. No. C/o 9797711778

...Petitioner(s)/Appellant(s)

Vs.

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Khasra No: 1287, Brari-Nambal,
Munawarabad Chowk, Srinagar, 190010,
M.No. 7006275889.

Through: Mr. Arshid Andrabi, Adv. for petitioners. ...For petitioner(s)

Through: Mr Tahir Majid Shamsi, DSGI with
Ms. Rehana Qayoom, Adv.
Mr. Nitin Parihar, Adv.
Mr. Ishrat Maqbool Bhat, Adv. ...For respondent(s)

CORAM:

HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

J U D G M E N T

Shahzad Azeem-J:

1. In these clubbed writ petitions, the auction letters issued by the respondent-Bank for auctioning the pledged gold ornaments form the subject matter of challenge, therefore, we propose to dispose of these writ petitions by a common judgment.

2. At the outset, we place on record that the averments in the writ petitions being vague, confusing and unclear, therefore, a concise and perceivable narration of facts is set out below without strictly going by the pleadings.

3. The petitioners have availed the gold loan facility floated by the respondent Nos. 4 and 5-Axis Bank, and as a security have pledged the gold ornaments. At this stage, it is noteworthy that in WP (C) No. 2547/2024, the petitioner-Mohammad Hatim, is said to have availed gold loan facility to the tune of Rs. 4,79,500/- whereas, in WP (C) No. 2545/2024 the petitioner-Yasmeen Jan Wani, has availed loan facility to the tune of 18,52,300/- respectively.

4. It appears that the loan accounts of the petitioners have turned irregular, accordingly, declared Non-Performing Asset (NPA), and as a corollary thereof, the respondent-Bank has issued auction letters for auctioning the pledged gold ornaments kept as securities while availing the loan facility.

5. The grievance of the petitioners as discernible from the pleadings is that the respondent-Bank has initiated the process of auctioning the pledged gold ornaments without following the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act], besides, the respondent-Bank has proceeded without taking into consideration the appropriate scheme, including One Time Settlement schemes, etc.

6. Further, the case set up by the petitioners is that they were constrained to institute civil suits which are pending before the Court of 3rd Additional Munsiff, Srinagar. The petitioners have also made reference to WP(C) No. 1185/2024 titled **Riyaz Ahmad Wani vs. J&K Bank Ltd. & Anr.** and WP(C) No. 2429/2023 titled **M/s Hotel Alpine Ridge & Ors. vs. Union of India & Ors.** and went onto submit that though the Court has granted respite, but later on their petitions were dismissed.

7. From the averments made in the writ petitions, it is seen that the petitioners have filed these petitions on the assumption that as if the bank has initiated the auction process in respect of pledged gold ornaments under

the SARFAESI Act, which is perhaps why they have made the reference of the judgment passed by this Court in, **M/s Hotel Alpine Ridge & Ors. vs. Union of India and Ors**; wherein the Court held in favour of maintainability of a writ petition under Article 226 of the Constitution of India in respect of action of a bank under the provisions of SARFAESI Act, by holding that the alternate statutory remedy provided under Section 17 of the SARFAESI Act via the Debt Recovery Tribunal at Chandigarh does not constitute an efficacious and accessible remedy for litigants residing in the Union Territories of Jammu and Kashmir and Ladakh.

8. Undisputedly, the petitioners have availed the loan facility from the respondent-Bank and, as a security have pledged gold ornaments. If this be the position, then the action of the bank to auction the pledged gold ornaments does not fall under the provisions of SARFAESI Act, in view of the bar contained under Section 31(b), that unequivocally bars the applicability of the provisions of the SARFAESI Act, *inter alia* in so far a pledge of movables within the meaning of Section 172 of the Indian Contract Act, 1872 is concerned.

9. A pledge under Section 172 of the Indian Contract Act is the bailment of goods, as security for payment of a debt and likewise in so far as the case on hand is concerned, the pledge of the gold ornaments/jewellery by the petitioners as security for re-payment of loan amount.

10. Under Chapter III of the SARFAESI Act, any security interest created in favor of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of the SARFAESI Act.

11. At the same time, the word “**Security Interest**” is defined under Section 2 (1) (zf) of the SARFAESI Act, which means right, title, or interest of any kind, other than those specified in Section 31, upon property created in favour of any secured creditor and includes—

(i)

(ii).....

12. Therefore, under the provisions of the SARFAESI Act, the secured creditor can enforce the security interest except in respect of the cases as are

specified in Section 31, and Section 31(b) excludes the applicability of the provisions of the SARFAESI Act insofar as pledge of movables within the meaning of Section 172 of the Indian Contract Act is concerned. Accordingly, in view of the exclusion clause contained under Section 31(b) of the SARFAESI Act, the writ petitions filed against the action of the bank in issuing the auction letter for auctioning the pledged gold ornaments is not maintainable.

13. Notwithstanding the bar contained under Section 31(b) of the SARFAESI Act, the petitioners are on admission that they have already filed civil suits which are pending disposal before the Court of learned 3rd Additional Munsiff, Srinagar, in respect of same subject matters.

14. Let us assume for a moment that petitioners have filed the instant writ petitions under the bonafide belief, as if the auction letters had been issued by the respondent-Bank under the provisions of the SARFAESI Act, and thus they have invoked the extraordinary writ jurisdiction of the High Court, but again question arises as to whether once they have chosen to file the civil suits in respect of same subject matter, whether writ petition in such scenario is maintainable. In this regard notably, under the Doctrine of Election, once the petitioners have chosen a civil remedy before the civil court, they cannot fall back and resort to the writ jurisdiction of this Court. Therefore, on this count also, the writ petitions are not maintainable.

15. In the light of the foregoing reasons, both the writ petitions are held to be not maintainable and are, therefore, dismissed along-with pending contempt petitions.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR:
04.03.2026
Altaf

Whether approved for reporting? Yes