



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

Reserved on: 24.11.2025

Pronounced on: 04.12.2025

Uploaded on: 04.12.2025

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

CJ Court

Ref(C) No. 01/2025

Nisar Ahmad Kakapor and Anr.

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

Through: - Mr. Mohammad Ibrahim Mehraj, Adv.

Vs.

Aijaz Ahmad Kadoo& Anr.

...RESPONDENT(S)

Through: - None

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

JUDGMENT

OSWAL 'J'

1. This reference has been made by the Court of learned Civil Judge Senior Division (Sub Judge) Bijbehara (for short 'the trial court') in a suit titled, Nisar Ahmad Kakapora and another vs. Aijaz Ahmad Kadoo.
2. In the reference, it is stated that in a pending suit for ejectment, recovery of possession, arrears of rent and mesne profits between petitioners/plaintiffs and his tenant (defendants), an issue in respect of the maintainability of



the suit before the Civil Court under the Jammu and Kashmir Residential and Commercial Tenancy Act, 2012 was framed and decided in favour of the petitioners/plaintiffs and against the respondents/defendants vide order dated 20.02.2023. The reason that prompted the trial court to make reference is an order dated 16.05.2024 passed in Civil Revision No. 04/2024 titled, **Manoj Kumar vs. Dara Singh**, whereby the learned Single Judge, by referring to the position of law post J&K Reorganization Act, 2019, has observed that in Table 4 of Schedule 5th of the J&K Reorganization Act 2019, there is no mention of Jammu and Kashmir Houses and Shops Rent Control Act, meaning thereby that the said Act has not been continued in terms of Section 95 (2) of Act of 2019, and as such, has directed the listing of the said case along with PIL No. 22/2012, for clarification of the applicability or otherwise of the provisions of the J&K Houses and Shops Rent Control Act to proceedings filed after coming into force of the Jammu and Kashmir Reorganization Act 2019.

3. Accordingly, by citing the order passed by the learned Single Judge in Civil Revision No. 04/2024, the present reference has been made.
4. Despite service of notice, none has appeared for the respondents.



5. Mr. Mohd Ibrahim Mehraj, learned counsel for the petitioners/plaintiffs has argued that the reference is incompetent, as once an issue stands already decided by the trial court, it is not open for the trial court to refer the same issue to this Court, more particularly when the case is pending for final arguments.
6. Heard and perused the record.
7. In the reference, it has been mentioned that an issue in respect of the maintainability of the suit before a Civil Court under the Jammu and Kashmir Residential and Commercial Tenancy Act, 2012 was framed, and came to be decided by the learned trial court vide order dated 20.02.2023 in favour of the petitioners/plaintiffs and against the defendants/respondents.
8. We find merit in the submissions made by the learned counsel for the petitioners that once an issue has been finally decided, the trial court lacks the jurisdiction to re-open or revisit the same. If the respondents were aggrieved by the order dated 20.02.2023, they were obligated to challenge that order through the remedy available under law. The order dated 20.02.2023 has attained finality before the learned trial court. A litigant who has not availed the appropriate legal remedy against an order cannot be permitted to re-agitate the same issue



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before the same court at any subsequent stage of the proceedings.

9. In view of the above, we are of the considered view that the present reference is incompetent. The same is answered accordingly. Needless to say that any observation made by this Court hereinabove is only for the purpose of answering the reference, as we have not examined the validity of the order dated 20.02.2023. The issue sought to be clarified in the aforesaid Civil Revision shall be considered and decided exclusively in that matter.
10. Copy of this order be sent to the trial court for information.

Jammu
04.12.2025
Karam Chand.



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