Serial No. 05

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

(Through Virtual Mode)

CCP(D) No. 27/2024 in
WP(C) No. 1216/2024 c/w
WP(C) No. 1216/2024

Date of pronouncement: 28.07.2026
Date of uploading: 28.07.2026

Mohammad Imran Jan (Aged 40 years)
S/o Abdul Gani Jan
R/o Chrawani Tehsil Charari Sharief
District Budgam
…..Appellant(s)/Petitioner(s)

Through: Mr. M. A. Wani, Advocate

vs

1. Mr Aijaz Ul Haq Rehman
Branch Manager, J&K Bank Charari Sharief Budgam
2. Mr. Fida Hussain
Tehsildar Charari Sharief, Budgam
….. Respondent(s)

Through: Ms. Maha Majeed, assisting counsel vice
Mr Ilyas Laway, GA
Mr. N.A. Dendroo, Advocate

CORAM: **HON'BLE THE CHIEF JUSTICE (ACTING)**
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER (ORAL)
28.07.2026

Sanjeev Kumar-Chief Justice(A)

WP(C) No. 1216/2024

1. This is a petition filed by one Mohammad Imran Jan seeking, *inter alia*, a direction to the respondent-Bank not to seal and put to auction the property belonging to him and which is not the subject matter of collateral security in the shape of mortgage deed executed by the brother of petitioner namely Tajamul Islam in favour of the

respondent-Bank for securing loan. It is submitted by the petitioner that with a view to securing loan, the petitioner has executed a mortgage deed in respect of the land measuring 07 Marlas falling under Khasra No. 461 min of Khata No. 700 and Khewat No. 285 situated at Chrawani, Tehsil Charari Sharief, District Budgam along with three-storied residential house constructed thereupon.

2. Mr. M. A. Wani, learned counsel for the petitioner contends that he has only been put on a notice under Section 13(2) of the SARFAESI Act and the mortgaged property is yet not taken possession of or sealed by the respondent-Bank. The grievance of the petitioner, as is projected by him in this petition, is that his brother namely Tajamul Islam, who too is a borrower with the respondent-Bank, has defaulted in making the repayment and has, therefore, been subjected to proceeding under SARFAESI Act. He submits that in a notice issued against his brother Tajamul Islam under Section 13(4) of the Act, the respondent-Bank has, instead of attaching the property mortgaged by Tajamul Islam measuring 01 Kanal falling under Khasra No. 461 min of Khata No. 591 and Khewat No. 285 situated at Mouzi Chrawani Tehsil Charari Sharief, District Budgam along with a double-storied residential annexy and single storied shop lane existing thereon, had sealed and seized the property belonging to the petitioner i.e. a piece of 07 Marlas of land with three-storied residential building constructed thereon. Brother Tajamul has not got the possession of the said property back from Bank on liquidating his loan account.

3. With a view to determine the illusionary dispute created by these two brothers with an ultimate aim of frustrating the efforts of the Bank to recover the loan amount, we even called upon the Revenue Agency to make demarcation. From the report submitted by the Committee of Revenue Officer, it transpires that the property between the brothers is a joint property and has not been partitioned so far. Taking the benefit of this fact that the property is not partitioned though the two brothers are occupying their respective shares, a confusion is sought to be created so that entire property is saved and bank loan remains unpaid.

4. Be that as it may, it has been brought to our notice by learned counsel appearing for the Bank that the brother of the petitioner namely Tajamul Islam has already cleared his dues and in line thereof, the property mortgaged by him has been released. Presently, none of the two properties mortgaged by the petitioner as well as his brother Tajamul Islam are under seize of the Bank.

5. The grievance of the petitioner that the property sealed may be de-sealed has, thus been rendered infructuous. However, we would hasten to add that, in case, the petitioner too has defaulted in making the payment of loan, the respondent-Bank shall be free to proceed against him in accordance with law and if necessary, seize and seal the property, which is specifically mortgaged by the petitioner with the Bank i.e. the land measuring 07 Marlas along with three-storied house constructed thereon. However, the petitioner shall also be at

liberty to clear his dues and avoid the sealing and seizure of the mortgaged property.

6. Although, this is not the scope of this petition yet we would like to advise the petitioner to go for partition and get his shares demarcated in the competent Court of law so as to avoid such future disputes.

7. **Disposed of.**

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1. In view of the order passed in writ petition, the instant contempt petition also stands **disposed of.**

(Mohd. Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (A)

Jammu
28.07.2026
Vishal Sharma

Whether the order is reportable? Yes/No

Whether the order is speaking? Yes/No