Sr. No.61
Regular List

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

RFA 86/2025 CM(6930/2025)
Caveat 2619/2025

HAKEEM IRFAN AND ORS

....PETITIONER/APPELLANT(S)

Through:-Mr. Nazish-ul-Haq, Advocate

Vs.

CHAIRMAN J&K BANK Ltd. AND ORS

...RESPONDENT(S)

Through:-Mr. Shafqat Nazir, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT
Dt:02.12.2025

1) Registry is directed to assign nomenclature of miscellaneous appeal to the present appeal.

2) The appellants through the medium of present appeal have challenged order dated 06.10.2025, passed by learned Additional District Judge (Fast Track Court), Budgam (hereinafter referred to as "the trial Court"), whereby application of the petitioners/plaintiffs under Order 39 Rule 1 and 2 CPC filed against the respondents/defendants has been dismissed.

3) It appears that the petitioners/plaintiffs have filed a suit for declaration and specific performance of contract against the respondents before the trial Court. In the said suit the plaintiffs have sought a declaration that the acts of the defendants be declared as illegal, un-authorized and contrary to the rules and regulations of RBI guidelines. A decree for specific performance of contract, thereby directing the defendants to comply the commitments, assurances made by them to the plaintiffs at the time of occupation of leased premises and a decree for damages, losses sustained by the plaintiffs, has also been sought by the plaintiffs.

4) As per case of the plaintiffs, they have leased out a double storeyed commercial building alongwith land underneath and appurtenant thereto, measuring 13 Marlas under Survey No.1698, situated at Ichgam Tehsil Budgam to the defendants for establishment of their business unit about 45 years ago. It has been pleaded that a lease agreement came to be executed between the predecessor-in-interest of the plaintiffs and the defendants on 24.03.1999, whereby monthly rent was fixed at Rs.1620/- with enhancement of 25% after every five years. The said lease agreement was having validity for a period of 15 years. After the expiry of 15 years, another lease agreement came to be executed by the parties on 03.09.2015 for another 15 years.

5) It has been submitted that the plaintiffs have incurred expenditure to the tune of Rs.20 lacs for making alterations to the building on the instructions of the defendants. It has been further submitted that father of plaintiffs 2 to 4 died on 14.02.2020, whereafter the property devolved upon the plaintiffs and a supplementary lease deed was executed in the year 2021 between the plaintiffs and the defendants.

6) It has been pleaded that the defendants are in the process to vacate the premises during the subsistence of lease period itself, thereby putting the plaintiffs at loss. It has been further pleaded that the plaintiffs have made repeated requests to the defendants to adhere to the lease terms and guidelines of Reserve Bank of India, but without any success.

7) The defendants contested the suit by filing their written statement, in which it has been submitted that in the lease deed it has been specifically laid down that the respondents/defendants have option to terminate the lease of the demised premises by giving the lessor prior notice of one month in writing or on payment of one month's rent in lieu thereof. It has been submitted that the entire rent for the demised premises stands paid by the Bank in terms of lease agreement to the plaintiffs and no other commitments were made by the defendant Bank to the plaintiffs. It has been submitted that the defendant Bank is in the process of shifting its Branch to another location in Ichgam Budgam, which is purely a commercial call based on public request and viability of business. The defendants have also denied the assertion of plaintiffs that they had to incur expenditure of Rs.20 lacs for making alterations to the demised premises on the instructions of the defendants.

8) The learned trial Court after hearing the parties and after considering the pleadings of the parties, dismissed the application of the plaintiffs under Order 39 Rule 1 and 2 CPC by virtue of impugned order dated 06.10.2025. While passing the impugned order the learned trial Court observed that the cause of action of the plaintiffs is based on mere apprehension and the same is not certain, as such, there is no prima facie case in favour of the plaintiffs. The learned trial Court also observed that the covenants of the lease deed give option to the defendants to terminate the lease deed subject to prior notice of one month or payment of one month's rent and on this basis there is no prima facie case in favour of the plaintiffs.

9) The plaintiffs have challenged the impugned order on the grounds that Clause (3) of the lease deed confers unilateral right on the lessee to terminate the lease and it defeats the object of the fixed term lease and the same is contrary to Sections 111(c) and 108(q) of the Transfer of Property Act. It has been further contended that the defendants have induced the plaintiffs to make substantial improvements in the demised property and, as such, they are estopped from prematurely terminating the tenancy of demised premises. It has also been contended that contention of the defendants that cause of action in favour of the plaintiffs is based on mere apprehension, is wholly misconceived.

10) I have heard learned counsel for the parties and perused the record of the case.

11) The contention of the plaintiffs is that as per the terms of the lease deed dated 03.09.2015 read with supplementary lease deed dated 06.10.2021, the lease agreement between the parties was to expire in the year 2030 and, as such, it was not open to the defendant Bank to terminate the lease. The other contention raised by the plaintiffs is that they have made improvements in the demised premises on the basis of the representation of the defendants that the lease agreement would be valid for 15 years and now that the defendants have terminated the lease, the plaintiffs have been put to heavy loss. It is also the case of the plaintiffs that cause of action in their favour is real and not imaginary as has been observed by the learned trial Court.

12) So far as the contention of the plaintiffs with regard to the cause of action in their favour is concerned, the same appears to be well founded. It is clearly spelled out by the plaintiffs in their plaint that the defendants intend to vacate the demised premises and this assertion of the plaintiffs has been admitted by the plaintiffs in their written statement. Thus, the apprehension of plaintiffs that the defendants would vacate the demised premises is real and not imaginary as has been observed by the learned trial Court. To this extent, the observations of the learned trial Court are entirely misconceived and against the record.

13) However, there is yet another aspect of the matter which is required to be considered. As per covenants of supplementary lease deed the defendant Bank at its option can terminate lease of demised premises by giving the lessor prior notice of one month in writing expressing its intention to terminate lease or on payment of one month's rent in lieu thereof. In the face of such a covenant, it appears that the lease agreement between the parties is determinable by its very nature.

14) The plaintiffs in their suit have sought specific performance of terms of the lease agreement and have also sought interim relief of similar nature. As per Section 14(d) of Specific Relief Act a contract which is in its nature determinable cannot be specifically enforced. As to what is meant by the expression "in its nature determinable" appearing in Section 14(d) of Specific Relief Act has been deliberated upon by High Court of Delhi in ***ABP Network Pvt.Ltd. vs. Malika Malhotra,*** 2021 SCC online Delhi 4733. It would be apt to reproduce the relevant paras of the said judgment hereunder:-

> ***"26.*** *The expression "in its nature determinable" is, to say the least, delightfully vague. The exact import of the words "in its nature" is not easy to discern. Nor is it easy to distinguish a contract which is "in its nature determinable", from a contract which is merely "determinable".*
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> ***27.*** *An early decision which considered the issue of whether a contract was "in its nature determinable" is to be found in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*[10]*. The case related to an agreement, dated 31st December, 1966, between Premier Automobiles Ltd. (PAL) and the Sabha Union of its workmen, for availing certain incentives. Subsequently, a settlement dated 9th January, 1971 was executed between PAL and another Union of its workmen, namely the Association Union. Certain members of the Sabha Union, who were aggrieved by the settlement, instituted a suit before the Bombay City Civil Court, for a declaration that the settlement dated 9th January, 1971, was not binding on them and all others who were not members of the Association Union. Additionally, permanent injunction, restraining PAL from enforcing or implementing the settlement dated 9th January, 1971, was also sought.*
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> ***28.*** *Among other issues, the Supreme Court considered, in para 29 of the report, the question of whether perpetual injunction could be granted in view of Section 14(1)(c) of the pre-amended Specific Relief Act. Section 19(2) of the Industrial Disputes Act, 1947 ("the ID Act") provided for termination of settlement between workmen and the management, and read thus:*
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>> *"**19. Period of operation of settlements and awards. -***
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>> *(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.*
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>> *(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the*

> *parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."*

> ***29.*** *The Supreme Court, in para 29 of the report, held that, by virtue of Section 19(2) of the ID Act, the settlement, between the Association Union and PAL was "in its nature determinable". Per corollary, it was held, the settlement was not specifically enforceable by virtue of Section 14(1)(c); consequently, injunction, restraining breach of the settlement, could not be directed in view of the proscription contained in Section 41(e) of the Specific Relief Act, 1963.*

> ***30.*** *A contract which was otherwise stipulated as being valid for a particular period of time, and was determinable prior thereto at the option of either of the parties to the contract was, therefore, held to be "in its nature determinable". No injunction, restraining breach of such a contract could, therefore, be granted."*

15) In the aforesaid judgment, the Delhi High Court has also relied upon judgment of the Supreme Court in ***Indian Oil Corporation Ltd. vs. Amritsar Gas Service,*** 1991 SCC (1) 533. For interpreting the contours of expression "in its nature determinable". Para (12) of the aforesaid judgment is relevant to the context and the same is reproduced as under:-

> ***12.*** *The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-*

respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

"This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained.

16) From the aforesaid analysis of the legal position on the subject it is manifest that an agreement that is determinable by the situations, such as by afflux of time or at the option of either or both the parties or by happening of an eventuality, would be an agreement determinable in nature.

17) Coming to the facts of present case, the validity of the agreement of lease between the parties is 15 years and it contains the clause relating to its premature termination at the option of defendant Bank by giving prior notice of one month in writing or on payment of one month's rent in lieu thereof. Thus, the lease agreement provides a mechanism for its termination. It can be terminated after expiry of 15 years with afflux of time or it can be terminated at the option of the defendant Bank by giving one month's prior notice or by paying one month's rent in lieu thereof. Thus, it is an agreement which by its nature is determinable as it can be terminated in the aforesaid situations.

18) Once it appears from the material on record that lease agreement between the parties is determinable in its nature, in the face of provisions contained in Section 14(d) of Specific Relief Act no specific performance of contract of the lease agreement can be granted by the Court. If that is so, even an interim injunction enforcing the covenants of the lease agreement between the parties cannot be granted. In this view of the matter, the plaintiffs do not have a prima facie case in their favour.

19) So far as the contention of the petitioners/plaintiffs that covenant of lease deed provide for its termination at the option of defendant/Bank is violative of provisions contained in Section 111(c)

and 108(q) of Transfer of Property Act, is concerned, it is to be noted that the plaintiffs have not challenged the said covenant in the suit nor any such declaration has been sought by the plaintiffs in their suit before the trial Court.

20) For the foregoing reasons, the plaintiffs/petitioners are not entitled to interim injunction. Thus, this Court does not find any ground to interfere with the ultimate conclusion drawn by the learned trial Court for refusing interim injunction in favour of the plaintiffs, though this Court has serious reservations about the reasons given by the trial Court for dismissing the application of the plaintiffs.

21) The appeal stands dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR
02.12.2025
Sarveeda

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