

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

WP (C) 3360/2023, CM (8066/2023)

Nazir Ahmad Khan and another

... Petitioner/Appellant(s)

Through: Mr. Mohammad Amin Bhat, Advocate

V/s

UT of J&K and others

... Respondent(s)

Through: Mr. N. H. Shah, Sr. Advocate

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

27-12-2023

1. Upon coming up of this petition for consideration on previous date of hearing i.e. 22.12.2023, Mr. Shah, senior counsel, present in the court, stated that the petitioners prior to filing of the instant petition had also filed a suit on the same subject matter and in regard to the same controversy as is involved in the instant petition, before the court of Sub Judge/Mobile Magistrate, Baramulla, and also an appeal, thereafter, arising from the said suit as a consequence whereof Mr. Shah came to be directed to produce copy of the suit.
2. Mr. Shah has produced the copy of the suit today as also order passed therein dated 18.3.2023 whereby the suit has been rejected under Order 7 Rule 11 CPC. Mr. Shah has also produced a copy of the appeal filed against the said rejection order, instituted by the petitioners herein before the court of Principal District Judge Baramulla along with an order passed by the said court dated 6.10.2023 in terms whereof the appeal has been dismissed.

3. Before proceeding further in the matter, a reference to the relief prayed by the petitioners in the instant petition becomes imperative which reads as under:

- i) WRIT OF CERTIORARI whereby the impugned order passed by Respondent No. 3 vide Order No. DCB/SQ/2671-78 dated: 30.09.2022 to the extent that petitioners are directed to remove the machinery and restore to the original business be quashed and set aside.
- ii) WRIT OF MANDAMUS whereby directing the respondents to allow the petitioners to run their business smoothly, without causing any sort of interference or impediment.

4. A reference to the relief clause of the suit *supra* also becomes necessary which reads as under:

1. That the decree be passed in favour of the plaintiff and against the defendants declaring the order dated 30.9.2022 vide no. DCB/SQ/2677-78 passed by defendant 5 as null and void, ineffective and inoperative upon the rights of the plaintiffs.
2. That the decree for perpetual injunction be passed in favour of the plaintiff and against the defendants restraining perpetually defendants from causing any interference and interruptions with the smooth and peaceful activities carried under the name and style of Pathan Fitness Centre situated at Main market Khawajabagh, tehsil and district Baramulla.

5. Perusal of the record of the petition would tend to show that the petitioners have filed the instant petition on 19.12.2023 i.e. after the order dated 6.10.2023 whereby the appeal *supra* came to be dismissed.

6. Perusal of the petition reflects that the petitioners in the petition have nowhere stated that prior to the filing of the petition the petitioners have filed the suit *supra* calling in question the order dated 30.9.2022 issued by respondent 3 herein in the suit *supra* as well. Even the rejection of the suit in terms of order dated 18.3.2023, the filing of appeal against the said order inasmuch as the

dismissal of the suit and appeal by the appellate court has been cancelled and suppressed by the petitioners.

7. It is settled law that while invoking extraordinary writ jurisdiction of the High Court under Article 226 of the Constitution, the petitioner must come with clean hands and must make full and complete disclosure of facts and the pleadings, as otherwise the concealment and suppression of fact material to the controversy *per se* would disentitle the petitioner to any relief under Article 226 of the Constitution. A reference to the judgment of the Apex Court passed in case titled M/S Prestige Lights Ltd. Vs State Bank of India reported in (2007) 8 SCC 449 would be appropriate and advantageous.

8. Having regard to the facts and circumstances of the case coupled with the fact that the counsel for the petitioner candidly concedes and admits that the petitioners have concealed and suppressed the aforesaid facts while maintaining the present writ petition and though the petitioners are liable to be proceeded against in this view of the matter, yet taking a lenient view and in the interest of justice initiation of such an action is deferred.

9. Petition for the foregoing reasons is **dismissed**.

(JAVED IQBAL WANI)
JUDGE

Srinagar
27-12-2023
N Ahmad

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No