

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

CM(M) No. 257/2024

Ajaz Ahmed Malik

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

Through: Mr. Bari Abdullah, Adv.

vs

Shib Lal and others

..... Respondent(s)

Through: Mr. O. P. Thakur, Sr. Adv. with
Mr. O. S. Bandral, Adv.

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

ORDER
27.12.2024

ORAL:

1. In the instant petition supervisory jurisdiction of this Court is being invoked by the petitioner for quashing order dated 13.09.2024 passed by the court of Principal District Judge, Ramban in appeal tilted as Shiv Lal and others vs Khem Raj and others.
2. Facts emerging from the record would reveal that the respondents herein filed a civil suit for declaration and permanent prohibitory injunction against the petitioner herein as also the proforma respondents 4 and 5 in respect of the land measuring 3 kanals 8 marlas covered under survey No. 397 situated at village Maitra Govindpura, Ramban, The said suit came to be dismissed in default on 06.12.2016, whereupon the plaintiff respondents herein filed an application for its restoration on 26.09.2019, which application, however, came to be dismissed on 16.08.2024. Aggrieved whereof, the plaintiffs respondents herein preferred an appeal

before the court of Principal District Judge, Ramban accompanied with an application for interim relief wherein the impugned order came to be passed as an interim measure directing the petitioner herein and proforma respondent 4 not to construct new construction on the suit land. The petitioner herein aggrieved of the said order preferred the instant petition.

3. Perusal of the impugned order reveals that the same has been passed admittedly as an interim measure and subject to objections. The impugned order, as such, could not have been assailed by the petitioner herein before this Court in the instant petition in view of the settled position of law laid down by the Apex Court in **A. Venkatasubbiah Naidu v S. Chellappan and others**, reported in (2000) 7 SCC 695, wherein at para 22, following has been held:

“22. Now what remains is the question whether the High Court should have entertained the petition under [Article 227](#) of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.”

4. In this view of the matter, this Court, thus, is not inclined to interfere in the instant petition, however, since the counsel for the petitioner states that the construction, which came to be prohibited by the appellate court, stands already raised on spot, the impugned order is modified to the extent that the parties shall maintain status quo with regard to the present

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position of the land on spot and the matter is remanded back to the appellate court to proceed with the main appeal in accordance with law.

5. Disposed of.

(JAVED IQBAL WANI)
JUDGE

Jammu
27.12.2024
Rakesh

Whether the order is speaking	Yes/No
Whether the order is reportable	Yes/No

