

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

**CM (M) No. 491/2024
CM No. 8235/2024**

Dated: 23rd of December, 2024.

Nusrat Nazir

... Petitioner(s)

Through: -

Mr Altaf Wani, Advocate with
Mr Waqar Farooq, Advocate.

V/s

Ghulam Hassan Dar & Anr.

... Respondent(s)

CORAM:

**HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE
(JUDGMENT)**

01. The Petitioner, through the medium of the present Petition filed under Article 227 of the Constitution of India, invokes the supervisory jurisdiction of this Court to seek quashing/ setting aside of Order dated 20th of November, 2024 passed by the Court of learned Principal District Judge, Pulwama in a Civil Miscellaneous appeal bearing file No. 12/Appeal titled '**Nusrat Nazir v. Ghulam Hassan Dar & Anr.**', as also Order dated 3rd of May, 2024 passed by the Court of learned Munsiff, Pulwama in an application seeking interim relief, filed alongside the Suit titled '**Ghulam Hassan Dar & Anr. v. Nusrat Nazir**'.

02. It appears that the Respondents herein, who are parents-in-law of the Petitioner herein, had filed a Civil Suit, wherein the Court of learned Munsiff, Pulwama (Trial Court), in an application seeking interim relief, vide Order dated 3rd of May, 2024, had granted maintenance of Rs. 3,000/-

per month in favour of each of the Applicant-Plaintiff/ Respondents herein from the monthly salary of the Defendant/ Petitioner herein w.e.f. January, 2024. Thereafter, feeling aggrieved of the aforesaid Order dated 3rd of May, 2024 passed by the Trial Court, the Petitioner herein, as Defendant before the Trial Court, preferred a Civil Miscellaneous Appeal before the learned District Judge, Pulwama, however, the learned District Judge, in terms of Order dated 20th of November, 2024, dismissed the said appeal, thereby upholding the Order passed by the Trial Court. It is these two Orders passed by the Courts below that have been assailed by the Petitioner before this Court through the medium of the instant Petition filed under Article 227 of the Constitution of India.

03. Learned Counsel appearing for the Petitioner submits that the Petitioner had been appointed on compassionate grounds on the demise of her husband, late Fayaz Ahmad Dar, who had been working as Jamadar in District Court at Pulwama, so as to sustain the family of the said deceased. He, however, submits that on compassionate appointment of the Petitioner, the Respondents herein, who happen to be the parents of the deceased Fayaz Ahmad Dar, filed a Civil Suit for declaration and mandatory injunction as against the Petitioner herein, seeking a direction to the Petitioner to apportion the salary received by her against her compassionate appointment for the death of their son, who also happened to be the husband of the Petitioner herein.

04. Learned Counsel further submits that the Trial Court, in an application for interim relief filed alongside the main Suit, directed the Petitioner herein, as Defendant before the Court below, to pay a monthly maintenance of Rs. 3,000/- in favour of each of the Plaintiff/ Respondents herein from her monthly salary, which Order, on being challenged before the Appellate Court, was upheld. He has further argued that both the Courts below have, in fact, fallen in error by holding that the Petitioner had to share the income received by her as salary in view of her compassionate appointment with the Respondents herein, who had filed a Civil Suit before

the Court below. He has argued that the Petitioner was not under any obligation to pay maintenance to the Respondents herein, as she was being paid wages out of her work, therefore, she cannot be made to share her wages with any other person

05. Heard learned Counsel for the Petitioner, perused the pleadings on record and considered the matter.

06. Without going into the merits of the case, what requires to be stated herein this case, at the very outset, is that for purpose of maintaining a Petition under Article 227 of the Constitution of India, the Petitioner has to make out a case that the Courts below have either transgressed their jurisdiction or have not exercised the jurisdiction vested in them. The Respondents herein have filed a Civil Suit for directing the Petitioner to share her income as salary against the compassionate appointment thus received in view of her appointment made in *lieu* of the death of her husband, who also happens to be the son of the Respondents herein. The Trial Court, in its wisdom, having regard to the difficulties being faced by the Respondents herein, had directed the Petitioner herein to pay an amount of Rs. 3,000/- every month to each of the Plaintiffs/ Respondents herein w.e.f. January, 2024 and this Order was upheld by the Appellate Court on an appeal filed by the Petitioner herein.

07. Since, the arrangement that has been ordered by the Trial Court and upheld by the learned First Appellate Court, by no stretch of imagination, can be described to be illegal or erroneous and is subject to the disposal of the main Suit, therefore, the Petitioner herein, as Defendant before the Trial Court, shall be at liberty to lead evidence during the trial of the Suit and shall have a right to oppose the plea raised by the Respondents, as Plaintiffs. Moreover, as per settled legal position on the subject, the jurisdiction vested in this Court in terms of Article 227 of the Constitution of India is to be used sparingly, especially either when the Court below has

CM (M) No. 491/2024
CM No. 8235/2024

exceeded its jurisdiction or has not exercised its power vested in it, which is not the case in the instant Petition.

08. Viewed thus, in the considered opinion of this Court, no case is made out for showing any indulgence by this Court at this stage. The present Petition is, thus, found to be misconceived and is **dismissed** in *limine*, along with the connected CM.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
December 23rd, 2024
"TAHIR"

i. Whether the Judgment is approved for reporting? Yes/ No.

