

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

Case:- CM(M) No. 216/2025
CM Nos. 4638/2025 & 4639/2025
Cav No. 1652/2025

1. M/s KP Banquet Pvt. Ltd. A company registered under the Companies Act through its Managing Director Nipun Kesar S/o Sh. I. J. Kesar, Head Office 8, Extension, Shastri Nagar, Jammu.
2. Sh. Sushil Kumar Dubey, S/o Sh. Madan Lal Dubey, R/o 7 B/D, 2nd Extension, Gandhi Nagar, Jammu.

.....Petitioners

Through: Mr. L. K. Sharma, Sr. Advocate with
Mr. Mohit Kumar, Advocate.

Vs

1. Vikas Baru S/o Kuldeep Raj Baru, R/o D-7, Nharat Nagar, Talab Tillo, Jammu.
2. Tehsildar, Jammu.
3. Naib Tehsildar, Jammu.



सत्यमेव जयते

..... Respondents

Through: Mr. Abhishek Wazir, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(30.07.2025)

1. Through the medium of this petition, the two petitioners have come forward seeking the indulgence of this Court in its supervisory jurisdiction under Article 227 of the Constitution of India to examine legality and validity of an order dated **21.07.2025** passed on **File No. 1A/03/2025** by the court of learned Munsiff, Jammu thereby rejecting an application filed by

the petitioners seeking modification of an order dated **11.04.2025** passed in a pending civil suit.

2. Need serving factual resume of the case engaging the petitioners and the respondent No. 1 in the trial court needs to be put up first so as to serve as a correct perspective for disposal of the matter through the medium of present order.

3. The petitioner No. 2 – Sushil Kumar Dubey, in his purported capacity as being an owner of land and building premises situated near Pencil Factory, Akhnoor Road, Jammu, had leased out said premises in favour of Sh. Madan Lal Dubey who was his father as well.

4. Vide a purported partnership-deed dated **31.05.2000**, coinciding with the execution of said lease-deed dated **31.05.2000** as made in his favour with respect to demised premises, said Madan Lal Dubey joined by one Nidhi Dubey and the respondent No. 1 – Vikas Baru constituted a firm which was meant to have been constituted with retrospective effect from 01.06.1999 for the purpose of business of running “Kamla Palace” purportedly at the demised premises.

5. Said Madan Lal Dubey, as being lessee and also one of the three partners of said firm, bearing purported dual status came to demise on **11.04.2009** to be survived by his three daughters, namely, Neelam Khajuria, Chander Prabha, Sunanda

Mangotra & the petitioner No. 2- Sushil Kumar Dubey as being his son.

6. By virtue of a purported relinquishment-deed, 72 % share in said firm M/s Kamla Palace claims to have been vested in favour of the petitioner No. 2 – Sushil Kumar Dubey with 28% with the respondent No. 1 – Vikas Baru.

7. On the other hand, the leasehold rights of the demised premises are claimed to have been surrendered in favour of the petitioner No. 2 – Sushil Kumar Dubey as being the owner who in turn by virtue of a registered lease-deed dated **11.04.2017** granted leasehold rights of the same very demised premises to the petitioner No. 1 through Manoj Kumar Magotra for a period of five years.

8. This lease-deed dated **11.04.2017** came to be challenged by the respondent No. 1 – Vikas Baru in a civil suit instituted on **10.08.2017** before the court of Munsiff, Jammu seeking declaration for declaring the lease-deed dated **11.04.2017** being null and void, inoperative and not binding upon his rights as well as partnership concern – **M/s Kamla Palace** with consequential relief of permanent prohibitory injunction restraining the petitioners from interfering in the rights of the respondent No. 1- Vikas Baru as well as trespassing upon in any manner

whatsoever in the premises under the leasehold rights to the respondent No. 1-Vikas Baru.

9. The institution of said suit by the respondent No. 1-Vikas Baru had taken place in the backdrop of a civil suit already filed by the petitioner No. 1 on **28.04.2017** before the court of learned Sub-Judge, Jammu thereby seeking a decree of permanent prohibitory injunction in which by virtue of an order dated **02.05.2017**, the court of learned Sub-Judge, Jammu came to restrain the respondent No. 1- Vikas Baru, the petitioner No. 2 – Sushil Kumar Dubey and one Ms. Nimisha Dubey from interfering with the possession of the petitioner No. 1 with respect to the demised premises.

10. The respondent No. 1 – Vikas Baru, in his civil suit for declaration with consequential relief of permanent prohibitory injunction relating to lease-deed dated **11.04.2017**, also preferred an application for temporary injunction thereby seeking interim direction for stay of operation of the impugned lease-deed dated **11.04.2017** and also restraining the petitioner No. 1 from establishing/ carrying on any business at the premises of **Kamla Palace** under the name and style of **K. P. Banquet Pvt. Ltd.**

11. By virtue of an ex-parte interim order dated **10.08.2017**, the trial court of learned Munsiff, Jammu came to pass an ex-parte ad interim injunctory direction of keeping in abeyance the

operation of the impugned lease-deed dated **11.04.2017** and further restraining the petitioners herein, as being two defendants in the suit, from changing the name and style of **M/s Kamla Palace**.

12. The petitioners, upon appearing in the suit, filing written statements to the plaint and objections to the temporary injunction application of the respondent No. 1 – Vikas Baru, sought dismissal of both.

13. The court of learned Munsiff, Jammu, by virtue of an order dated **27.09.2017** came to dispose of temporary injunction application of the respondent No. 1 – Vikas Baru by confirming the order dated **12.08.2017** without any further modification or addition in any manner to the direction so given in ex-parte *ad-interim* order dated **12.08.2017**.

14. Aggrieved of the aforesaid outcome in terms of an order dated **27.09.2017** of the Court of learned Munsiff, Jammu, the petitioner No. 2 – Sushil Kumar Dubey preferred a miscellaneous appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 on **file No. 88/2017** before the court of learned Ist Additional District Judge, Jammu.

15. The aforesaid appeal **No. 88/2017** preferred by the petitioner No. 2 – Sushil Kumar Dubey came to be followed by institution of a miscellaneous appeal **No. 91/2017** by the

petitioner No. 1 – M/s K. P. Banquet Hall Pvt. Ltd., under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 against the very same order dated **27.09.2017** of the court of learned Munsiff, Jammu.

16. Both the respective appeals of two petitioners came to be disposed of by the court of learned Ist Additional District Judge, Jammu by virtue of a common order dated **29.02.2024** by lending some modifications to the order dated **27.09.2017** of the learned Munsiff, Jammu.

17. The modifications which came to be imparted with respect to order dated **27.09.2017** of the court of learned Munsiff, Jammu by the court of learned Ist Additional District Judge, Jammu came to be as under:-

“The order impugned, therefore, is modified and it is ordered that respondent shall not create any third-party interest qua the subject matter of the suit by alienation or transferring by any mode and shall also not change the nature of the subject matter of the suit property by any substantial construction. However, they shall not be precluded from effecting repairs of the K. P. Banquet and running business therein till the disposal of the suit before the learned court below.”

18. It is important to register herein an observation that order dated **29.02.2024** passed by the court of learned Ist

Additional District Judge, Jammu was in two appeals, one preferred by the petitioner No. 1 – M/s K. P. Banquet Pvt. Ltd. in which the petitioner No. 2 – Sushil Kumar Dubey figured as the respondent No. 1 and the respondent No. 1 – Vikas Baru figured as the respondent No. 2, whereas on the other hand in the appeal preferred by the petitioner No. 2 – Sushil Kumar Dubey, the respondent No. 1 – Vikas Baru figured as the respondent No. 1 whereas the petitioner no. 1 – K. P. Banquet Pvt., Ltd., figured as the respondent No. 2 and in that context it is not clear that the modification imparted by the court of learned Ist Additional District Judge, Jammu in its order dated **29.02.2024** was and is meant to operate against which of the two respondents in context of both the appeals.

19. The respondent No. 1 – Vikas Baru came to prefer an application before the court of learned Munsiff, Jammu thereby seeking implementation of order dated **29.02.2024** of the Court of learned 1st Additional District Judge Jammu read with the modifications imparted therein with a direction to the Sr. Superintendent of Police (SSP), Jammu as well as the Tehsildar, Jammu to implement the same.

20. The respondent No. 1 – Vikas Baru in his said application came to aver that the petitioners, as being the defendants, along with others i.e. Manager and staff are engaged

again on changing the nature of the suit property by raising construction over the suit land by digging plinth despite the defendants i.e., the petitioners having proper knowledge of order dated **29.02.2024** of the court of learned 1st Additional District Judge, Jammu.

21. The respondent No. 1 – Vikas Baru further came to allege in his application that the SHO Police Station Nowabad Jammu was acting in connivance with the petitioners who are continuing with the construction activity at the spot which constrained him to approach Sr. Superintendent of Police (SSP), Jammu as well as the Tehsildar concerned for implementation of the directions of the Court only to be told that there is no such direction upon them to implement the same.

22. This application of the respondent No. 1 – Vikas Baru came to be responded by the Court of learned Munsiff, Jammu in terms of an order dated **11.04.2025** without first calling upon the petitioners, as defendants, to respond the same. Following operative direction came to be issued in order dated **11.04.2025** set out in para 4 which is reproduced as under:-

“4. In the light of the above discussions, I am of the opinion that indulgence of this court is required to protect the suit land and in order to avoid any multiplicity of litigation, SSP Jammu shall implement the order dated 29-02-2024, in its letter and spirit upon the

defendants. SSP Jammu shall take assistance of Tehsildar Jammu for proper identification of the suit property. It is, however, made clear that under the garb of this order, the concerned police is not authorized to disturb the possession on spot. Let a copy of this order along with photocopy of order dated 29-02-2024, be sent to concerned SHO for compliance. Application stands dispose of and shall made part of the main file.”

23. Acting upon the said order dated **11.04.2025**, the Sr. Superintendent of Police (SSP), Jammu and the Tehsildar, Jammu are said to have acted in furtherance thereof which left the two petitioners aggrieved, as being the defendants, constraining them to file an application before the court of learned Munsiff, Jammu seeking modification of order dated **11.04.2025** emphasizing therein that demarcation of the suit property by the indulgence of the Tehsildar, Jammu was not in any manner mandate of order dated **27.09.2017** of the court of learned Munsiff, Jammu read with order dated **29.02.2024** of the learned Ist Additional District Judge, Jammu.

24. Said application of the petitioners came to suffer dismissal in terms of an order dated **21.07.2025** from the court of learned Munsiff, Jammu against which the petitioners came forward with the present petition under Article 227 of the Constitution of India seeking supervisory jurisdiction with respect

to examination of legality and validity of said two orders dated **11.04.2025** read with order dated **21.07.2025** of the court of learned Munsiff, Jammu.

25. When this Court examines the manner of passing of order dated **11.04.2025** by the court of learned Munsiff, Jammu, there is no escape from obvious fact that it came to be passed without putting the petitioners, as being defendants, to a bare minimum notice, notwithstanding the urgency shown by the respondent No. 1 – Vikas Baru and this is where the procedural illegality actually set in exposing the indulgence of the court of learned Munsiff, Jammu in terms of passing of an order dated **11.04.2025** to question as it came to be questioned in this petition before this Court.

26. The court of learned Munsiff, Jammu came to compound the procedural illegality by dismissing the application of the petitioners seeking recall of order dated **11.04.2025** and instead validating the order dated **11.04.2025** by over emphasizing the fact that the application for implementation filed by the respondent No. 1 – Vikas Baru has already been disposed of vide order dated **11.04.2025**.

27. In passing order dated **21.07.2025**, the court of learned Munsiff, Jammu perhaps missed to keep in mind a fundamental position of law that an order passed by a judicial or a quasi-

judicial authority bearing legal consequence/effect at the back of a contesting party is always risking a tag of nullity which upon being asked to be corrected/rectified ought to be corrected/rectified without loss of time.

28. Bare minimum thing which the court of learned Munsiff, Jammu ought to have done is to recall the order dated **11.04.2025** and thereby afford an opportunity of objections to the petitioners within shortest possible time of day or so and then dispose of said application on merits in terms of submissions made from both sides and which if would have been done so would not have resulted in catching even this Court in bind to put the situation to its simplest position that the application filed by the respondent No. 1 – Vikas Baru for implementation of order dated **29.02.2024** be adjudicated upon first by giving the petitioners opportunity of objections.

29. This Court is coming up with the aforesaid observations by bearing in mind that there are some salient aspects attending the order dated **29.02.2024** of the court of learned Ist Additional District Judge, Jammu read with order dated **27.09.2017** of the court of learned Munsiff, Jammu which this Court is consciously avoiding to comment upon lest it shall any prejudice to either of the two parties and may also impression the mind of the court of the learned Munsiff, Jammu.

30. In view of the aforesaid facts and circumstances of the case, this Court holds the impugned order dated **11.04.2025** read with order dated **21.07.2025** of the court of learned Munsiff, Jammu as illegal warranting to be set aside and are, accordingly, set aside thereby reviving the application of the respondent No. 1 – Vikas Baru seeking implementation of order dated **29.02.2024** passed by the court of learned Ist Additional District Judge, Jammu to which the petitioners shall submit objections, whereupon the court of learned Munsiff, Jammu to dispose of the said application on merits by or before **15th September, 2025**.

31. The petition is, thus, ***disposed of***.

32. A copy of this order be sent to the court of learned Munsiff, Jammu for notice by the Registrar Judicial, Jammu.

(RAHUL BHARTI)
JUDGE

JAMMU
30.07.2025
Muneesh

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