

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

CM(M) No. 20/2025
CM No. 260/2025
CAV No. 78/2025
CAV No. 2353/2024

Rohit Kumar

.....Petitioner(s)

Through: Mr. Anil Khajuria, Advocate

Vs

Gopal Krishan Gupta & Anr

..... Respondent(s)

Through: Mr. Ashish Singh Kotwal, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER(ORAL)
30.01.2026

- 01.** The petitioner through the medium of instant petition which has been preferred under Article 227 of the Constitution of India is seeking setting aside and quashment of the order dated 29.11.2024 passed by the learned Principal District Judge, Udhampur in file No. 19/Civil Appeal/2022 by virtue of which the learned Principal District Judge, Udhampur has allowed the appeal preferred by the respondents without affording any opportunity of hearing to the petitioner. In addition, the petitioner is also seeking quashment of an order dated 11.01.2025 by virtue of which the learned appellate Court has refused to entertain review petition preferred by the petitioner despite the existence of an error apparent on the face of record *viz-a-viz* the service of the petitioner in the appeal as referred.
- 02.** The record further reveals that this Court vide order dated 20.01.2025 has pleased to direct the parties to maintain status quo qua the land in question and the said order continues to be operative as on today.

03. The response stands filed on behalf of respondents 1 and 2 *i.e* the contesting respondents.
04. The only ground which has been canvassed by learned counsel for the petitioner is that the order dated 29.11.2024 passed by the learned Principal District Judge, Udhampur in the appeal preferred by the respondent is nonest in the eyes of law, *inasmuch as*, the same suffers from manifest error on the fact of record as well as jurisdictional defect and has caused great prejudice particularly miscarriage and failure of justice to the petitioner in the light of the fact that the interim order already granted in favour of the petitioner was set-aside without hearing the petitioner and also without appreciating the real controversy involved in the matter and on this ground alone, the order impugned according to the learned counsel deserves to be quashed.
05. It is specific case of the petitioner that during the pendency of the appeal before the learned Principal District Judge, Udhampur, the petitioner was not served at all in the matter till 06.09.2024, when fresh summon was directed to be served upon the petitioner and the report of process server merely indicates that he had telephonically informed the petitioner on a cell number mentioned in the report of the process server. Learned counsel with a view to fortify his claim submits that it is mandatory that the summons must accompany the copy of the plaint or the documents on the basis of which the proceedings are instituted. Additionally, it has been argued that the Order XLI Rule 14(3) mandates that every notice to be served upon the respondent shall be accompanied by the copy of memorandum of appeal and in the instant case, there was absolutely no service upon the petitioner, *inasmuch as*, the process server had admitted in his report that the person against whom the summons

was issue was also not available at his home.

06. The learned counsel has drawn attention of the Court that the Order V Rule 15 contains the provisions which provide the manner in which the process serving agency must act and in that case the service could be made on any adult member of the family. However, according to learned counsel, no such procedure was adopted in the instant case and the error as regard the violation of the applicable provisions of law was manifest on the face of record and therefore, the learned appellate Court was not justified in proceeding ahead to hear the appeal and finally decide the same against the petitioner without following the mandate of law and also even proceeding ex-parte against the petitioner or otherwise drawing satisfaction with respect to the service of the petitioner by recording the statement of process server. According to Mr. Khajuria, there is a clear jurisdictional defect manifest on the face of record as the learned appellate Court has firstly exercised the jurisdiction which did not vest in it and secondly it has failed to exercise jurisdiction vested in it, thereby causing miscarriage as well as failure of justice to the petitioner, thus on both counts, the order deserves to be quashed.

07. *Per Contra*, the reply stands filed on behalf of the respondents 1 and 2 in which the respondents have taken a preliminary objection with regard to the maintainability of the instant petition as the petitioner has failed to make out a case for any error apparent on the face of record which could warrant intervention of this Court under Article 227 of the Constitution of India. In addition, the respondents have pleaded that the petitioner has concealed and suppressed true and actual material facts before this Court and has not come to this Court with clean hands and on this ground also, the writ petition deserves

dismissal.

- 08.** It is specific case of the respondents that the plea raised by the petitioner in the instant petition is totally false, frivolous and concocted and denied vehemently. The respondents have further pleaded that the Court below has rightly passed the order dated 29.11.2024 which is impugned in the instant petition. It is specific stand of the respondents that the petitioner has been duly served and did not choose to appear before the Court with a view to defeat the process of law and to linger on proceedings.
- 09.** It is categoric stand of the respondent in the reply affidavit that the petitioner was duly served and was having full knowledge about the pendency of the appeal before the learned Principal District Judge, Udhampur as the petitioner along with his father were duly served upon by SHO Police Station Chenani on 22.08.2024 and the petitioner was complying with the order of maintaining status quo on spot. In addition, it has been submitted that the petitioner was also served by the process-server, but the petitioner deliberately did not choose to appear before the Court with a view to defeat the process of law and to grab ancestral land of respondent No.1 by using his muscle power. In the aforesaid backdrop, it is prayed that the writ petition be dismissed with costs.
- 10.** Heard the learned counsel for the parties at length and perused the record.
- 11.** With the consent of learned counsel for the parties, the instant petition is taken up for final disposal today.
- 12.** Since the only grievance which has been raised by learned counsel for the petitioner is that he has not been properly served in the appeal preferred by the respondents and the order dated 29.11.2024 has been passed by the learned Principal District Judge, Udhampur which has caused great prejudice to the

petitioner. In addition, the learned counsel for the petitioner has also sought quashment of the order dated 11.01.2025 by virtue of which the learned Appellate Court has also refused to entertain the review petition preferred by the petitioner. The record further reveals that the interim direction passed by this Court dated 20.01.2025 continues to be operative as on date and continuance of the said direction even otherwise also is not in the interest of both the parties. In the aforesaid backdrop, both the learned counsel for the parties have agreed for disposal of the instant petition by conceding to the fact that the matter be referred back to the Appellate Court to decide the appeal expeditiously after hearing both the parties so that the justice is done to both.

13. In the aforesaid backdrop, this Court deems it proper to quash and set aside the order dated 29.11.2024 passed by the learned Principal District Judge, Udhampur and also the subsequent order dated 11.01.2025 passed by the learned Appellate Court by virtue of which the learned Appellate Court has refused to entertain the review petition. Therefore, the instant matter is relegated back to the learned Appellate Court to decide the appeal preferred by the respondent expeditiously preferably within a period of six weeks from the date both the parties appear before the said Court after affording an opportunity of being heard to the rival parties therein and also providing an opportunity to file response to the respondents, if required, so that complete justice is done to both the parties as the delay is in no body's interest. Accordingly, both the parties are directed to appear before the learned Principal District Judge, Udhampur on 03.02.2026 and it is requested that the learned Appellate Court will decide the said appeal expeditiously preferably within a period of six weeks from the date both the parties cause their

appearance i.e 03.02.2026 without being influenced by any observation made by this Court in deciding the instant writ petition in which both the parties have consented for disposal of the instant writ petition.

14. Needless to say that the learned Appellate Court will decide the appeal afresh without being influenced by any observation which has already been made in the order dated 29.11.2024 which has already been set aside by this Court or else the order dated 11.01.2025 which has also been quashed by this Court in pursuant to the consent being given by other side and that too after hearing both the parties strictly in accordance with law.

15. *Disposed of along with connected applications.*

JAMMU
30.01.2026
Vijay

(WASIM SADIQ NARGAL)
JUDGE

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

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