

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CR. No. 10/2026
CM No. 2803/2026

Reserved on : 12.05.2026
Pronounced on: 14.05.2026
Uploaded on : 15.05.2026

Mohammad Akbar Dar (Aged 61)
S/o Ghulam Nabi Dar
R/o Dew Mohalla, Pawzalpora, Shalimar,
Srinagar

Through: Mr. Ishtiyag Ahmad Mir, Adv

...Petitioner

Vs

Tariq Ahmad Wani
S/o Gh Ahmad Wani
R/o Pawzalpora Shalimar Srinagar

...Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The present Civil Revision Petition has been preferred challenging the order dated 29.04.2026 passed by the learned Trial Court (1st Additional Munsiff, Srinagar) in the suit titled “*Mohammad Akbar Dar vs. Tariq Ahmad Wani*”, whereby, while considering an application under Order XXXIX Rule 1 and 2 read with Section 151 Civil Procedure Code, the learned Trial Court has directed issuance of notice to the respondent and posted the matter for consideration on 10.06.2026.
2. The grievance projected by the petitioner is that the learned Trial Court has failed to consider the prayer for ad-interim injunction at the initial stage and has deferred consideration of the matter, thereby allegedly

exposing the petitioner to continued interference with respect to the suit property.

3. It is submitted that the petitioner claims to be the lawful owner and in settled possession of land measuring approximately 2 Kanals and 18 Marlas situated at Pawzalpora, Shalimar, Srinagar, forming part of Khasra No. 484/130, along with a pathway allegedly constituting the sole access to his residential house.
4. The petitioner further alleges that the respondent has recently started interfering with the petitioner's peaceful possession and enjoyment of the pathway by allegedly creating an unauthorized opening/tin door and by making attempts to construct footpath towards the petitioner's land, thereby causing interference with the suit property.
5. In view of the alleged interference and apprehension/ threat of dispossession, the petitioner instituted a civil suit for declaration, permanent injunction, and mandatory injunction before the learned Trial Court along with an application under Order XXXIX Rule 1 and 2 CPC seeking urgent ad-interim protection restraining the respondent from interfering with the petitioner's possession or altering the nature and character of the suit property.

Heard and considered

6. A perusal of the impugned order reveals that the learned Trial Court has merely directed issuance of notice on the application under Order XXXIX Rule 1 and 2 CPC by order dated 29.04.26 and fixed the matter for consideration on 10.06.2026. The order neither adjudicated the rights of the parties nor determined the interim application finally. The order is thus purely interlocutory and procedural in nature.
7. It is well settled that revisional jurisdiction under Section 115 CPC is confined to cases where the subordinate Court has exercised jurisdiction not vested in it by law, failed to exercise jurisdiction so vested, or acted in exercise of jurisdiction illegally or with material irregularity. The revisional jurisdiction is not intended to be exercised against every interlocutory or procedural order passed during pendency of proceedings.

8. It is trite that the power to grant or refuse temporary injunction is essentially discretionary in nature and lies within the domain of the learned Trial Court, which is required to exercise such discretion upon consideration of the pleadings, affidavits, and material available on record. The Trial Court is entrusted to examine whether the ingredients of prima facie case, balance of convenience, and irreparable injury stand satisfied in the facts of a particular case. This Court, while exercising revisional jurisdiction under Section 115 **Code of Civil Procedure** (CPC), cannot substitute the view of the learned Trial Court in the matter of grant of interim relief merely because another view may also be possible. Interference would be warranted only where subordinate Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.
9. There can be no dispute with the settled proposition that where urgency exists, the Trial Court is expected to examine the pleadings, affidavits, and supporting material with promptitude and, where circumstances warrant, may even grant ex parte ad-interim protection or post the matter at the shortest possible date.
10. However, in the present case, the impugned order does not finally decide the interim application nor does it determine any substantive rights of the parties. The learned Trial Court has merely issued notice and deferred consideration of the application to a subsequent date.
11. The Hon'ble Supreme Court in case titled **Shiv Shakti Coop. Housing Society, vs M/S. Swaraj Developers & Ors** reported as 2003 (6) SCC 659 has held as under:

“A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. But on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the

revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115”.

12. In the present case, the impugned order merely directs issuance of notice on the application under Order XXXIX Rule 1 and 2 code of civil procedure (CPC) and posts the matter for consideration on a subsequent date. The order neither adjudicates the interim application on merits nor determines any substantive rights of the parties. Applying the ratio laid down by the Hon’ble Supreme Court, the impugned order being purely interim and interlocutory in character cannot be made the subject matter of revision under Section 115 Code of Civil Procedure (CPC).
13. It is equally settled that interlocutory orders unless shown to suffer from patent lack of jurisdiction or manifest illegality, are ordinarily not amenable to revisional jurisdiction. Entertaining revision against such orders would unnecessarily impede the progress of proceedings before the Trial Courts.
14. In the facts of the present case, this Court does not find that the learned Trial Court has exercised jurisdiction not vested in it by law, failed to exercise jurisdiction vested in it, or acted with such material irregularity so as to warrant interference in exercise of revisional jurisdiction.
15. The grievance of the petitioner essentially relates to deferment of consideration of the application for temporary injunction, which can appropriately be addressed before the learned Trial Court itself at the stage of consideration of the application on merits.
16. In view of the settled legal position, this Court is of the considered opinion that the present Civil Revision Petition, is not maintainable under Section 115 CPC.
17. However, while holding the revision petition to be not maintainable, this Court cannot lose sight of the fact that despite urgency having been projected by the petitioner/plaintiff therein, the learned Trial Court has posted the matter after approximately one and half month,

though the issue relates to alleged threat of dispossession and interference with the suit property. This Court is of the opinion that applications under Order XXXIX Rule 1 and 2 CPC are required to be considered expeditiously so that the very purpose of seeking interim protection is not defeated.

18. In the aforesaid circumstances, this Court deems it appropriate to direct the learned Trial Court to consider and decide the petitioner's application under Order XXXIX Rule 1 and 2 CPC expeditiously after affording due opportunity of hearing to both parties.

19. Accordingly, the Civil Revision Petition is dismissed as not maintainable along with all connected applications

(WASIM SADIQ NARGAL)
JUDGE

Srinagar
14.05.2026
Mubashir/JS

i. Whether the Judgment is Reportable: Yes/No
ii. Whether the Judgment is Speaking : Yes /No