

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**
(COMMERCIAL APPELLATE DIVISION)

Reserved on: 31.07.2026

Pronounced on: 07.08.2026

Uploaded on: 10.08.2026

Whether the operative part
or full judgment is
pronounced: **Full**

FAO No.30/2025

M/S IBM ASSOCIATES

.../APPELLANT(S)

Through: - Mr. Vaseem Aslam, Advocate, with
Mr. Huzaif Ashraf, Advocate.

Vs.

ESWAR THERAPEUTICS PVT. LTD.

...RESPONDENT(S)

Through: - Mr. Ajaz Ahmad Chesti, Advocate.

CORAM: HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE (TH. VC)
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

Sanjay Dhar 'J':

1) The present appeal is directed against the judgment dated 15.07.2025, passed by the learned Commercial Court (Additional District Judge), Srinagar, whereby application filed by the appellant/plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking interim injunction has been dismissed.

2) It appears that the appellant herein (hereinafter referred to as the "plaintiff") filed a suit for permanent

prohibitory injunction against the respondents herein (hereinafter referred to as the “defendants”) before the learned Commercial Court (Additional District Judge), Srinagar (hereinafter referred to as the “Trial Court”). In the suit, the plaintiff sought a decree of permanent prohibitory injunction restraining the defendants from terminating its distributorship and from acting upon the email dated 18.03.2025, the termination notice dated 03.04.2025, the revised agreement dated 21.04.2025 and the termination notice dated 23.04.2025, as also from appointing any third party as distributor for the Kashmir region and from altering or modifying the terms of engagement.

3) In the plaint, it was averred by the plaintiff that in July 2017, defendant No. 1, through its Regional Manager (defendant No. 2), entered into a business relationship with the plaintiff, whereby the plaintiff was appointed as the Super Stockist/Distributor for pharmaceutical products of defendant No.1 for Kashmir Valley. It was pleaded that over the years, the business grew exponentially and the monthly figures were nearing ₹49,09,117/- by February 2025. The entire business was functioning on cash-based transactions. It was pleaded that on 18th March, 2025, and again on 1st April, 2025, the defendants issued two emails to the plaintiff and along with these emails, a revised agreement was

attached. One of the conditions of the revised agreement was furnishing of interest-free security deposit of ₹1,00,00,000/- (Rupees One Crore). The plaintiff termed the said condition as harsh and unjustified.

4) It was pleaded that on 3rd April, 2025, the defendants unilaterally and abruptly terminated the Super Stockist agreement and the plaintiff was instructed to return the entire stock lying in its premises. According to the plaintiff, such action of the defendants is in complete violation of fair-trade principles, contractual equity and business norms as the same has jeopardized the livelihood of the employees of the plaintiff and it has caused irreparable loss to its business interests and reputation.

5) It was further pleaded that even in the year 2019, the defendants had attempted to bypass the plaintiff by directly supplying goods to stockists. However, the issue was resolved through the intervention of the Chemists and Distributors Association of J&K, and a commitment was made by the defendants to supply products only through the plaintiff. It was pleaded by the plaintiff that it apprehended that the defendants may act in breach of the aforesaid commitment and may directly supply the stocks to the market or third parties thereby usurping the goodwill built by the plaintiff. It was contended by the plaintiff that the

unilateral revised agreement is one-sided and that the same is mala fide in nature. It was contended that slashing down of percentage of stockist margin and discount was an attempt of unjust enrichment by the defendants.

6) It was also pleaded that the plaintiff communicated with defendant No.2 vide email dated 22nd April, 2025, for reconsideration of the matter. However, defendant No.1, instead of addressing the issue, sent email dated 23rd.04.2025, whereby business relations with the plaintiff have been terminated. This action of the defendants has been termed by the plaintiff as *mala fide*.

7) The defendants contested the suit by filing their written statement, wherein they pleaded that in order to supply its pharmaceutical products, they had personal discussion with the plaintiff, whereafter the plaintiff was appointed as Super Stockist for Kashmir under the terms and conditions mentioned in email dated 23.06.2017. It was pleaded by the defendants that as per Clause (8) of the terms and conditions mentioned in email dated 23.06.2017, the right to change/withdraw the Super Stockistship remains with the defendant company thereby vesting absolute unilateral power in the defendant company. According to the defendants, there was no requirement of issuing prior notice before terminating the stockistship of the plaintiff. It was

pleaded that no other agreement was ever executed by and between the parties in this regard.

8) According to the defendants, after a certain period of business, the plaintiff dramatically changed its functioning, inasmuch as it failed to make payments on time against the supplies made. It was pleaded by the defendants that the plaintiff, after receipt of supplies from the defendants, was required to distribute these goods, however, it failed to make supplies worth ₹50,000/- to distributors, as a result of which, the defendants were constrained to deliver these supplies directly to distributors through employees.

9) According to the defendants, the unethical activities and indiscipline of the plaintiff continued and that the plaintiff threatened to tarnish the image of the defendant company. It was pleaded that despite all these indiscretions by the plaintiff, it was provided a number of opportunities to improve, but it did not bear any fruitful results. The defendants have pleaded that with due consultation with the plaintiff, the terms and conditions for Super Stockistship were revised in terms of email dated 18.03.2025 with fresh terms and conditions including the condition for deposit of one-time refundable interest-free security of ₹1,00,00,000/- (Rupees One Crore), with a further condition that right to change/withdraw super stockistship shall remain with the

defendant company. However, the plaintiff did not agree to the condition regarding deposit of ₹1,00,00,000/- (Rupees One Crore) refundable interest-free security. Thereafter negotiations were held between the parties and the revised terms and conditions came to be issued vide email dated 21.04.2025 and the condition with regard to deposition of refundable interest free security removed but *in spite* of this concession, the conduct of the plaintiff did not improve, as a result of which the defendants had to stop the supplies to the plaintiff. It was pleaded by the defendants that in order to save themselves from recurring losses, they had no option but to terminate business dealings with the plaintiff, vide email dated 23.04.2025. It was also pleaded by the defendants that even at present, stocks worth lakhs of rupees are lying with the plaintiff and despite requests, the plaintiff has not returned the same.

10) The learned Trial Court at the time of institution of the suit, passed an *exparte* interim injunction on 26.04.2025, whereby the parties were directed to maintain status quo with respect to appointment of any third party as distributor for Kashmir region.

11) After the pleadings were complete, the learned Trial Court proceeded to consider the application filed by the plaintiff under Order 39 Rules 1 and 2 of CPC on its merits

and upon analysing the pleadings of the parties and after hearing learned counsel for the parties, the learned Trial Court, vide impugned order dated 15.07.2025, proceeded to dismiss the application of the plaintiff under Order 39 Rules 1 and 2 CPC and the exparte interim injunction granted in favour of the plaintiff has been vacated. While passing the impugned order the learned Trial Court has observed that the defendants were well within their rights to terminate the contract as the plaintiff has acted in derogation of the terms and conditions agreed upon at the time of entering into business transaction. It has been observed by the learned Trial Court that neither there is any prima facie case in favour of the plaintiff nor the balance of convenience lies in its favour, inasmuch as granting of injunction in favour of the plaintiff would cause more inconvenience and mischief to the defendants than withholding it and that they will suffer an irreparable loss.

12) The appellant/plaintiff has challenged the impugned order on the grounds that the learned Trial Court has failed to appreciate that there is a strong prima facie case in its favour. It has been contended that the defendants cannot place reliance upon an unregistered email agreement which contains a clause relating to unilateral termination of distributorship. It has also been contended that the

appellant/plaintiff has already returned the stocks to the defendants which shows its bonafides. It has been contended that the email dated 23.06.2017, which contains a clause relating to termination of distributorship, is not an authentic document, as such, the same could not have been relied upon. The appellant/plaintiff has submitted that it has already moved an application under Section 379 of BNSS before the learned Trial Court seeking action against the defendants in relation to fabrication of this document. It has been further contended that no formal agreement was ever executed between the parties and, therefore, the defendants could not have unilaterally terminated the contract. It has been contended that the plaintiff has created extensive infrastructure and the arbitrary action of the defendants has led to huge losses which has created a financial strain upon the plaintiff. It has also been contended that business interests of the plaintiff are required to be protected as termination of distributorship would lead to loss of plaintiff's goodwill as also other losses which cannot be compensated in terms of money.

13) We have heard learned counsel for the parties and perused record of the case including record of the Trial Court. We have also considered the grounds projected by the appellant in the memo of appeal.

14) It is well-settled law that while passing a temporary injunction under Order 39 Rules 1 and 2 of CPC, the Court is required to consider:

- (a) Whether there is a prima facie case in favour of the plaintiff;*
- (b) Whether balance of convenience is in favour of passing the order of injunction, and*
- (c) Whether the plaintiff will suffer an irreparable loss and injury if the order, as prayed for, is not passed.*

15) In the present case, the plaintiff has come forward with the contention that it was appointed as super stockist/distributor by the defendant company for its pharmaceutical products for Kashmir Valley. This was done by the defendant company in July, 2017. According to the plaintiff, there were no terms and conditions settled by the parties. However, the defendants, in their written statement, have specifically pleaded that the terms and conditions settled by the parties were incorporated in letter dated 23.06.2017. As per this letter, the following terms and conditions were laid down:

- 1) Invoice will be generated from Chandigarh.
- 2) CST as applicable will be charged to you.
- 3) Stocks will be dispatched only after the receipt of Demand Draft / or Account transfer in Company's account.
- 4) 2% Cash Discount will be given in the Invoice itself.
- 5) 5% Super Stockist margin will also be given in Invoice itself.

6) You need to maintain inventory of 'Sales x 2 times.

7) Any sales return or Expiry will be adjusted by way of Credit Note and the same will be adjusted in your account.

8) Right to change/withdraw Super Stockistship remains with the company only.

16) It is admitted case of the plaintiff that from July, 2017 onwards, it has acted as Super Stockist/Distributor for the products of defendant company in Kashmir Valley and that business was being carried on by it by acting as stockist of the defendant company. The plaintiff has not even pleaded as to what were the terms and conditions of the business dealings between the parties, though it has categorically admitted that it was conducting business as Stockist of the defendant company. Once it is an admitted position that the plaintiff was conducting business as a Stockist of the defendant company, in the absence of pleadings or material from the end of the plaintiff to show that any other terms and conditions were agreed upon by the parties, it has to be inferred that the business transactions were being undertaken in accordance with the terms and conditions laid down in letter dated 23.06.2017. The denial of the plaintiff about the existence of the aforesaid letter, in the absence of any pleadings or the documents to the contrary, is unacceptable. Thus, *prima facie*, it appears to us that the business transactions between the parties were being

governed by the terms and conditions contained in letter dated 23rd June, 2017.

17) As per clause (8) of the aforesaid letter, the defendant company had a right to change and withdraw the Super Stockistship at any time. There is also material on record to show that the defendant company intended to vary the terms and conditions of the distributorship by incorporating the condition with regard to interest-free refundable security and change in percentage of stockist margin and cash discount. This was not acceptable to the plaintiff, as has been clearly pleaded by it in the plaint. It is because of these reasons that the defendant company decided to terminate the Stockistship/Distributorship of the plaintiff. Since the defendant company had a right to withdraw the Super Stockist arrangement with the plaintiff at any time, therefore, once there was no consensus between the parties about the revised terms and conditions, the action of the defendants in terminating distributorship of the plaintiff, *prima facie*, appears to be justified. Thus, the learned Trial Court is right in its conclusion that there is no *prima facie* case in favour of the plaintiff.

18) Once it is found that the plaintiff has failed to make out a *prima facie* case in its favour, there is no need to consider the other ingredients for grant of interim injunction, like

balance of convenience and the likelihood of irreparable loss and injury in case of withholding of injunction.

19) Even otherwise, in the present case, if the injunction as prayed for by the plaintiff is not granted in its favour and it ultimately succeeds in the suit, the loss that the plaintiff may suffer on account of impugned action of the defendants can always be calculated and compensated in terms of money. The figures relating to profits earned by the plaintiff during the currency of Stockistship agreement would offer a basis for calculating the loss to which the plaintiff would be put in case it ultimately succeeds in proving that the action of the defendants was illegal. Therefore, it is not a case where the loss suffered by the plaintiff, if it succeeds in the suit, cannot be measured in terms of money. On this ground also, the plaintiff is not entitled to grant of a temporary injunction.

20) Apart from the above, if we have a look at the nature of business transaction between the parties, it is revealed that the same is determinable in nature. This is evident from Clause (8) of the communication dated 23rd June, 2017, which provides that the defendant company shall have a right to withdraw the Super Stockistship. Therefore, the provisions contained in Section 14 of the Specific Relief Act, which provide that the contracts which are determinable in nature cannot be specifically enforced, are attracted to the

present case. Section 41(e) of the Specific Relief Act specifically provides that no injunction can be granted to enforce a contract which is not specifically enforceable. On this ground also, the relief prayed for by the plaintiff by way of temporary injunction cannot be granted in its favour.

21) Since the contract between the parties in the present case is, in its nature, determinable, as such, no injunction can be granted for restraining breach of such contract. On this ground also, the plaintiff does not have a case in its favour.

22) Learned counsel for the appellant has placed reliance upon the judgment of the Supreme Court in the case **M/s Gujarat Bottling Co. Ltd. & Ors. v. The Coca-Cola Co. & Ors.**, (1995) 5 SCC 545, to contend that in a case where distributorship of an entity has been terminated, the Court has the power to grant an interim injunction.

23) The ratio laid down in **Gujarat Pottling Co. Ltd** (supra). is not applicable to the facts of the present case because in the said case, the Supreme Court was dealing with a case where the issue was relating to enforcement of a negative stipulation contained in the agreement, whereby **Gujarat Pottling Company** was supposed not to manufacture, bottle, sell, deal or otherwise be concerned

with the products, beverages of any other brands or trademarks/trade names during the subsistence of the agreement. It is in those circumstances that the Supreme Court proceeded to uphold the grant of temporary injunction in favour of Coca cola Company. The facts of the present case are entirely different.

24) The other decision which has been relied upon by learned counsel for the appellant is in the one rendered by the Supreme Court in the case of **Best Sellers Retail (India) Pvt. Ltd. v. Aditya Birla Nuvo Ltd.** (2012) 6 SCC 792.

25) The ratio laid down in the aforesaid case, in fact, goes against the proposition propounded by the appellant, inasmuch as in the said case, it has been held that even in a case where there is a prima facie case in favour of a plaintiff but it is found that loss caused to the plaintiff by withholding the injunction can be compensated in terms of money, the Court may not grant an injunction in favour of the said plaintiff. In the present case, as already discussed, the loss that may be caused to the plaintiff in case it succeeds in the suit can be measured and compensated in terms of money. Therefore, no temporary injunction can be granted in favour of the plaintiff.

26) It is a settled law that an order passed by a trial court in exercise of its discretionary power under Order 39 Rules 1 and 2 of CPC cannot ordinarily be interfered with by an Appellate Court unless the discretion exercised by the trial court is based upon irrelevant considerations while excluding the relevant material. The Appellate Court cannot substitute its own discretion for that of the trial court merely because it might have reached a different conclusion on same material. In the instant case, we find that the learned Trial Court has exercised its discretion to refuse temporary injunction in favour of the plaintiff on sound principles of law. Therefore, the impugned order does not call for any interference from this Court.

27) Accordingly, the appeal is dismissed being without any merit and the impugned order passed by the learned Trial Court is upheld.

28) The Trial Court record along with a copy of this judgment be sent back

(Sanjay Dhar)
Judge

(Sindhu Sharma)
Judge

SRINAGAR

07.08.2026

“Bhat Altaf-Secretary”

Whether the **Judgement** is speaking: **YES**

Whether the **Judgement** is reportable: **YES**