

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM No. 5447/2026 in
WP(C) No. 2009/2026

Sakina and Another

...Appellant(s)/Petitioner(s)

Through: Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Vikas Malik, Advocate

Vs.

UT of JK and others

...Respondent(s)

Through: Mr. Shuja Ul Haq, Advocate

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

21.08.2026

1. The petitioner No.1 and 2 are wife and husband to each other.

2. The petitioner No.2, joined by the petitioner No.1 has commenced a civil suit before the court of **3rd Additional District Judge, Srinagar** against four defendants out of which the respondent No. 6 herein is figuring the defendant No.4 with the defendants No. 1 and 3 being UT of J&K and Department of Forest as well as Department of Revenue.

3.In the civil suit, the respondent No.6 has come forward not only with her written statement but also with a counter claim.

4.There is a temporary injunction application under **order 39 rule 1 and 2 of the Code of Civil Procedure, 1908** which is still pending final disposal.

5.In the backdrop of ad interim order dated **29.10.2025**, whereby the respondent No.6, as being defendant No. 4, has been directed to maintain status quo qua suit property including the land underneath measuring **18 marlas** (including shamilat deh and proprietary land) falling under **khasra No. 126**, Harwan Sriangar, the parties to the civil suit i.e., petitioners and the respondent No. 6 seem to have got in some sort of allegations and counter allegations before Police Station Harwan, resulting in registration of counter **FIRs 03 of 2026 and 04 of 2026**.

6.The SHO Police Station Harwan seems to have solicited the indulgence of the Executive Magistrate 1st Class, Harwan to initiate

proceedings so as to prevent the parties from disturbing public peace.

7. By virtue of an **order No. 1029/NTH/25** dated **10.01.2026**, the Executive Magistrate 1st Class, Harwan, Srinagar came to hold that sensitivity of the dispute and likelihood of breach of peace between the parties belonging to different communities is constraining to exercise preventive jurisdiction and to order temporary attachment and sealing of the disputed property till conclusion of an enquiry.

8. By purported reference to said order and initiation of enquiry proceedings, the **Executive Magistrate 1st Class, Harwan** has come up with an order dated **10.08.2026** by purported reference to proceedings under **section 164** of the **Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023 (BNSS), 2023**.

9. Without delving further into the matter, this Court, when examines two orders i.e., order dated **10.01.2026** and order dated **10.08.2026**, this finds an inherent legal infirmity committed

at the end of the Executive Magistrate 1st Class, Harwan, Srinagar and said infirmity is an outcome exclusively from the ignorance of law on the part of Executive Magistrate 1st Class, Harwan, Srinagar that the origin of proceedings under **section 164 of Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023 (akin to section 145 of the Code of Criminal Procedure, 1973)** is meant to be sourced to a preliminary order to be drawn first wherein two things are to be set out which are dispute about possession of an immovable property and then likelihood of breach of peace between the two contesting parties viz-a-viz said possession claim.

10. In the present case, the Executive Magistrate 1st Class, Harwan, Srinagar, in his order dated **10.01.2026**, does not bear any such reference that the likelihood of breach of peace between the petitioners and the respondent No. 6 is obtaining with respect to the possession of the

property obtaining in the form of immovable land/premises thereupon.

11. With this fundamental flaw/omission in his original order dated **10.01.2026**, rest of the proceedings undertaken by the Executive Magistrate 1st Class, Harwan, Srinagar resulting in its purported conclusion in terms of order dated **10.08.2026** whereby he came to order restoration of possession of the property not identified in order dated **10.01.2026** but getting identified in order dated **10.08.2026**, to be restored to the respondent No. 6, is also rendered illegal.

12. Given the fact that both the petitioners and the respondent No. 6 have come up with the extensive pleading from their respective end before the court of 3rd Additional District Judge, Srinagar, the call of prudence for the Executive Magistrate 1st Class, Harwan, Srinagar ought to have been to refer the petitioners as well as respondent No. 6 to the court of 3rd Additional District Judge, Srinagar for dealing with the

matter so obtaining between the petitioners and the respondent No.6 viz-a-viz the suit property.

13. In the light of the aforesaid, this Court is declaring the entire course of proceedings at the end of **SHO Police Station Harwan** of apprising the **Executive Magistrate 1st Class, Harwan, Srinagar** with respect to purported state of dispute and then action and directions on the part of **Executive Magistrate 1st Class, Harwan, Srinagar** in initiating proceedings in terms of order dated **10.01.2026** and culminating in order dated **10.08.2026** as illegal and, accordingly, order dated **10.08.2026** is hereby set aside.

14. Consequently, this Court directs learned **3rd Additional District Judge, Srinagar** to bring the suit property under immediate attachment of **Nazir of Principal District Judge, Srinagar** by distancing both the parties i.e., plaintiffs-petitioners and the respondent No. 6 as defendant No.4 from the suit property till final

adjudication/disposal of temporary injunction application of the petitioners in the suit.

15. The court of learned **3rd Additional District Judge, Srinagar** shall dispose of pending temporary injunction application by or before **30.09.2026** without any scope for extension of time in carrying out the requisite adjudication.

16. This court is constrained to observe so because the delay of this nature in disposing of an application under **order 39 rule 1 and 2 of the Code of Civil Procedure, 1908**, in a given civil suit leads the parties to the suit for shortcut to outwit each other in the matter of claim and counter claim viz-a-viz possession of a suit property.

17. A copy of this order be forwarded to the court of learned **3rd Additional District Judge, Srinagar** for notice and compliance.

18. This writ petition is, accordingly, **disposed of** along with connected CM/s.

(RAHUL BHARTI)
JUDGE

Srinagar
21.08.2026
"Imtiyaz"