

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

**CR No. 32/2026
CM No. 6223/2026
Caveat No. 1564/2026**

Bashir Ahmad Lone (55 Years)

S/O Abdul Kareem Lone
R/O Bemina, Srinagar.

... Petitioner(s)

Through: -

Mr Javeed Malik, Advocate.

V/s

1. **Owais Ahmad Wani,**
S/O Bashir Ahmad Wani
R/O Nowgam, Bypass,
Srinagar.

... Contesting Respondent

2. Nazir Ahmad Parray,
S/O Ghulam Ahmad Parray,
Maharajpora, Batamaloo,
Srinagar.
3. Farooq Ahnmad Bhat
S/O Abdul Ahad Bhat
R/O Gogoo, Humhama,
Srinagar.

... Proforma Respondent(s)

Through: -

Mr Tahir Nazir, Advocate for the Caveator/ R-1.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(ORDER)

16.09.2026

Caveat No. 1564/2026:

01. With the appearance of Mr Tahir Nazir, Advocate, on behalf of the Caveator/ Contesting Respondent, Caveat No. 1564/2026 shall stand **discharged**, accordingly.

CR No. 32/2026; CM No. 6223/2026:

02. The Petitioner, through the medium of this Revision Petition read with Article 227 of the Constitution of India, seeks setting aside of

Order dated 3rd of August, 2026 read with Order dated 2nd of September, 2026 passed by the Court of learned 1st Additional District Judge, Srinagar, in an application filed by the Petitioner herein as Judgment Debtor under Order XXI Rule 29 CPC in the Execution Petition titled “**Owais Ahmad Wani V. Nazir Ahmad Parray & Ors.**”, seeking stay of the executing proceedings till the cross Suit titled “**Nazir Ahmad Parray & Ors. V. Owais Ahmad Wani**” is conclusively decided.

03. The impugned Orders have been challenged on the ground that the Petitioner, as one of the Judgment Debtors, had moved an application under Order XXI Rule 29 CPC before the Executing Court seeking stay of the execution proceedings, until the Suit filed by the Judgment Debtors against the Decree sought to be executed in the executing proceedings is decided finally.

04. The learned Counsel for the Petitioner has argued that the Court below has wrongly declined to exercise discretionary power under Order XXI Rule 29 of CPC, by observing that grant of stay at this stage would defeat the rights of the Decree Holder to enjoy the fruits of the Decree and would amount to delaying the execution, without any lawful justification. He has further argued that the Executing Court was under an obligation to stay the proceedings of the Execution Petition till the conclusion of the Suit filed by the Judgment Debtors, including the Petitioner herein, to challenge the Decree having been obtained allegedly by playing fraud and that, in case the Decree is enforced at this stage, the Suit filed by them shall be rendered *infructuous*. He has also argued that the Court below, while passing the impugned Orders, has taken a wrong view in the matter which is required to be set aside.

05. Learned Counsel appearing for the Respondent No.1, on the other hand, argued that the Executing Court had passed the impugned Orders perfectly in consonance with law and, as such, same do not call for any interference by this Court invoking Revisional jurisdiction. He has, finally, prayed that the instant Civil Revision be dismissed outrightly and the impugned Orders be upheld.

06. Heard and considered.

07. At the outset, it has to be kept in mind that the Revisional jurisdiction can be invoked when the orders under challenge suffer from any perversity or illegality. Having regard to this important consideration, the impugned Orders passed by the Executing Court in the instant case are required to be considered.

08. Rule 29 of Order XXI of CPC, for facility of reference, is extracted as under:

“29. Stay of execution pending Suit between decree holder and judgment debtors: Where a Suit is pending in any Court against the holder of a decree of such Court instituted by the person against whom the decree was passed, the Court may, on such terms as it thinks fit, stay the execution of the decree until the pending suit has been decided.”

On a bare perusal of the above Rule 29 of Order XXI CPC, it clearly transpires that where a Suit is pending in any Court against the holder of a Decree of such Court instituted by the person against whom the Decree was passed, the Court may, on such terms as it thinks fit, stay the execution of the Decree, until the pending Suit has been decided.

09. In the instant case, the Executing Court has rightly interpreted the aforesaid provision of law by holding that a plain reading of the aforesaid provision makes it clear that the power to stay execution is discretionary and not mandatory, as the expression “**may**” in Rule 29 confers a discretionary power upon the Executing Court which, however, has to be examined judicially, depending upon the facts and circumstances of each case. Mere pendency of a Suit between the Decree Holder and Judgment Debtor does not automatically entitle the latter to an order of stay. The discretion vested in the Executing Court is required to be examined judicially, after considering the facts and circumstances of each case, the conduct of the parties and the stage of execution proceedings. It is trite in law that the Executing Court cannot go beyond the Decree and is bound to execute the Decree, as it stands, unless its execution has been stayed or the Decree has been set aside by a competent Court.

10. It appears that the Petitioner herein, while filing a Suit for setting aside the Decree may not have prayed, or, if prayed, may not have

been granted the stay of the impugned Decree. The Petitioner has not brought on record anything to suggest whether any interim relief was sought with that Suit or not and, if sought, whether that was declined by the Court. In such a situation, it was for the Petitioner, as Plaintiff in the subsequent Suit, to challenge the Decree to seek stay of the execution of the Decree from that Court, instead of approaching the Executing Court to seek stay of the execution proceedings invoking Rule 29 of Order XXI of CPC, which is discretionary in nature.

11. In view of above, no fault can be found with the Order passed by the Court below invoking the revisional jurisdiction as regards the non-exercising of discretionary power vested in the Court below, inasmuch as, it does not amount to any illegality or perversity which this Court, while exercising the revisional jurisdiction, is supposed to warrant interference.

12. Insofar as the other Order dated 2nd of September, 2026, impugned in this Petition is concerned, in absence of payment of the amount of the money Decree, the Court below had ordered the Judgment Debtors to be arrested and detained in civil prison invoking Order XXI Rule 40 of CPC read with Section 51 of CPC, with the condition that if they deposit/ pay the decretal amount, they shall be released from custody forthwith.

13. In this context, the learned Counsel appearing for the contesting Respondent/ Decree Holder, submits that there are three Judgment Debtors, the Petitioner and the Respondents No. 2 and 3 herein, and that the Respondents Nos. 2 and 3 have liquidated some of the decretal amount and they are in the process of liquidating the balance amount, however, the Petitioner herein, whose liability extends to payment of ₹7.00 lacs, has not paid even a single penny, as such, the Petitioner cannot take refuge of pendency of a Suit for setting aside the Decree, sought to be enforced in the execution petition without any stay Order from the Trial Court where the subsequent Suit is pending.

14. In the light of the aforesaid submissions and on a consideration of Order dated 2nd of September, 2026, the same also seems to be perfectly

legal in nature and does not call for any interference in this Revision Petition, for lack of perversity or illegality of any kind.

15. Viewed thus, the present Revision Petition is found to be devoid of any merit and substance. Accordingly, the same is **dismissed** in *limine*, along with the connected CM.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

September 16th, 2026

"TAHIR"

