

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR No.2780 of 2023

Date of decision: 04.05.2023

M/s Thind Motion Films Private Limited

....Petitioner

V/s

Ishdeep Randhawa and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate for the petitioner.

VIKAS SURI, J.

This is a petition preferred under Article 227 of the Constitution of India challenging the order dated 01.05.2023 passed by Civil Judge (Junior Division), Ludhiana whereby *ex-parte* ad-interim injunction has been passed against the defendants therein from releasing the film “Jodi Teri Meri” on 05.05.2023 i.e. tomorrow.

The facts in brief are that father of the plaintiffs viz. Gurdev Singh Randhawa, was director of Gurdevfilms, which is producer of TV serials, documentaries, tele-films, films, motion pictures and AD films. He had decided to make motion film on the biography of ‘Amar Singh Chamkila and Bibi Amarjot Kaur.’ He had entered into an agreement with the widow of Amar Singh Chamkila and the writing in that regard was executed on 12.10.2012 whereby she had granted permission on behalf of her family to make the film and assured full cooperation. In consideration thereof, she had received a sum of Rs.5,00,000/- and transferred all rights to Gurdev Singh. It was stipulated that the agreement will be binding on the

heirs as well. Gurdev Singh Randhawa died on 03.11.2022 and is survived by his widow Smt. Jaspreet Kaur and the plaintiffs namely Ishdeep Randhawa and Sanjot Randhawa.

It is further pleaded that the plaintiffs came to know that Gurmail Kaur are making/preparing the film on biography of Amar Singh Chamkila and Bibi Amarjot Kaur in association with M/s Reliance Entertainment, Imitiaz Ali, Diljit Dosanj and Parineeti Chopra. The plaintiffs earlier filed one civil suit titled *Ishdeep Randhawa and another vs. Gurmail Kaur and others*, against the aforesaid persons, which is pending in the Court of Harsimranjit Singh, Civil Judge (Senior Division), Ludhiana. It is pleaded that in the said case, Gurmail Kaur and M/s Reliance Entertainment have appeared and filed written statement. During pendency of the said civil suit, the plaintiffs came to know from online and other sources that another film namely 'Jodi Teri Meri' is also being prepared and is scheduled for release on 05.05.2023.

In the aforesaid backdrop, the plaintiff-respondent Nos.1 and 2 instituted the present suit against the defendant-respondent Nos.3 to 6 as well as the petitioner, by wrongly mentioning the petitioner as Daljit Motion Films (defendant No.2). It was averred therein that they have no right to make/prepare the said film during the subsistence of the agreement between the plaintiffs and Gurmail Kaur (defendant No.3). It is also averred that the afore-noticed film is based and influenced by the book 'Awaz Mardi Nahi' authored by Sh. Gulzar Singh Shonki. It is further averred that the concept is also copied and inspired from the aforesaid book and the main actor/hero in both the films is defendant - Diljit Dosanj.

The suit was instituted on 01.05.2023 along with the application under Order 39 Rule 1 and 2 CPC for grant of ad-interim injunction. On the same day, an *ex-parte* ad-interim injunction was granted whereby the defendants were restrained from releasing the film 'Jodi Teri Meri' on 05.05.2023, except in due course of law till the next date of hearing i.e. 08.05.2023. It is notable that formal notice of the suit or the application for ad-interim injunction has not been ordered to be issued by the impugned order but it was made clear that if service of defendants is not affected by 08.05.2023 through RC/AD etc. then the stay order shall stand vacated automatically.

Learned senior counsel for the petitioner has emphatically urged that perusal of the plaint (Annexure P-3) reveals that the brief controversy involved is that the plaintiff-respondent Nos.1 and 2 claim to be owner of copy right and other bundle of intellectual rights in the story of singer Chamkila, through an assignment agreement dated 12.10.2012 entered into between the wife of the deceased singer and the predecessor-in-interest of the plaintiffs. It is, thus, contended that in view of the specific bar contained in Section 62 of the Copy Right Act, 1957 (for short "the Act"), the suit was not maintainable before the Civil Judge (Junior Division), who entertained the same while passing the impugned order dated 01.05.2023. The said plaint could only have been presented before the District Court having jurisdiction i.e. the Principal Civil Court of original jurisdiction. Reference is made to the definition of 'District' contained in Section 2(4) of the Code of Civil Procedure.

On a specific query being put to learned senior counsel, regarding the impugned order being appealable under the provisions of Order 43 Rule 1(r) CPC, a categorical two fold stand has been taken. It is submitted that in view of the embargo contained in Section 62 of the Act, the proceedings suffer from jurisdictional error and even otherwise, on account of basic principles of natural justice having been flouted, the impugned order has resulted in gross and manifest failure of justice.

It would be necessary to refer to the averments made in the plaint and the relevant statutory provisions to appreciate first part of the argument urged by learned senior counsel, noticed above.

The heading of the suit and the prayer made in the plaint (Annexure P-3) reads as thus:-

“Suit for grant of judgment and decree for declaration to the affect that any agreement/writing allegedly executed by defendant No.3 in favour of other defendants or subsequent agreement if any for giving the rights to make film on biography of ‘Amar Singh Chamkila & Bibi Amarjot Kaur’ is illegal, null and void, merely waste paper, and is not having any value in the eyes of law during the subsistence Agreement reduced into Writing dated 12.10.2012 by Gurmail Kaur W/o Amar Singh Chamilka in favour of the plaintiff by receiving the entire consideration amount.

And

Suit for mandatory injunction directing the defendants to produce on writing reduced between the defendants for giving the rights to make film on biography of ‘Amar Singh Chamkila & Bibi Amarjot Kaur’

And

for grant of judgment and decree for permanent injunction restraining the defendants their agents, attorney, associates to release the film “Jodi Teri Meri” on biography of ‘Amar Singh Chamkila & Bibi Amarjot Kaur’ on 05.05.2023 and during the pendency of suit as the same is prepared during the subsistence of agreement in favour of the plaintiff, ON THE BASIS OF ORAL AND DOCUMENTARY EVIDENCE.

It is, therefore, prayed that decree for grant for declaration to the affect that any agreement/writing allegedly executed by defendant No.3 in favour of other defendants or subsequent agreement if any for giving the rights to make film on biography of ‘Amar Singh Chamkila & Bibi Amarjot Kaur’ is illegal, null and void, merely waste paper, and is not having any value in the eyes of law during the subsistence Agreement reduced into Writing dated 12.10.2012 by Gurmail Kaur W/o Amar Singh Chamkila in favour of the plaintiff by receiving the entire consideration amount, and decree for mandatory injunction directing the defendants to produce on writing reduced between the defendants for giving the rights to make film on biography of ‘Amar Singh Chamkila & Bibi Amarjot Kaur’ decree for grant of judgment and decree for permanent injunction restraining the defendants their agents, attorney, associates to release the film “Jodi Teri Meri on biography of ‘Amar Singh Chamkila & Bibi Amarjot Kaur’ on 05.05.2023 and during the pendency suit as the same is prepared during the subsistence of agreement in favour of the plaintiff may kindly be awarded in favour of the plaintiffs and against the defendants.

Any additional or alternative relief of this Hon’ble Court deems fit may also be awarded in favour of the plaintiffs against the defendants.”

To substantiate the argument that the present suit is based on copyright and other intellectual rights in the life story of Amar Singh Chamkila and therefore, was instituted in the wrong Court in light of the candid provisions of Section 62 of the Act, learned counsel would make reference to the averments in para Nos. 4, 6, 8, 9 and 12 of the plaint, which read as under:-

4. That the defendant No.3 to give full rights to Gurdev Singh and his LRs had entered into an agreement dated 12.10.2012 and granted full right/intellectual property rights on the biography of Amar Singh Chamikla, 'Film means the motion picture on the biography of Amar Singh Chamikla, intellectual property right means all intellectual property right including tantamount united to copy rights, trade mark, patent, digital rights and all other amalgams rights as are communally under applicable law in India and other jurisdiction and ancillary rights. It has been further agreed upon between the said parties herein that consideration of acquiring the right of original film making on the biography life of Sh. Amar Singh Chamkila is acquired by Sh. Gurdev Singh Randhawa. The entire consideration as mentioned in agreement has been paid. It has also been agreed that all L.R. of Gurdev Singh will be entitled to recipient of any consideration of this agreement in the said agreement subsequently or in future. Sh. Gurdev Singh was suffering from hypertension and died after prolong illness.

6. That earlier plaintiff came to know that defendant No.3 (Gurmail Kaur as defendant No.1 in that suit) in connivance with (2) M/s Reliance Entertainment, (3) Imitiaz Ali, (4) Diljit Dosanj & (5) Parineeti Chopra are making/preparing the film on the biography of 'Amar Singh Chamkila & Bibi Amarjot Kaur'. In the said film

the defendant No.2 is a Producer, defendant No.3 is a Director/Producer and defendant Nos.4 and 5 are Actor and Actress of the said alleged film. On enquiry the plaintiff came to know that defendant No.1 has signed writing in favour of defendants and given the rights to make the film on the biography of 'Amar Singh Chamkila & Bibi Amarjot Kaur'. So the plaintiff approached the defendants and showed the writing dated 12.10.2012 executed by Smt. Gurmail Kaur in favour their father Sh. Gurdev Singh Ranadhawa, and further requested them to declare the alleged agreement/writing allegedly executed by defendant No.1 in favour of defendants as illegal, null and void, merely waste paper and not to act upon the same. At that time the defendants assured not to make any film on the 'Amar Singh Chamkila & Bibi Amarjot Kaur' and further assured to tear the agreement/writing, but cunningly they did not acted upon the same. So the plaintiffs have filed one civil suit titled "Ishdeep Randhawa and another vs. Gurmail Kaur and others" against the above said persons which is pending the court of Sh. Harsimranit Singh, CJ(SD), Ludhiana and the said court granted the stay order in favour of the plaintiff and restrained Gurmail Kaur and others to release any film on the biography of 'Amar Singh Chamkila & Bibi Amarjot Kaur' vide order dated 21.03.2023, the said suit is still pending before the said court and now fixed for 03.05.2023 for filing replication. **The copy of the plaint and order is attached.**

8. That thereafter during the pendency of the above civil suit Ishdeep Randhawa Vs. Gurmail Kaur and others, the plaintiff further came to know from online and other sources that one another film namely 'Jodi Teri Meri' is also being prepared by the defendants in the present case in collusion with each other and are going to release the

same on 05.05.2023. The defendants have no right to prepare the said film during the subsistence of the agreement between the plaintiffs and defendant No.3, the said act on the part of the defendants is totally illegal and they have taken the law in their hands. It is worth to mention here that the above said film namely ‘Jodi Teri Meri’ is based and influenced by a Book namely “Awaz Mardi Nahi’ written by author Sh. Gulzar Singh Shonki. The defendants in hurried manner are going to release the same on 05.05.2023. It is further worth to mention here that the defendants with malafide intention change the name Amar Chamkila with Amar Sitra (Diljit Dosanj) and Amarjot Kaur with Kamaljot Kaur (Nimrat Khara). The concept is also copied and inspired from book “awaz Mardi Nahi’ Some of the important pages are as under:-

Page No. 26	Paragraph No.2 – Amar Singh Chamkila meeting his friend to discuss their future plans outside the liquor store
Page No.31	How Chamkila was called in School to sing when he was in first grade.
Page No.47	When Amar Singh Chamkila and Amarjot Kaur’s first programme got cancelled.
Page No.48	Amarjot Kaur is cooking for Chamkila and doing rehearsals onteh roof top.
Last Scene	Where Amar Singh Chamkila was filmized as dead in similar manner.

In the said films some title of the Cassettes shown in the move are similar and relevant to cassettes released by ‘Amar Singh Chamkila & Bibi Amarjot Kaur’, during life time. Photos attached. It is further worth to mention

here that in both the films the main actor/Hero is Diljit Dosanj and he is very well conversant with all the facts of both the films. The plaintiff again met the defendants and again requested, but the defendants paid no heed to the genuine requests of the plaintiff rather threatened the plaintiff, so the plaintiff has no efficacious remedy except to bring this suit.

9. That the plaintiff requested the defendants to produce the writing reduced between the defendants whereby giving the rights to make film on biography of 'Amar Singh Chamkila & Bibi Amarjot Kaur' but the defendants totally failed to handover the same to the plaintiff. It is worth to mention here that defendant No.4 Diljit Dosanj being actor signed the two contracts for preparing films on the biography of Amar Singh Chamkila and Amarjot Kaur, one contract is with M/s Reliance Entertainment and another with M/s Rhythm Boys Entertainment Pvt. Ltd Etc. This fact itself declares Gurmail Kaur and Diljit Dosanj in connivance with each other hatched a conspiracy just to earn the money by adopting illegal means on the goodwill of dead persons.

12. That cause of action arose to the plaintiffs on the date when defendant No.3 and Sh. Gurdev Singh Randhawa entered into an agreement/writing dated 12.10.2012, on the date when Sh. Gurdev Singh Randhawa approached Gurmail Kaur for the contents on the life of 'Amar Singh Chamkila & Bibi Amarjot Kaur' and then during life time picturized some songs and scene on the biography of 'Amar Singh Chamkila & Bibi Amarjot Kaur' and then during life time picturized some songs and scene on the biography of 'Amar Singh Chamkila & Bibi Amarjot Kaur' at USA/Canada on the date when Sh. Gurdev Singh Randhawa died, on the date plaintiffs approached the defendant No.1 and showed the writing dated 12.10.2012 and requested to disclose biography of

‘Amar Singh Chamkila & Bibi Amarjot Kaur’ on the date when the previous suit titled Ishdeep Singh Randhawa and another vs. Gurmail Kaur and others was filed, but he put the matter on one pretext or the others, on the date when the defendant No.1 without any right entered into an agreement/writing in favour of M/s Reliance Entertainment and they started making film with the help of Diljit Dosanj and Parineeti Chopra, the date when plaintiffs on coming to know about the above said facts filed the Civil Suit and on the date when the civil court granted stay order on the release of film on the biography of ‘Amar Singh Chamkila & Bibi Amarjot Kaur’, on the date when the plaintiffs further came to know that defendants in connivance with each other prepared another move in title “Jodi Teri Meri” on the date when the plaintiff came to know about preparing of movie under title “Jodi Teri Meri” on the date when the plaintiffs requested the defendants not to release film under title “Jodi Teri Meri”, but the defendants paid no heed to the genuine requests of the plaintiff and rather threatened to plaintiffs to release the same on 05.05.2023, the threats of the defendants are still continue.

The following statutory provisions would be relevant to appreciate the contentions raised on behalf of the petitioner:

“Section 2

- (y) “work” means any of the following works, namely,—
- (i) a literary, dramatic, musical or artistic work;
 - (ii) a cinematograph film;
 - (iii) a sound recording;

13. Works in which copyright subsists.—(1)

Subject to the provisions of this section and the other

provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recording.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of Section 40 or Section 41 apply, unless,—

- (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;
- (ii) in the case of an unpublished work other than a work of architecture, the author is at the date of making of the work a citizen of India or domiciled in India; and
- (iii) in the case of a work of architecture, the work is located in India.

Explanation.—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

- (a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;
- (b) in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the sound recording is made.

(5) In the case of a work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

14. Meaning of copyright.—For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

- (i) to do any of the acts specified in clause (a);
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two-dimensions of a three-dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

(i) to make a copy of the film, including—

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means;

- (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;
- (iii) to communicate the sound recording to the public.

Explanation.—For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.]

16. No copyright except as provided in this Act.—

No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

55. Civil remedies for infringement of copyright.—(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, or, subject to the provisions of sub-section

(3) of Section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

62. Jurisdiction of court over matters arising under this Chapter.—(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.”

A perusal of the above provisions show that meaning of copyright, contained in Section 14, is the exclusive right to do or authorize the doing of the acts specified in that section, in respect of the work or any

substantial part thereof. “Work” is defined under Section 2(y) to mean a literary, dramatic, musical or artistic work; a cinematograph film; or a sound recording.

The plaint does not *prima facie* make reference to any “work” with regard to which infringement of copyright is alleged to have been pleaded, as per the argument made on behalf of the petitioner. Moreover, by virtue of Section 16 of the Act, no person is entitled to copyright or any similar right in work except as provided in the Act. Meaning thereby, the Act being a self contained code, any act purported to be actionable claim against infringement of copyright would mandatorily have to be within the four corners of the statutory provisions.

Learned counsel for the petitioner would refer to the principles formulated on the exercise of High Court’s jurisdiction under Article 227 of the Constitution of India in ***Shalini Shyam Sethi and others vs. Rajendra Shanker Patel, (2010) 8 SCC 329***, which had also noticed the principles laid down by the Constitution Bench of the Apex Court in ***Waryam Singh vs. Amarnath, AIR 1954 SC 215***.

The said principles, also record a word of caution that High Courts cannot, on the drop of hat, in exercise of its powers of superintendence under Article 227 of the Constitution, act as a Court of appeal over the orders of Court or Tribunals subordinate to it. Nor can it, in exercise of the said power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal have been provided, that would also operate as a restrain on the exercise of this power by the High Court. In exercise of power of superintendence, High Court cannot interfere to correct mere errors of law or fact just because another view than the one taken by the Court subordinate to

it is a possible view. It was thus held, in other words the jurisdiction has to be very sparingly exercised. The power of interference under Article 227 of the Constitution is to be kept minimum to ensure that wheel of justice does not come to halt and the fountain of justice remain pure and unpolluted in order to maintain public confidence in the functioning of the Tribunals and Courts subordinate to High Court.

In *Sandhana Lodh vs. National Insurance Co. Ltd. and another, (2003) 3 SCC 524*, the Apex Court while examining the provisions of the right of statutory appeal under Section 173 of the Motor Vehicles Act, 1988 held that where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution of India. It was observed, that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the fact of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

In *Jai Singh and another vs. Municipal Corporation of Delhi and another, (2010) 9 SCC 385*, it was held as under:-

“15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under

Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognised constraints. It can not be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

16. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar

facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.”

Learned counsel for the petitioner is not in a position to deny from the record that vide impugned order, *ex-parte* ad-interim injunction was granted on the prayer made in the application under Order 39 Rule 1 and 2 CPC filed along with the suit. The said order is appealable in view of the candid provisions of Order 43 Rule 1(r) CPC.

While considering whether an *ex parte* ad interim injunction order issued under Rule 1 or Rule 2 of Order 39 of the Civil Procedure Code is appealable under Order 43, Rule 1(r), the Full Bench of the Jammu and Kashmir High Court in *M/s Astral Traders vs. M/s Haji Mohammad Shaban Dar and others*, AIR 1982 J&K 124, held that an *ex parte* order is as good an order to attract the provisions of Order 43. Rule 1 (r), as an order passed after hearing both the sides. Failure to state reasons for it can be no doubt a good ground for oversetting an order in appeal, but surely such failure cannot render the order non-appealable. If the intention of the Legislature were to make only such orders appealable as were passed after hearing both the sides, then nothing could have prevented it from saying so in clear and unequivocal terms. The language of Order 43, Rule 1(r) is too wide and distinct not to admit of any interpretation that its provisions would be attracted to only that order which has been passed by the court after hearing both the parties and contains reasons for the decision sought to be conveyed through it.

As an argument in despair, it is sought to be urged on behalf of the petitioner that the statutory appeal is not an efficacious remedy in light of the fact that the release is scheduled for 05.05.2023 and an *ex-parte* order has been passed by a Court, which has no jurisdiction to entertain the suit.

This Court is conscious of the fact that any observation made touching the merits of the case in these proceedings, is likely to prejudice one party or the other and thus, refrains from venturing into that arena.

Nonetheless, it needs to be noticed that the suit was instituted on 01.05.2023 and the release was scheduled for 05.05.2023. The trial Court had reasonable time to affect service upon the defendants, by one or more modes specified under Order 5 Rule 9(3) CPC, instead of considering the prayer for ad interim injunction *ex parte*.

In view of the above discussion and the law settled by the Apex Court, I am of the considered opinion that no exceptional case is made out for exercise of jurisdiction under Article 227 of the Constitution of India, particularly when the petitioner has chosen to take its chance by approaching this Court first, instead of availing the remedy of statutory appeal against the impugned order under Section 104 read with Order 43 Rule 1(r) CPC.

The petitioner, if so advised, may still avail his remedy before the lower Courts, in accordance with law. Needless to observe that this order will not come in the way of the petitioner, if it chooses to avail remedy of appeal or approach the trial Court.

Any observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

The present revision petition is accordingly disposed of.

(VIKAS SURI)
JUDGE

May 04, 2023
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No