Serial No. 148

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No. 76/2025

Dr. Ashok Sharma and others

.....Appellants

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate &
Mr. Irfaan Khan, Advocate

Vs

Anil Sharma and another.

..... Respondents

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Paras Gupta, Advocate,
Mr. Ravi Abrol, Advocate &
Mr. Parimoksh Seth, Advocate.
Mr. K. S. Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(30.12.2025)

1. Through the medium of this order, this Court is granting disposal to the present appeal preferred under the spell of Order 43 Rule 1(r) of the Code of Civil Procedure, 1908.

2. The respondent – Anil Sharma, the plaintiff has preferred a civil suit filed by him before the court of learned 2nd Additional District Judge, Jammu wherein the respondent – Anil Sharma is seeking a decree of declaration, decree of permanent prohibitory injunction and decree of mandatory injunction all independent to each other against the four

defendants, three of whom are the appellants herein whereas the fourth defendant is the proforma respondent in the present appeal.

3. In the civil suit, the respondent-Anil Sharma is claiming the reliefs as under:-

i. Pass a decree of declaration declaring that the plaintiff is the prior, continuous and exclusive user of the trade name/trade mark "SDDM Hospital" in respect of hospital and healthcare services conducted at the suit premises since the year 2014, and that the defendants have no right, title or interest therein;

ii. Pass a decree of permanent prohibitory injunction restraining the defendants, their agents, servants, employees, representatives, licensees or any other person acting for or on their behalf, from using the trade name/ trade mark "SDDM Hospital" or any other name or mark identical with or deceptively similar thereto, in relation to hospital or medical services, in any manner whatsoever, within the Union Territory of Jammu & Kashmir or such other area as this Hon'ble Court may deem fit;

iii. Pass a decree of permanent prohibitory injunction restraining the defendants from in any manner interfering with, intruding upon or dealing with the management, administration, staff, machinery, equipment, records, finances or day-to-day operations of the plaintiff's hospital, namely SDDM Hospital, situated at Channi Himmat, Jammu.

iv. Pass a decree of mandatory injunction directing the defendants to forthwith return and restore all machinery, medical equipment and other hospital assets unauthorizedly removed from the plaintiff's hospital;

v. Pass a decree of injunction restraining the defendants from threatening, intimidating, coercing or influencing

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the doctors, nursing staff, employees or any other persons associated with or working at the plaintiff's hospital;

vi. Award costs of the suit in favour of the plaintiff; and

vii. Grant such other or further reliefs, including incidental and consequential reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

4. Accompanying his said civil suit is an application preferred under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 wherein the respondent – Anil Sharma has sought issuance of temporary injunction for restraining all the four defendants, their agents, servants, representatives and all persons acting through or under them from entering, interfering with or operating the respondent-Anil Sharma's hospital premises at Channi Himmat, Jammu or in any manner interfering with the management, administration, staff, machinery, equipment and records of the respondent's hospital and further asking for temporary injunction restraining said four defendants, their agents, servants, representatives and all persons acting through or under them from using the name and style as "SDDM Hospital" or any name deceptively similar to the respondent-Anil Sharma's hospital until the final disposal of the suit.

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5. In said application under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908, the respondent – Anil Sharma invoked the exigency for immediate indulgence of the court of learned 2nd Additional District Judge, Jammu in dispensing with the requirement of issuance of prior notice to the defendants and grant ex parte ad interim injunction and, thus, cited Rule 3 of Order 39 of the Code of Civil Procedure, 1908 in the application.

6. The court of learned 2nd Additional District Judge, Jammu, by virtue of an order dated 23.12.2025, came to pick up only two defendants out of array of four defendants to be put to temporary restraint and said two defendants are the appellant No. 1 – Dr. Ashok Sharma and the appellant No. 2 – Dr. Jyotsana Lamba who figure as the defendants No. 1 & 2 in said civil suit also.

7. The appellants No. 1 & 2, thus, came to be directed temporarily restrained from entering the said hospital, namely, "SDDM Hospital" at Channi Himmat, Jammu or to remove any machinery or fixtures from it till next date of hearing.

8. The direction so passed was made subject to objections from the other side in terms of modification, variation or vacation upon circumstances so warranted.

9. Finding themselves temporarily so restrained, the appellants No. 1 & 2 joined by the appellant No. 3 – Divya Vasudeva, who is the defendant No. 3, have rushed to this Court with the present appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908.

10. Mr. Vikram Sharma, learned Sr. Advocate arguing for the appellants meant to show to this Court, by reference to the accompanying documents that the institution of the suit by the respondent against the appellants as well as the proforma respondent is tainted with malafide.

11. On the other hand, Mr. Sunil Sethi, learned Sr. Advocate arguing for the respondent – Anil Sharma urges this court to stay away from granting any indulgence in the matter in view of the facts and circumstances of the case whereby the respondent – Anil Sharma has earned the ex parte ad interim temporary injunction on the basis of a prima facie case made out before the court below.

12. Upon hearing both sides, this Court is of the considered view that at this moment of the litigation, this Court needs not to reflect upon the factual and legal aspects of the subject matter of suit lest any observation may cause a prejudice to the parties to the lis in one way or other.

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13. Keeping in view this caution in mind, this court is caught by a concern that once in the temporary injunction application filed by the respondent, the temporary injunction sought by the respondent was meant to be against all the defendants alike without any distinction, then how come the court of learned 2nd Additional District Judge, Jammu picked up only two defendants out of array of five defendants to be so injuncted when in the impugned order there is no such recital coming forth from the end of the court of learned 2nd Additional District Judge, Jammu as to whether the respondent has relinquished his prayer for temporary injunction against the other two co-defendants for the court of learned 2nd Additional District Judge, Jammu to restrict the finding of a prima facie case only vis-à-vis the defendants No. 1 & 2, who are the appellants No. 1 & 2 herein.

14. Except the plaint and the temporary injunction application therewith, there is no material whatsoever for the court of learned 2nd Additional District Judge, Jammu to split the four defendants and then subject only two out of the four to suffer the ex parte ad interim temporary restraint in the manner as placed against them.

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15. This Court would have appreciated the fact if there would have been status-quo only vis-à-vis some of the defendants but not when a temporary injunctory direction is meant to be placed, that too ex parte, for which the appraisal and evaluation of the facts and circumstances of the suit are to be taken in an organic and composite manner rather than by splitting the defendants without anything being pleaded first from the end of the respondent in his temporary injunction application.

16. It is upon this aspect that this Court finds that perhaps the court of learned 2nd Additional District Judge, Jammu faltered in exercising its discretion rendering the order vulnerable to be interfered with.

17. Bearing in mind scope for this Court for interference with an order of nature of the impugned order in terms of position of law settled by this Court in the case of **"K. K. Puri and others Vs A. K. Puri and others," 1994 AIR J&K 25**, this Court is well within its judgment to hold that there is a manifest perversity in the exercise of discretion on the part of the court of learned 2nd Additional District Judge, Jammu if not an element of bias.

18. In view of the aforesaid, this Court sets aside the ex parte ad interim injunction so placed against the appellants No. 1 & 2 (defendants No. 1 & 2) in terms of the impugned order.

19. Accordingly, this Court directs the appellants to come forward with their written statement along with the objections to the temporary injunction application in the suit before the court of learned 2nd Additional District Judge, Jammu by or before **10.01.2026** whereupon the trial court of learned 2nd Additional District Judge, Jammu to hear and dispose of the temporary injunction application on merits by or before **31.01.2026**.

20. ***Disposed of***.

21. Copy of this order be forwarded to the court of learned 2nd Additional District Judge, Jammu notice and compliance.

(RAHUL BHARTI)
JUDGE

JAMMU
30.12.2025
Muneesh

Whether the order is speaking : Yes / No
Whether the order is reportable : Yes / No

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Muneesh Sharma
2025.12.30 01:42
I attest to the accuracy and
integrity of this document