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Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) NO. 187/2025

CM No. 2878/2025

Manzoor Ahmad Shah and anr.

..... Petitioner (s)

Through: Mr. R A Bhat, Adv.

V/s

Abdul Rahman Rather

..... Respondent(s)

Through:

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER

13.05.2025

1. The petitioners have challenged order dated 03.04.2025 passed by the Munsiff, Kangan in an application filed under Order 39 Rule 1 and 2 of CPC filed by the respondent/plaintiff against the petitioners/defendants.
2. It appears that by virtue of the impugned order, an exparte ad-interim injunction came to be passed by the learned trial court whereby the parties were directed to maintain status quo on spot with regard to the suit property. An order passed under Order 39 Rule 1 and 2 of CPC whether the same is exparte in nature or it has been passed after hearing the parties, is appealable in nature

- in terms of provisions contained under Order 43 Rule 1 (r). The Supreme Court in the case titled *Shalini Shyam Shetty Vs. Rajendra Shankar Patil* (2010) 8 SCC 329 has in clear terms held that in a case where a litigant has an alternate efficacious remedy available to him, it would not be open to the High Court to exercise its supervisory jurisdiction under Article 227 of the Constitution.
3. Learned counsel for the petitioners has, when confronted with the aforesaid position of the law placed reliance upon judgment of the Supreme Court in *Kishore Kumar Khaitan and another Vs. Praveen Singh* reported in *2006(3) SCC 312*. The question whether in the presence of an alternative remedy, the High Court can exercise its supervisory jurisdiction was not under consideration before the Supreme court in the aforesaid cases. Same is the position of the case titled *O P Trivedi V/s Vijai Shankar Dwivedi* reported in *AIR 1976 All 97* upon which learned counsel has place reliance.
4. In view of the binding precedent of the Supreme Court in the case of *Shalini Shyam Shetty* (supra), the petition is held to be not maintainable and is **dismissed** accordingly, leaving it open to the

petitioner to file an appeal against the impugned order before the District Judge concerned or to pursue the remedy of applying for vacation of interim ex parte order passed by the learned trial court.

(Sanjay Dhar)
Judge

SRINAGAR
13.05.2025
Aasif

