HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU

Uploaded on 28.10.2026

CM(M) No. 228/2026

Balwant Singh …..Appellant(s)/Petitioner(s)

Through: Mr. Lawanya Sharma, Adv.

vs

Krishan Singh and another ….. Respondent(s)

Through: Mr. C. M. Koul, Sr. Adv.with
Mr. Arshad Hussain, Adv.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
23.10.2026

1. Through the medium of present petition, the petitioner has challenged order dated 10.10.2026 passed by the Principal District Judge, Reasi(hereinafter to be referred as the appellate court), whereby *ex parte* interim order dated 11.08.2026 passed by the learned Sub Judge, Reasi(hereinafter to be referred as the trial court) has been kept in abeyance. Challenge has also been thrown to the proceedings emanating out of the appeal filed by the respondents against the aforesaid order of the learned trial court.

2. Issue notice to the respondents. Mr. Arshad Hussain, Advocate, who is on caveat, accepts notice on behalf of the respondents. Caveat shall stand discharged.

3. I have heard learned counsel for the parties and perused record of the case.

Rakesh Kumar
2026.10.18 05:25
I attest to the accuracy and
integrity of this document

4. It appears that the petitioner/plaintiff has filed a suit for declaration and injunction against the respondents/defendants and proforma respondents/defendants before the learned trial court. By way of the said suit, the plaintiff has sought a declaration that the sale deed dated 20.01.2023 executed by defendant No. 1 in favour of defendant No. 2 in respect of land measuring 1 kanal and 19 marlas falling under khasra Nos. 1811, 1317, 786 and 133 situated at Village Mahore, Tehsil Mahore, District Reasi is null and void, on the ground that the suit land is joint and unpartitioned amongst the co-owners. The plaintiff has also sought permanent prohibitory injunction restraining the defendants from raising any construction on the suit land or from dispossessing the plaintiff from the said land. Along with the suit, the plaintiff filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for short the Code) before the learned trial court.

5. On 11.08.2026, the learned trial court passed an *ex parte* interim order in favour of the plaintiff, whereby the parties to the suit were directed to maintain status *quo* with respect to the possession over the suit land. It also appears that on 02.09.2026, the learned trial court passed another order directing implementation of order dated 11.08.2026 through the Police Agency. On 16.09.2026, the defendants filed appeal against order dated 02.09.2026(supra) before the learned appellate court and vide order dated 16.09.2026 passed in the said appeal, order dated 02.09.2026 passed by the learned trial court was kept in abeyance. The record shows that the defendants filed another appeal against order dated 11.08.2026 passed by the learned trial court before the learned appellate court and, vide impugned

order dated 10.10.2026, the learned appellate court directed that order dated 11.08.2026 passed by the learned trial court be kept in abeyance.

6. The plaintiff/petitioner has challenged the order impugned and the appellate proceedings on the grounds that the learned appellate court has passed the impugned orders without giving notice to the plaintiff even though he had filed a caveat application before the said court. It has also been contended that order dated 11.08.2026 passed by the learned trial court was *ex parte ad* interim in nature, as such, the same is neither appealable nor revisable. It has been contended that the learned appellate court, while passing the impugned order has, exceeded its jurisdiction.

7. The facts narrated hereinabove, project a disturbing state of affairs as regards the manner in which the appellate court has readily entertained the appeal against an *ex parte* interim injunction order, without satisfying itself as to whether doing so was warranted in the facts and circumstances of the case. Not only has the learned appellate court entertained the appeal, but it has proceeded to pass an *ex parte* interim order in favour of the appellants/defendants, which is under challenge before this Court. Neither of the parties has shown patience in pursuing the appropriate remedy of getting the application under Order XXXIX Rules 1 and 2 of the Code decided on its merits. The approach adopted by the learned appellate court has compounded the situation, leading to multiplicity of proceedings without actually ensuring the decision of the *lis* on its merits.

8. The question that is required to be determined in the first instance is as to whether an *ex parte* interim order passed in terms of Order XXXIX Rules 1 and 2 of the Code is appealable in nature and if so, whether the proper course

for the appellate court would have been to remand the case to the trial court with a direction to decide the application under Order XXXIX Rules 1 and 2 of the Code on its merits after hearing the parties, instead of entertaining the appeal.

9. As per the provisions contained in Order XLIII of Rule 1(r) of the Code, an order passed under Order XXXIX of Rules 1 and 2 of the Code is appealable in nature. Thus, an order passed by a civil court on an application under Order XXXIX of Rules 1 and 2 of the Code, whether it is *ex parte* or whether the same has been passed after hearing the parties, is appealable in nature in terms of Order XLIII of Rules 1(r) of the Code.

10. Generally the Courts are loathe to entertain appeal against an *ex parte* interim order passed in terms of Order XXXIX of Rules 1 and 2 of the Code and the parties are more often than not asked to approach the trial court and get the application under Order XXXIX of Rules 1 and 2 of the Code decided on its merits before approaching to the appellate court. However, there is no absolute bar to entertain an appeal against an *ex parte* interim order passed in terms of Order XXXIX of Rules 1 and 2 of the Code. In deserving and appropriate cases, it would be open to appellate court to entertain and decide an appeal on its merits even against an *ex parte* interim order passed under Order XXXIX of Rules 1 and 2 of the Code.

11. The Supreme Court in the case of **A. Venkatasubbiah Naidu v. S. Chellappan and others, (2000)7 SCC 695** has illustrated one of the situations where the appellate court can entertain an appeal even against *ex parte* interim order passed in terms of Order XXXIX of Rules 1 and 2 of the

Code. The relevant observations of the Supreme Court are reproduced as under:

> "It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of **Order 43 Rule 1 of the Code**. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of **Order 39 Rule 3A of the Code** is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule."

12. From the above analysis of legal position, it is clear that in a case where the mandate of Order XXXIX Rule 3-A of the Code is flouted, the aggrieved party is entitled to the avail the right to file an appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction. Similarly, in a case where an *ex parte* interim injunction has been passed by a court having no jurisdiction or that such order suffers from manifest perversity, the appellate court would be justified in entertaining an appeal.

13. Turning to the facts of the case, *ex parte* interim injunction order was passed by the learned trial court on 11.08.2026 and the case was posted to 14.09.2026. On that date, it appears that the defendants filed their written

statement before the trial court. The defendants, without pursuing the case before the trial court with a view to seek disposal of the application under Order XXXIX Rules 1 and 2 of the Code and get the interim injunction vacated, approached the appellate court by way of an appeal on 16.09.2026 for assailing order 02.09.2026 passed by the learned trial court and by way of another appeal filed on 10.10.2026, for assailing the basic order dated 11.08.2026.

14. So far as order dated 02.09.2026 passed by the learned trial court is concerned, the same is not appealable in nature as such, it was not open to the learned appellate court to entertain the appeal against the said order.

15. So far as appeal against order dated 11.08.2026 is concerned, the same could have been entertained by the learned appellate court if it was a case where the learned trial court had resorted to delaying tactics in deciding the application under Order XXXIX of Rules 1 and 2 of the Code or if the *ex parte* interim order passed by the learned trial court would have been without jurisdiction or if there was any manifest perversity attributable to the said order.

16. The learned appellate court has not recorded any reason for entertaining the appeal against *ex parte* interim order, while passing impugned order dated 10.10.2026. The impugned order is cryptic in nature and it does not assign any reason much less a cogent reason for entertaining the appeal against the order passed by the learned trial court. Even otherwise *ex parte* interim order passed by the trial court is neither perverse nor the same is without jurisdiction. The impugned order passed by the appellate court is, therefore, not sustainable in law. The same deserves to be set aside. In fact, this Court

does not find any justification for entertaining the appeal against the order of the learned trial court as such, the appeal(s) ought not have been entertained by the appellate court.

17. This Court way back in the year 1994 in the case of **K. K. Puri and others vs. A. K. Puri and others, AIR 1994 J&K 25** had deprecated the growing tendency of the litigants to bypass the trial courts in matters where *ex parte* orders are subject to objections of the other side. It would be apt to reproduce paragraph (25) of the aforesaid judgment, which reads as under:

> "25. Before parting, I deem it appropriate to advert to the growing tendency of the litigants to by-pass the trial courts in matters where ex parte orders are subject to objections of other side and even valid only till next date and vacation whereof can be sought under Rule 4 of Order 39, CPC before the trial Court. It has been consistent policy and practice of this court not to entertain such appeals and not to interfere in such orders. A Full Bench of this Court has approved of this policy in Astral Traders v. Haji Mohd. Shaban Dar, 1982 Ker LJ 324 : (AIR 1982 J & K 124) after giving reasons in its support. This practice has almost hardened into a rule and it is in very rare cases that a departure is made where impugned orders appear manifestly perverse or where these suffer from any manifest lack of jurisdiction or where the bias of the trial Court is apparent on the face of record. There may be some other circumstances also which may warrant interference, but by and large, this policy is adhered to discourage litigating parties from rushing to this Court."

18. For the foregoing position of law, it is clear that the learned appellate court has fallen into a grave error in entertaining the appeal against an *ex parte* interim order passed by the learned trial court and thereafter, passing another *ex parte* interim order in favour of the defendants/appellants. The proper course for the learned appellate court would have been to dispose of the appeal with a direction to the learned trial court to decide the application under Order XXXIX Rules 1 and 2 of the Code within a time-bound manner, by adhering to the timelines stipulated under Order XXXIX Rule 3-A of the Code.

19. In view of the foregoing discussion, the present petition is allowed and the impugned order dated 10.10.2026 passed by the appellate court is set aside. The appeals filed by the defendants against order dated 11.08.2026 and 02.09.2026 passed by the learned trial court, which are pending before the appellate court along with present petition are disposed of with a direction to the learned trial court to decide the application of the plaintiff under Order XXXIX of Rules 1 and 2 of the Code most expeditiously, preferably within a period of one month from the date a copy of this order is made available to the said court.

20. Till such time the aforesaid application is decided by the learned trial court, the ex *parte* interim order dated 11.08.2026 passed by the said court shall remain in force and in case the plaintiff adopts any delaying tactics before the trial court, the *ex parte* interim order dated 11.08.2026 shall stand automatically vacated after the expiry of aforesaid period of 30 days.

(SANJAY DHAR)
JUDGE

Jammu
23.10.2026
Rakesh PS

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