**Serial No. 131**

# HIGH COURT OF JAMMU & KASHMIR AND LADAKH
## AT JAMMU

**CM(M) No. 237/2026**
**CM No. 7614/2026**
**CAV No. 2792/2026**

Beli Ram .....Appellant(s)/Petitioner(s)

Through: Mr. G. S. Thakur, Advocate.

**vs**

Rameshwar Bawa Alias Rameshwar Kumar ..... Respondent(s)

Through: Mr. Virender Bhat, Advocate

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

**ORDER**
**28.10.2026**

**1.** The petitioner, through the medium of present petition, has challenged order dated 30.09.2026 passed by the learned Principal District Judge, Reasi, whereby appeal filed by him against order dated 11.07.2026, passed by the learned Civil Judge, Senior Division, Katra, has been dismissed.

**2.** Issue notice to the respondents.

**3.** Mr. Virender Bhat, Advocate waives notice on behalf of the respondent. With the appearance of Mr. Virender Bhat, Advocate, caveat stands discharged.

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

**5.** It appears that the respondent/plaintiff has filed a suit for permanent prohibitory injunction against the petitioner/defendant before the court

of learned Civil Judge, Senior Division, Katra (hereinafter to be referred as the 'Trial Court'), with the prayer that the defendant be restrained from interfering into peaceful possession of his shop bearing No. 14, situated at Fwara Chowk, Katra and from parking any vehicle/scooter in front of the staircase obstructing the entry into the business premises of the plaintiff.

**6.** Along with the suit, the plaintiff filed an application under Order 39 Rules 1 and 2 CPC. The said application came to be disposed of by the learned trial court in terms of order dated 11.07.2026. In terms of the said order, the parties to the suit have been directed to maintain status quo with regard to suit premises and ongoing business. Further the defendant has been restrained from obstructing the staircase leading to the suit shop by any kind of act till disposal of the suit. Against this order, the defendant filed an appeal before the court of learned Principal District Judge, Reasi (hereinafter to be referred as the 'Appellate Court') and vide impugned order dated 30.09.2026, the appeal has been dismissed.

**7.** The petitioner has challenged the impugned order on the ground that the plaintiff has suppressed the material fact with regard to existence of partnership between the parties in his suit and therefore, he is not entitled to discretionary relief of interim injunction. It has also been contended that because there was partnership between the parties, as such, the suit filed by the plaintiff is hit by the provisions contained in Section 69 of the Partnership Act. It has further been contended that

since the parties to the suit are partners, it was not open to the learned trial court to restrain the defendant from conducting the business.

**8.** If we have a look at the pleadings of the parties and documents placed on record before the learned trial court and the appellate court, it does appear that parties were conducting business from the suit premises in partnership. A copy of the partnership deed has been placed on record by the petitioner/defendant and the same was also available on the record of the trial court and appellate court. As per terms of this partnership deed, the defendant had an option of terminating the partnership by giving six months' notice. It is case of the defendant that he has never terminated the partnership, whereas the plaintiff claims that the defendant had already retired from the partnership, as such, he had become the sole proprietor of the business concern.

**9.** The aforesaid issues have not been properly gone into and analysed either by the trial court or by the appellate court while passing the impugned orders. It was necessary for the courts below to go into the issue whether in the presence of material on record to show that there was partnership business between the parties and there was no material on record to show that the defendant had retired from the partnership, the suit itself was maintainable in view of the provisions contained in Section 69 of the Partnership Act. Learned trial court and the learned appellate court were duty bound to consider the pleadings and documents on record in order to decide this crucial issue for concluding as to whether there was a *prima facie* case in favour of the

plaintiff, so as to entitle him to an interim injunction. This however, has not been done by the courts below.

**10.** In view of above, while setting aside the impugned order passed by the learned trial court as upheld by the learned Appellate Court, the application for grant of interim injunction is remitted to the learned trial court for its fresh decision on merits which will depend upon the determination of the issue relating to maintainability of the suit.

**11.** The petition is, accordingly, disposed of by providing that the learned trial court shall frame a preliminary issue with regard to maintainability of the suit in view of the provisions contained in Section 69 of the Partnership Act. Till such time, the said issue is decided, the business being operated from the suit shop shall continue to be operated by the plaintiff. For protecting the interest of the defendant, the plaintiff shall furnish verified account statements relating to the business before the learned trial court on fortnightly basis. The grant or otherwise of interim injunction shall await decision of the preliminary issue.

**12.** **Petition is disposed of in the above terms.**

**(SANJAY DHAR)**
**JUDGE**

**Jammu**
28.10.2026
***Sahil Padha***

Sahil Padha
2026.10.30 16:50
I attest to the accuracy and
integrity of this document