Serial No. 03
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CM(M) No. 464/2026
CM No. 6956/2026

Manzoor Ahmad Bawni and Ors **...Petitioner(s)**

Through:
Mr. Erfan Akbar, Advocate.

V/s.

Mohammad Maqbool Ganai **...Respondent(s)**

Through:

CORAM:
Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.

ORDER
12.10.2026

01. The learned counsel appearing on behalf of the petitioners has drawn the attention of the Court to an order passed by the learned 2nd Additional Munsiff, Srinagar [the "Trial Court"], on 05.02.2024, whereby the learned Trial Court disposed of the interim application filed along with the suit by the plaintiff/respondent herein, in the following manner:

> *"15. In light of the abovementioned arguments, it is observed that the fact in issue before this court is that whether demolition/raising of such wall would be more convenient/inconvenient to the plaintiff/defendants. It is observed that unless the question of entitlement of the portion claimed by both the parties is answered by going through the evidence, and as such status quo vis-à-vis nature and possession of such portion shall be maintained. However, such a situation would be inconvenient to the defendants as they have stated to be going through the process of construction and the trial may take some time. In contrast to that, the defendants submit that if they have been granted permission by the competent authority to*

raise such construction and the share has been duly demarcated by the revenue authorities, restraining them would be harsher to them. The Court is of the view that in case the permission for raising construction has been granted by the competent authority after proper verification of the matter, the same would prima facie favour the claim made by the defendant no. 4 and restraining them would be harsh. As such, the court is of the view that the balance of convenience tilts in favour of the defendants.

IRREPARABLE INJURY

16. An irreparable injury means an injury which cannot be compensated in terms of money. In the present case, the question at this stage before this court is that whether allowing the defendant no. 4 to demolish the portion of wall in question and raise construction would cause any irreparable loss to the plaintiff or not. It has been put forth by the Ld. Counsel for defendants that permission has been granted by the competent authority to the defendant to raise construction. In this regard, the question of balance of convenience has been decided in favor of the defendants. A such the court does not need to address the question of an irreparable injury. However, to ensure that the suit does not become infructuous, it is made clear that the defendant no. 4 shall be liable to indemnify the claim of plaintiff by demolishing such construction or any other manner as directed by this Court, if the suit is decided by this court in favour of the plaintiff.

CONCLUSION

17. Keeping in view the above, the court is of the opinion that since the defendant no. 4 states to have the proper building permission with regard to the area in question, the balance of convenience tilts in his favour. As such interim direction issued on 24.11.2023 is modified to the extent that in case, the defendant no. 4 exercises his liberty to raise/demolish construction over the area/wall in dispute under garb of the permission granted by the

competent authority, he shall before raising such construction file an indemnity bond before this Court assuring that in case the suit is decided in favour of plaintiff, the defendants shall demolish the construction so raised and restore the status quo ante and compensate the plaintiff in any manner directed by this Court. It is further provided that the permission so granted by the competent authority shall pertain to the area in question / wall in dispute and that the same should not have been overturned or kept in abeyance by the competent authority. In case, the same has been overturned or kept in abeyance, then in that case, the parties shall continue to maintain status quo vis-à-vis nature and possession of the subject matter of the suit viz. the wall in question.
Disposed of."

02. It has been vehemently argued by the learned counsel for the petitioners that the Trial Court, while passing the aforesaid order, was alive to the fact that in case the permission for raising the construction had been granted by the competent authority after proper verification of the matter in favour of the petitioners herein/defendants therein, the same would *prima facie* favour the claim made by the defendant No. 4 in the suit, and restraining the defendants would be harsh. Accordingly, the learned Trial Court was of the view that the balance of convenience tilted in favour of the defendants.

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03. In the aforesaid backdrop, the interim direction passed by the learned Trial Court on 24.11.2023 was modified to the extent that in case the defendant No. 4 exercises his liberty to raise/demolish construction over the area/wall in dispute under the garb of permission granted by the competent authority, he shall before raising such construction file an indemnity bond to the Trial Court assuring that in case the suit is decided in favour of the plaintiff, the defendant(s) would demolish the construction so raised and restore the status quo ante and compensate the plaintiff in any manner directed by the learned Trial Court.

04. It is a specific case of the petitioners that once the interim application was disposed of in favour of the petitioners herein, then there was no need of any clarification of the aforesaid order, as there was no ambiguity in that order. However, the respondent herein preferred an application before the learned Trial Court seeking clarification of the order dated 24.11.2023, and the learned Trial Court, passed an order in the said application on 09.03.2024, whereby the learned Trial Court took a U-turn and directed the defendants (petitioners herein), not to continue any demolition/ construction over the area in dispute till next date of hearing. The said order was ordered to be served to the defendants for its compliance through SHO concerned. For facility of reference, operative portion of order dated 09.03.2024 is reproduced below:

> *"4. Since, a material proposition has been raised by the Plaintiff that the demolition/ construction which is being done by the defendants is beyond the parameters of the permission granted by the competent authority, as such, this court is of the opinion that the issue requires the indulgence of this Court to inquire into the matter. As such, a notice be issued to the other side to appear on the next date and in the meantime, the defendants are directed not to continue any demolition/construction over the area in dispute, till next date of hearing. A copy of this order be served to defendants for its compliance through SHO concerned of the area….."*

05. The learned counsel for the petitioners submits that under the garb of the aforesaid clarification, the learned Trial Court reversed its earlier order by taking a U-turn which is not permissible under law, and by doing so, the learned Trial Court has rendered the earlier order passed in the interim application by virtue of which the said application was disposed of, ineffective.

06. Feeling aggrieved of the aforesaid order dated 09.03.2024, the petitioners filed objections and the matter was finally argued on 03.10.2025.

07. The learned counsel for the petitioners, with a view to fortify his claim, has also placed on record certified copies of the orders passed by the learned Trial Court from time to time, a perusal whereof reveals

that till date, the order has not been pronounced on the said application, despite the fact that arguments thereon were concluded on 03.10.2025, thereby a grave prejudice has been caused to the petitioners, and feeling aggrieved of the same, the instant petition has been preferred.

08. Heard learned counsel for the petitioners at length and perused the record.

09. From a bare perusal of the record and also in the light of the arguments advanced by the learned counsel for the petitioners, *prima facie* case for indulgence is made out.

10. The record also *prima facie* vindicates the stand of the petitioners that the arguments in the application seeking clarification were concluded way back on 03.10.2025, but till date the order has not been pronounced, thereby causing grave prejudice to the petitioners. This Court is also *prima facie* satisfied that once the interim application stood disposed of, whereby the learned Trial Court was alive to the situation by considering the rights of both the parties and the balance of convenience, then there was no occasion for the learned Trial Court to have upset the order passed in the interim application, by way of a clarification, which is not permissible under law.

11. In the peculiar facts and circumstances of the case, and also in the light of the record which has been produced before this Court, this Court deems it proper to have a report from the learned Trial Court i.e. court of 2nd Additional Munsiff, Srinagar, explaining as to why till date the order has not been pronounced in the application seeking clarification, despite the fact that the arguments stood concluded way back on 03.10.2025.

12. Let the learned Registrar Judicial seek a report from the learned Trial Court and shall also summon the scanned record of the case from the court below.

13. Issue notice to the respondent in the main petition as well as in the connected CM, returnable by or before the next date of hearing.

14. Requisite steps for service to be taken within one week.

15. List on 31.10.2026.

16. In the meantime, subject to objections from the other side and till the next date of hearing before the Bench, the impugned order dated 09.03.2024 shall remain stayed. However, the learned trial court shall proceed in the matter, in accordance with law.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
12.10.2026
"Hamid"

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Abdul Hamid Bhat
I attest to the accuracy and
authenticity of this
document