

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) 59/2022

Abdul Rehman Dar and anr.

.../Petitioner(s)

Through: Mr. G. N. Sofi, Advocate

Vs.

Tariq Ahmad Wagay & ors.

...Respondent(s)

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
10.08.2022

1. At the time when this court had, in terms of an order dated 18/04/2022 passed in the present petition filed under article 227 of the COI, considered directing for sending of the record of two civil suits from the Court of Munsiff, Anantnag, it must have been least expected that upon the record received, its perusal would find this court itself embarrassed as to the mindset with which the Presiding Officer/Judge of the Court of Munsiff, Anantnag has come to pass judicial orders in the pending two counter civil suits qua same suit property between the same parties leaving the same to nothing short of public ridicule belittling the very institution of District Judiciary

and the Administration of Justice.

2. Bearing in mind the Hon'ble Supreme Court of India's pertinence bearing observation through Hon'ble Mr. Justice Dr. Dhananjaya Y. Chandrachud in para 40 of judgment reported in **2021 AIR SC 3563 Somesh Chaurisa vs State of M.P. & Anr.**, that the courts comprised in the district judiciary are the first point of interface with citizens, this Court is constrained to take cognizance of the manner in which the Presiding Officer of the Court of Munsiff, Anantnag has come to act in discharge of judicial function and conduct the cases which leave the administration of justice becoming a mocking matter at the hands of the judge of the civil court itself, and which is likely to erode, and in fact must have already eroded, the respect oriented public perception viz the district level judicial institution.

3. Upon going through the record of the two civil suits during hearing of the present petition today, this Court is unable to defer the immediate indulgence even for the next date as that would have mean stretching the public ridicule of the judicial institution even after this Court has stepped into the scene in the form of entertaining of the present petition filed under article 227 of the Constitution of India. This Court is, thus, resorting to a remedial measure of recommending to the Hon'ble Chief Justice of the High Court of Jammu & Kashmir and Ladakh to recall the incumbent judge from his/her posting

as Munsiff, Anantnag for undergoing refresher training in the State Judicial Academy for an appropriate course of period before restoring judicial/court work to said judicial officer.

Though in exercise of jurisdiction under article 227 of the COI this court has, as held by the Hon'ble Supreme Court of India in **2017 AIR SC 310 Ajay Singh & Anr. Vs State of Chhattisgarh & Anr.**, the administrative competence to pass an appropriate order with respect to the said judicial officer but for the sake of judicial propriety and for prestige of the position of the Hon'ble Chief Justice of the of the High Court of Jammu & Kashmir and Ladakh as being the head of the entire judicial institution of the UT of J&K And Ladakh, this court is making recommendation for the intended end.

4. The facts of the matter, symbolized as tales of two suits, which have compelled this Court in coming forward with this measure are chronicled herein next.

Suit no. 1 Tariq Ahmad Wagey Vs Abdul Rehman Dar & an. Date of Institution is 10/12/2021

5. There is a suit property in the form of a shop in the building premises the ownership of which is claimed to be of the petitioner herein namely Abdul Rehman Dar and the said building property is situated in Seer Hamdan, Anantnag. The respondent namely Tariq Ahmad Wagey comes to file a civil suit no. **OS/150** on **10/12/2021**

before the Court of Munsiff, Anantnag on the factual narration that he has taken the said shop on rent from the petitioner by reference to a purported rent agreement dated 27/07/2020 and that as the petitioner was trying to disturb the use and occupation of the respondent qua the said shop without adopting due course of law so the cause of action for filing the suit. This suit is accompanied with an application for grant of interim relief in response to which the Court of Munsiff, Anantnag comes to pass an ex parte ad interim direction in terms of an order dated **10/12/2021** directing both the parties to maintain status quo on spot till next date of hearing which is fixed for **18/12/2021** while directing issuance of notice to the petitioner as being the defendant no. 1 in the said suit while the defendant no. 2 is Suhail Ahmad Dar.

6. However, there are two orders of **10/12/2021** for status quo. One order is handwritten by the Presiding Officer of the Court of Munsiff, Anantnag which reads as under: -

*“Parties are directed to maintain status quo on spot till next date of hearing.
Service affidavit to be filed within 2 days otherwise interim order stand vacated Sd.”*

and the other status quo order also dated 10/12/2021 is in typed form which is two paged. Thus, which of two orders meant to be on record is only known to the Presiding Officer of the Court of Munsiff, Anantnag.

7. On **18/12/2021**, the petitioner as being the

defendant no. 1 causes his appearance through advocate Ab. Hamid Mir in the suit of the respondent.

8. Proceedings of **18/12/2021** recorded in the order by the Munsiff, Anantnag on the suit file no. OS/150 is reproduced as under: -

“LC for the plaintiff present. Adv Ab. Hamid Mir submitted P.O.A on behalf of def no. 2. Filed and made part of file. Copy of suit provided to LC for def no. 1 in open court. LC for def no. 1 seeks time for submitting w/s. Time sought is granted. Meanwhile office is directed”

9. Proceedings of 18/12/2021 recorded in the order passed by the Munsiff, Anantnag on the Application for Interim Relief file no. 147/Misc is reproduced as under: -

*“LC for parties present. Put up on **12/02/2022**. Sd.”*

10. However, on the very said date of 18/12/2021, the Munsiff, Anantnag mentions about moving of an application by the counsel for the applicant (that means the plaintiff in the suit) and passes an order dated **18/12/2021** directing the Incharge, Police Station, Mattan, Anantnag to proceed on spot and implement order dated **10/12/2021** in letter and spirit and submit compliance. There is no such application found on the scanned record of the file so received from the Court of Munsiff, Anantnag. A perusal of said order dated 18/12/2021 directing Incharge, Police Station Mattan to do as directed reveals that against File No., DOI and DOD there is blank only, with nothing written/typed against each entry. As there is no number allocated to the so

referred application in which the Munsiff, Anantnag has passed direction unto the Incharge, Police Station, Mattan so there is no Order sheet to said effect on record.

11. On the other hand, next date to 18/12/2021 in the suit is mentioned to be 22/01/2022 but the recorded one found is **14/02/2022** whereas in the Application for Interim Relief the next dated after **18/12/2021** is **12/02/2022**. Thus, Civil suit file was having one date whereas the Application for Interim Relief is having different date. Even later dates also go on divergent days as in the suit it is **16/03/2022** in the application it is **17/03/2022** and **24/03/2022** It is only on **08/04/2022** that the suit file and Application of Interim Relief came to come up on same date.

12. From the record of the Suit file no. OS/150, it is forthcoming that on **18/01/2022** an application is moved by the respondent Tariq Ahmad Wagey, as being the plaintiff in the suit, for seeking necessary action against the two defendants that is the petitioner and Suhail Ahmad Dar and also Wasim Ahmad Shah SHO Police Station, Mattan in terms of Order 39 Rule 2 A CPC. Said application is diarized under number 165/Misc. In the application the respondent has mentioned in para 1 that the suit is fixed on 22/01/2022 whereas a report endorsed by the concerned court clerk is that suit is fixed for 12/02/2022 and this office note further mentions that by a court order dated 01/01/2022 the Police Station

concerned has been directed to implement the order dated 10/12/2021.

13. Upon this application no. 165/Misc., the Munsiff Anantnag comes to pass a handwritten order that is "Issue Notice to N/A/SHO concerned. Put up on 24/01/2022".

14. Thus, on which application the intervening order dated 01/01/2022, as reported by the court clerk on application no. 165/Misc, came to be passed is not gatherable from the record but an order dated 01/01/2022 is there in which File no. is blank and date of filing (DOI) is shown to be 18/12/2011 and date of decision (DOD) is shown to be 01/01/2022. In terms of this order dated 01/01/2022, the Munsiff, Anantnag by resort to section 151 CPC has come to direct the Police Station concerned to restore possession of the respondent (the plaintiff/applicant in the suit) in the suit shop and by further reference to order dated 10/12/2021 directs Incharge Police Station concerned to implement order dated 10/12/2021 and ensure that possession of the respondent is restored back till further order from the court.

15. How and in which manner status quo direction came to be translated into a direction for restoration of possession is known only to the Presiding Officer of the Court of Munsiff, Anantnag. This direction is passed without any notice to the defendants particularly when the defendant no. 1, that is the petitioner herein, had already

caused his appearance in the suit on 18/12/2021.

16. The respondent comes to file a handwritten application dated 08/02/2022 before the Munsiff Anantnag in which the Presiding Officer endorses date of presentation to be 07/02/2022 that is pre-dating the presentation of application dated 08/02/2022 and then on 08/02/2022 there is a handwritten order by the Presiding Officer of the Court of Munsiff, Anantnag directing SHO concerned to submit compliance report by next date which is **12/02/2022**.

Suit 2: Ab Rehman Dar vs Tariq Ahmad Wagey DOI 21/01/2022

17. The most disturbing part of the matter is that when the petitioner, after having appeared as defendant in the suit 1 on 18/12/2021, comes to file his suit on 21/01/2022 before the Munsiff, Anantnag against the respondent Tariq Ahmad Wagey for a decree of Permanent Prohibitory Injunction qua the property of Shopping Complex having two shops and one room at Seer Hamdan, Anantnag. The suit property in this suit includes the suit shop in the suit 1 referred supra.

18. Along with his suit, the petitioner has also filed an application for interim relief in which the Court of Munsiff, Anantnag comes to pass an order dated **21/01/2022** imparting an ex parte interim direction for status quo on spot by both parties qua the suit property. A perusal of this order reflects that in this date of institution (DOI) is

shown to be **20/01/2022** that is day prior to institution of suit on **21/01/2022**.

19. This Court may not be able to observe as to whether the Presiding Officer of the Court of Munsiff, Anantnag had recollection of fact that suit 1 was already lying before the same court between same parties. Though it is strange that a judicial officer would not recollect about already pending civil suit between the same parties.

20. On 11/02/2022, by reference to a purported application of the petitioner, as being the plaintiff/applicant, the Munsiff, Anantnag comes to direct SHO Police Station, Mattan to proceed on spot to implement the direction of status quo in letter and spirit and submit compliance report. Thus two status quo orders in operation and both to be implemented by Police Station, Mattan.

21. On 07/03/2022, the respondent comes to file two applications one bearing no. 176-A/Misc under section 10 CPC before the Munsiff, Anantnag in which the respondent comes to mention for the notice of the Munsiff, Anantnag about the already running suit filed by him against the petitioner qua the same very suit property and orders passed therein, and other no. 176-B for seeking vacation of status quo direction given in terms of order dated 21/01/2022.

22. Now coming to the matter in the present petition filed by the petitioner, it is the order dated 01/01/2022 of

the Munsiff, Anantnag filed in suit 1 of the respondent in terms whereof the direction to the Incharge, Police Station Mattan for restoring possession of the suit shop in favour of the respondent has been given, which is being assailed. Thus, this court finds self-conflict of two directions of the Munsiff Anantnag both addressed for SHO Police Station Mattan to carry out. It can be any body's guess as to what impression SHO Police Station Mattan must be carrying as to which status quo direction, so issued by the very same Munsiff, Anantnag to be carried into compliance and in what manner and how to restore the possession of suit shop to the respondent in the face of status quo operating in the case of the petitioner against the respondent.

23. Thus, the mindlessness on the part of the Presiding Officer of the Court of Munsiff, Anantnag is self-speaking and that brings nothing but a disrepute and disrespect besides ridicule in the eyes and estimate of public at large borne out from the functioning of the judicial officer of the court of Munsiff, Anantnag.

24. Thus while the present petition is to be heard and disposed of after the appearance of the respondent and hearing of the case but in the meantime this court is making recommendation to the Hon'ble Chief Justice for needful appropriate direction in case the Hon'ble Chief Justice considers the recommendation fit enough to warrant a corrective action with respect to the judicial

officer presently posted as Munsiff Anantnag.

25. Let a copy of this Order be put up by the Registrar Judicial, Srinagar, before the Registrar General, High Court of Jammu & Kashmir And Ladakh for his covering note for placing it before the Hon'ble Chief Justice.

(RAHUL BHARTI)
JUDGE

SRINAGAR
10.08.2022
Yasmeen

Whether the judgment is speaking : *Yes/No*
Whether the judgment is reportable : *Yes/No*

