

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(THROUGH VIRTUAL MODE)**

PRONOUNCED ON : 07.10.2022

**CM (M) No. 186/2021
CM no. 3866/2022
CM no. 7848/2021**

Bashir Ahmad Khan and others

..... Petitioner(s)

Through: Mr. G.A.Lone, Advocate.

Vs

Union Territory of Jammu and Kashmir
and others

..... Respondent(s)

Through: Ms. Rehana Bashir, Advocate vice
Mr. M.Y.Lone, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Heard learned Counsel for the parties.
2. Physicist Martin Fischer's quote "Conclusion is the place where you got tired of thinking" nearly explains the thinking effort on the part of the Principal District Judge, Kupwara's decision in holding the appeal of the petitioners against a temporary injunction order of the civil court as not maintainable on a premise that section 104 read with Order 43 of the Code of Civil Procedure, 1908 does not bear mention of an order passed under section 94 (c) and (e) of the Code of Civil Procedure, 1908 as being appealable. In rushing to reach said conclusion to knockdown the appeal, the Principal District Judge, Kupwara made text surfing of section 94, section 104 and Order 39 & 43 of the Code of Civil Procedure, 1908.

3. Thus, the adjudication of the present petition, invoking the supervisory jurisdiction of this Court under article 227 of the Constitution of India, perforce invites this court to delve into the understanding of the Code of Civil Procedure 1908 in the context of its sections and the first schedule to come to hold that the Court of Principal District Judge Kupwara erred very seriously in choking the very remedy of appeal of the petitioners against the impugned order.
4. Following the dictum facts first law next, the needful mention of the facts of the case bearing the controversy in reference is that the respondent no.5–Mst. Amina Begum has come to maintain a civil suit against the petitioners and others on the file of the court of Sub-Judge, Handwara. The suit is for declaration, partition, possession and injunction with respect to estate of the parties' predecessor-in-interest late Mohd. Yaqoob Khan comprising of land measuring 76 kanals situated at village Ashpora, tehsil Handwara and 102 kanals of land situated in tehsil Qaziabad. In the suit there are fourteen defendants. The petitioners are eight in numbers figuring in the said array of fourteen defendants. In this civil suit, in terms of an interim order dated 28-06-2019, the trial court has put in place an interim injunctory direction to the following effect, ***“whereby the defendants have been directed not to create third party interest in the suit property in any form or manner till filing of the detailed written statement in the main suit and objection in the application for temporary injunction”***.

5. There is a counter civil suit filed before the same very trial court of Sub Judge Handwara by the petitioners herein against said respondent no. 5- Mst. Amina Begum pertaining to a property measuring 10.11 kanals in survey number 50 min situated in village Ashpora, tehsil Kralgund. In this counter civil suit, there is operating an injunctory direction as well in terms of an order dated 12/10/2020 which is reproduced herein next ***“whereby the parties of the suit have been directed to maintain status quo on spot with respect to the above mentioned suit land as existing today subject to objections from other side”.***
6. Both the said two civil suits have come to be clubbed together vide an order dated 14/11/2019 by the trial court of Sub Judge Handwara and the ad interim ex parte injunctory directions in terms of above mentioned two orders are said to be still in effect as the applications in which the same have come to be passed are still pending adjudication.
7. Amidst this situation, the respondent no. 5, being the plaintiff in her suit, came to file another application on 20/06/2020 on file no. 171/Misc. titled “Mst. Amina Begum Vs Bashir Ahmad Khan & Ors” before the trial court alleging that with respect to her possession qua 10.11 kanals piece of land under survey number 50, which is forming part of the suit property in both the civil suits, the petitioners are causing interference and damaging fruit bearing trees thereupon by use of muscle power and for that need to be restrained from causing any type of interference. This application of the respondent no. 5 came bearing reference as being filed under section 94 (c) and (e) of the Code of Civil Procedure.

8. The trial court of Sub-Judge, Handwara came to dispose of the said application 171/Misc. vide its order dated 07.08.2020 by passing a direction to the effect which is reproduced herein before thereby directing the parties to the suit to comply with the interim injunction as imparted vide interim orders dated 28.06.2019 and 22.10.2019 in letter and spirit, and further directing the parties to the suit not to change the physical possession and cause any type of interference over the suit land falling under survey no. 50 measuring 10 kanals 11 marlas situated at Village Ashpora recorded in favour of the respondent No.5, being the applicant-plaintiff in the matter.
9. Very opening para of the order dated 07/08/2020 of the trial court of Sub Judge Handwara not only introduces but also imprints its actual nature as being an adjudication done under the spell of Order 39 rule 1 of the Code of Civil Procedure, 1908. Opening para of order dated 07/08/2020 of the learned Sub Judge Handwara is as follows:

“The instant application has been presented by the Ld. counsel for the plaintiff/applicant for restraining the defendants/non-applicants from interfering into her peaceful possession over the land measuring 10 kanals and 11 marla under survey no. 50 situated at village Ashopra, Tehsil Kralgund till final disposal of main suit.”
10. Said order dated 07/08/2020 of the trial court of Sub Judge, Handwara, in issuing the injunctory direction and disposing of file no. 171/Misc, came to be called in question by the petitioners in an appeal before the appellate court of the learned Principal District Judge, Kupwara which vide its order dated 07.08.2021 came to hold the said appeal of the

petitioners as not maintainable without touching the meat of the matter on merits. Thus, the petitioners, finding themselves non-suited in their appeal at the very threshold, came rushing to this court with a petition under article 227 of the Constitution of India finding themselves left with no other legal course of action to question the legality and validity of the said order dated 07/08/2021 of the court of Principal District Judge, Kupwara.

11. The court of Principal District Judge, Kupwara, in uprooting the petitioners' appeal against the said injunctory order dated 07/08/2020 of the Sub-Judge, Handwara, came to fetch from the text of section 104 and the Order 43 of the Code of Civil Procedure, 1908 an understanding to opine and say that since injunctory order passed by reference to section 94 (c) & (e) of the Code of Civil Procedure, 1908 is not finding any mention in section 104 read with Order 43 as an appealable order, so the Code of Civil Procedure, 1908 envisages no appeal against an injunctory order passed by a civil court in a civil suit acting under the provisions of section 94 (c) & (e) of the Code of Civil Procedure, 1908. The Principal District Judge, Kupwara, thus, ventured to understand section 94 of the Code of Civil Procedure, 1908 as a provision providing for passing of an order in order to prevent the ends of justice from being defeated as part of inherent power by reference to Latin law maxim *ex debito justitiae*. The court of Principal District Judge, Kupwara for bearing understanding of Section 94 of the Code of Civil Procedure relied upon a judgment of the Hon'ble Supreme Court reported in **1962**

AIR SC 527 titled “*Manohar Lal Chopra v/s Rai Bahadur Rao Raja Seth Hira Lal*”.

12. The Principal District Judge, Kupwara fell into a thought process about issuance of an injunctory order/direction taking place either under the umbrella of Order 39 Rule 1 & 2 of the Code of Civil Procedure or under the spell of Section 151 of the Code of Civil Procedure and not under section 94. The court of Principal District Judge, Kupwara has ventured to take and even put on record it as a statement of law that an order under section 94 (c) & (e) cannot be interpreted or over-stretched to mean that it is an order under rule 1 & 2 of the Order 39 of the Code of Civil Procedure, 1908. In fact, the learned Principal District Judge, Kupwara has gone to the extent of saying that section 94 of the Code of Civil Procedure, 1908 is not a substantive provision and for that the learned Judge’s premise is that section 94 presupposes existence of a main or principal relief for which a supplement relief can be granted. The Principal District Judge Kupwara has further gone to the extent of exhibiting his understanding to observe that Order 39 Rule 1 & 2 of the Code of Civil Procedure are the provisions of independent character and the relief envisaged under Section 94 of the Code of Civil Procure, 1908 is to supplement or complete or enhance the relief grantable under Order 39 rule 1 & 2 of the Code of Civil Procedure, 1908.
13. Riding on this take of law in the context of section 94 of the Code of Civil Procure, 1908 on the one hand and of Order 39 rule 1 & 2 of the Code of Civil Procedure, 1908 read with Section 104 and Order 43 of

the Code of Civil Procedure, 1908 on the other hand, the learned Principal District Judge, Kupwara held the impugned order dated 07.08.2020 of learned Sub-Judge, Handwara being not appealable under Section 104 read with Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908.

14. This Court has no iota and moment of hesitation and, in fact, needs to hasten to hold and declare that the Principal District Judge, Kupwara has erred in bearing correct reading and comprehension of the very legislative scheme of the Code of Civil Procedure, 1908, and, thus, fell short of true understanding and correct conclusion which is exposed from the very use of singular statement in the impugned order dated 07.08.2021 of the Principal District Judge, Kupwara saying that section 94 of the Code of Civil Procedure, 1908 is not a substantive provision. Since the Principal District Judge, Kupwara has built the edifice of his impugned order on this singular line of understanding with respect to section 94 of the Code of Civil Procedure, 1908 as such this court needs to address its examination of the impugned order in a detailed perspective.
15. In passing the impugned order, the Court of Principal District Judge Kupwara faulted and faltered on two counts. Firstly the Sub Judge Handwara in its order dated 07/08/2020, which was appealed against, has no where even made a passing whisper to section 151 of the Code of Civil Procedure, 1908 being resorted to in passing the said order. Thus ex facie there was no occasion for the District Judge Kupwara to read

and examine the order dated 07/08/2020 as if bearing the text and context of section 151 of the Code of Civil Procedure, 1908. Other count is that the Principal District Judge Kupwara has gone very seriously wrong in his legal understanding of the subject.

16. It would serve the disquisition better by firstly having relevant provisions of the Code of Civil Procedure, 1908 put on record here in next.

Preamble of the Code is as under:

“Whereas it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.”

Section 2(1) defines Code as under:-

“2(1) “Code” includes rules.”

Section 2 (16) defines Prescribed as under:

“2(16) “prescribed” means prescribed by rules.”

Section 2(18) defines Rules as under:

“2(18) “rules” means rules and forms contained in the First Schedule or made under Section 122 or Section 125.”

Section 94 figuring in part VI as “Supplemental Proceedings” in terms of clause (c) & (e) reads as under:

“94. Supplemental Proceedings: In order to prevent ends of justice from being defeated the court may , if it is so prescribed,-

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.”

Section 104. Orders from which appeal lies:- (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders :-

- (a) [***]
- (b) [***]
- (c) [***]
- (d) [***]
- (e) [***]
- (f) [***]
- (ff) ...
- (ffa)...
- (g) ...
- (h) ...
- (i) any order made under rules from which an appeal is expressly allowed by rules”

[Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]

(2)”

Section 121. Effect of rules in First Schedule :- The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Section 122. Power of certain High Courts to make rules:- High Courts [not being the Court of a Judicial Commissioner] may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.”

Order 39 rule 1 & 2 :

1. Cases in which temporary injunction may be granted:- Where in any suit it is proved by affidavit or otherwise –

- (a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) That the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,
- [(c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach :- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) [***]

(4) [***]

Order 43 (1)(r) :

1. **Appeals from orders:-** An appeal shall lie from the following orders under the provisions of Section 104, namely:-

- (a)...
- (b)[***]
- (c)...
- (d)...
- (e)[***]
- (f)...
- (g) [***]
- (h) [***]
- (i)...
- (j)...
- (ja)...
- (k)...
- (l)...
- (m)[***]
- (n)...
- (na)...
- (o)[***]
- (p)...
- (q)...
- (r) an order under Rule 1, Rule 2, [Rule 2-A], Rule 4 or Rule 10 of Order XXXIX.
- (s)...
- (t)...
- (u)...
- (v)[***]
- (w)...

17. The Code of Civil Procedure, 1908, by its introduction, is a statute as simple and ordinary as any other statute in terms of its structure and substance. A statute is a legislative statement of a law in a written form, and law so stated can be a substantive law and/or an adjective law. Law made on any given legislative subject is given written composition through words in a statute and those words bearing sentences are embodied in the form of sections. To put it in easier parlance, as pages bind a book so do sections primarily bind a statute.
18. The Code of Civil Procedure, 1908, in its very preamble, introduces its character as being a law relating to the procedure of the courts of civil judicature. It has sections enlisted 1 to 158 composing its organic structure and, in fact, are taken to form and constitute “the body of the

Code” in contradistinction to “the Code”. Very insightful reading and understanding of the Code of Civil Procedure as bestowed and invested in the course of time dating back to Pre Independence time as well, from the various High Courts of the Country and which has been stamped with an approval by the Hon’ble Supreme Court of India leaves the perception clear that the section part (1 to 158) of the Civil Procedure Code, 1908 is known as the body of the code in which are not to be read the rules embodied in First Schedule as Orders I to LI. Sections 1 to 158 and the Orders I to LI combined together are defined and identified as the Code as per section 2 (1) which defines the word Code. Thus, while the Code ranges from Sections and the Orders figuring in the First Schedule, on other hand the body of the code includes only the Sections 1 to 158. Sections are substratum of the Code whereas the First Schedule bearing compartmentalization of the rules into Orders are the turf part of the Code at which processing and progression of stage wise adjudication/trial of a cause/suit/appeal before a civil court of law gets carried out and conducted to its finality.

19. It hardly calls for any discussion or discourse to know that the sections of the Code of Civil Procedure, 1908 are the provisions of law which has the legislative judgment coded therein. Sections are the seed and stem part of the Civil Procedure Code, 1908 whereas the Rules are the branching part of the same and that is why the High Courts, by operation of section 122, have been delegated with the power to annul, alter or add

to all or any of the rules in the first schedule without having any liberty to touch the section part.

20. Entire body of Rules figuring in First Schedule, by reference to section 2(18), are generic in reference but Orders I to LI are brand names of the rules so composed and grouped. Order 39 is a brand name of the rules which deals with Procedure of Temporary Injunctions and Interlocutory Orders. Both expressions i.e., “Temporary Injunction” and “Interlocutory Orders” figuring in the very headline of Order 39 are, in fact, drawn from section 94 (c) & (e) and this is for very correct design as section 94 (c) & (e) of the Civil Procedure Code, 1908 provides the jurisdiction to a civil court to grant temporary injunction and pass interlocutory order leaving the details to be set out in the rules part of Order 39 rule 1 & 2. This is how section 94 is read with Order 39 rule 1 & 2 Civil Procedure Code 1908 and not the reverse way in which the Court of Principal District Judge Kupwara understood it to be. The Court of Principal District Judge, Kupwara made an inverse understanding of the legal provisions in reference.
21. Full Bench of the High Court of Allahabad in para 44 to 46 of case 1969 Allahabad 142 dwells upon it very clearly. In para 46 of said judgment is said that the sections are the jurisdictional provisions and having regard to their subject matter the expression “body of the code” can refer to the sections only and not to the rules which are figuring in the First Schedule being included in the Code as per section 2 (1) and Section 2(18) of Civil Procedure Code . It is held by the Full Bench of the

Allahabad High Court in said judgment that Sections alone comprise the “the body of the code”. This expression “body of the code” is gatherable from sections 121 & 128 of the Code of Civil Procedure, 1908. Paras 44, 45 & 46 are reproduced as under:-

“44. The Code of Civil Procedure, 1908 is an Act which consists of a number of sections and rules. The first eight sections are grouped together as "Preliminary" and the remaining are arranged into parts. The rules are comprised in five Schedules. We are concerned only with the first Schedule, which indeed is the only one which remains after the repeal of the others. The First Schedule consists of a number of rules arranged into Orders. Apart from the rules contained in the First Schedule, Sections 122 and 125 confer power upon the High Courts to make rules.

45. The word "Code", wherever used in the Act, is defined by Section 2(1) as including rules. Section 2(18) defines "rules" to mean "rules and forms contained in the First Schedule or made under Section 122 or Section 125." It is clear that wherever the word "Code" is used in the Act of 1908, it includes not only the sections comprised in it but also rules and forms contained in the First Schedule as well as the rules and forms made by the High Courts under Section 122 or Section 125, It will be found that the Act used both expressions "Code" and "body of the Code". The expression "body of the Code" is not defined. But upon an analysis of the several provisions of the Act it will be clear that the expression "body of the Code" is employed only where reference is intended to the sections of the Act. That that is so will appear from a perusal of the provisions of Sections 7, 8, 96, 100, 104, 121 and 128.

46. The sections mentioned above are jurisdictional provisions and having regard to their subject-matter the expression "body of the Code" can refer to the sections only and not to the rules. The conclusion is reinforced if regard is had to Section 121 and Section 128. Section 121 declares that the rules in the First Schedule shall have effect "as if enacted in the body of this Code". Section 128 provides that the rules made by the High Court "shall be not

inconsistent with the provisions in the body of this Code," which rules by Section 127 are deemed to have the same force and effect as if they had been contained in the First Schedule. It is clear from Sections 121 and 128 that the rules contained in the First Schedule and the rules framed by the High Courts are in fact outside the "body of the Code". The sections alone therefore comprise the "body of the Code"

22. In *Karam Singh & Ors Vs Kunwar Sen & Ors* reported in 1942 AIR Allahabad 387 , the Division Bench of the High Court speaking through Justice Allsop, while dealing with section 22 Civil Procedure 1908 matter in relation to provisions dealing with the joined of causes of action, the joined of the defendants and local jurisdiction of two courts quo two properties one in Amritsar and other in Saharanpur, has observed that the Civil Procedure Code was framed in its present form, namely, in the form of an Act with schedules attached as to give greater elasticity to the rules of procedure. It is further written in said judgment that the main body of the Act sets forth the fundamental principles which are variable only by the Legislature itself. The most assertive line of law leaving nothing to doubt about the nature of section part of the Code is that no rule in the schedule can confer upon any Court a jurisdiction which it would not have under the provisions in the body of the Code which confer such jurisdiction.
23. In *Trimbak Bhikaji Marathe & Anr. Vs Dhondappa Narayanappa Bondre*, the Division Bench of the High Court of Nagpur in 1945 AIR Nagpur 83 has understood the Code of Civil Procedure to speak as clearly as sky is blue which is worth reproducing: -

“The Civil Procedure Code consists of (i) all that which is termed “body of the Code” and (ii) of the rules. The body of the Code is fundamental and is unalterable except by the Legislature. The rules have concern with details and machinery and can be more readily altered. Thus, it will be found that the body of the Code creates jurisdiction, while the rules indicate the mode in which it is to be exercised. It follows that the body of the Code is expressed in more general terms, and it has to be read in conjunction with the more particular provisions of the rules:

The body of the Code consists of 158 sections which confer jurisdiction. The rules and forms are contained in Sch. 1. The sections are not liable to be altered except by the Legislature. The rules in Sch. 1 have effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of Part 9. Sections 122 to 128 confer jurisdiction for the amendment of the rules and provide a machinery by which necessary amendments can be made.”

24. Any iota of doubt if left is put to rest by the Hon’ble Supreme Court of India in the case of Vareed Jacob Vs Sosamma Geevarghese in (2004 AIR SC 3992) in para 6, 10 & 11 which are befittingly reproduced herein:

“6. Civil Procedure Code, 1908 applies to all proceedings in Courts of Civil Jurisdiction, subject to any special or local law or any special jurisdiction under any other law for the time being in force. The main feature of the Code is its division into two parts. The main body of the Code consists of section which create jurisdiction while the rules indicate the manner in which the jurisdiction has to be exercised.

10. In the case of Jagjit Singh Khanna v. Dr. Rakhal Das Mullick reported in AIR 1988 Cal 95 it has been held that temporary injunction may be granted under Section 94(c) only if a case satisfies Order 39, Rule 1 and Rule 2. It is not correct to say that the Court has two powers, one to grant temporary injunction under Section 94(c) and the other under O. 39 R. 1 and R. 2. That Section

94(c), C.P.C. shows that the Court may grant a temporary injunction thereunder, only if it is so prescribed by Rule 1 and Rule 2 of Order 39. The Court can also grant temporary injunction in exercise of its inherent powers under Section 151, but in that case, it does not grant temporary injunction under any of the powers conferred by C.P.C, but under powers inherent in the constitution of the Court, which is saved by Section 151 C.P.C.

11. The above discussion shows that the source of power of the Court to grant interim relief is under Section 94. However, exercise of that power can only be done if the circumstances of the case fall under the rules. Therefore, when a matter comes before the Court, the Court has to examine the facts of each case and ascertain whether the ingredients of Section 94 read with the rules in an Order are satisfied and accordingly grant an appropriate relief. It is only in cases where circumstances do not fall under any of the rules prescribed that the Court can invoke its inherent power under Section 151 C.P.C. Accordingly, the Courts have to grant relief of attachment before judgment, if the circumstances fall under O. 38 C.P.C. Similarly, Courts will grant temporary injunction if the case satisfies Order 39. So depending on the circumstances falling in the prescribed rules, the power of the Court to grant specified reliefs would vary. Therefore, each set of rules prescribed are distinct and different from the other and therefore, one cannot equate rules of temporary injunction with rules of attachment before judgment although all are broadly termed as interlocutory orders.”

25. In *Badal Chandra Kundu & An. Vs Netai Mahato* case the High Court of Calcutta in 2019 AIR Calcutta 245 has stated in most succinct manner the understanding of section 94 read with Order 39 rule 1 & 2 CPC. Para 18, 19 and 21 are self stating the position.

“18. S.B. Sinha, J. while delivering the minority judgment in the three Judges Bench of the Hon'ble Apex in the case of *Vareed Jacob vs. Sosamma Geevarghese and others*, reported in (2004) 6 SCC 378: (AIR 2004 SC 3992) has dealt with the scope of

"supplemental proceedings" under Part VI vis-a-vis "incidental proceedings" under Part III of the Code and has held that the statutory scheme therefor is that supplemental proceeding should be taken recourse to only when the interest-of-justice is required to be sub-served, although interlocutory order may not have anything to do with the ultimate decision of the Court. The observations of S.B. Sinha, J. in the said judgment of the Hon'ble Apex Court are quoted below:-

"54. Parliament consciously used two different expressions "incidental proceedings" and "supplemental proceedings" which obviously would carry two different meanings.

55. The expression "ancillary" means aiding; auxiliary; subordinate; attendant upon; that which aids or promotes a proceeding regarded as the principal.

56. The expression "supplementary proceeding" on the other hand, would mean a separate proceeding in an original action, in which the court where the action is pending is called upon to exercise its jurisdiction in the interest of justice.

57. The expression "incidental" may mean differently in different contexts. While dealing with procedural law, it may mean proceedings which are procedural in nature but when it is used in relation to an agreement or delegated legislation, it may mean something more; but the distinction between an incidental proceeding and a supplemental proceeding being obvious cannot be ignored.

58. Indisputably, the effect of an order passed under different provisions of Section 94 of the Code of Civil Procedure would be different. They have been so legislated keeping in view different exigencies of circumstances but it must not be forgotten that the power thereunder is to be exercised in the interest of justice. The statutory scheme therefor is that supplemental proceeding should be taken recourse to only when the interest of justice is required to be subserved, although the interlocutory order may not have anything to do with the ultimate decision of the Court."

The above quoted observations of S.B. Sinha, J. in the said decision of the Hon'ble Apex Court does not suggest that the Court

has two sources of power to grant an order of injunction i.e. one under Section 94(c) of the Code and another under Order 39 Rules 1 and 2 of the Code.

19. The Hon'ble Division Bench of this Court in the case of Jagjit Singh Khanna vs. Rakhil Das Mullick and another, reported in AIR 1988 Calcutta 95 has held that Section 94(c) shows that a Court may grant a temporary injunction thereunder only "if it is so prescribed". The expression "prescribed" in Section 94(c) of the Code would mean as defined in Section 2(16) of the Code "prescribed by Rules." The rules which prescribe grant of temporary injunction are Rules 1 and 2 of Order 39. Therefore, a temporary injunction may be granted under Section 94(c) only if a case satisfying the requirement of Order 39, Rules 1 and 2 is made out. Thus, it is not correct to say that the Court has two sources of power to grant temporary injunction, one under Section 94(c) and the other under Order 39, Rules 1 and 2 and may resort to one or the other as and when necessary.

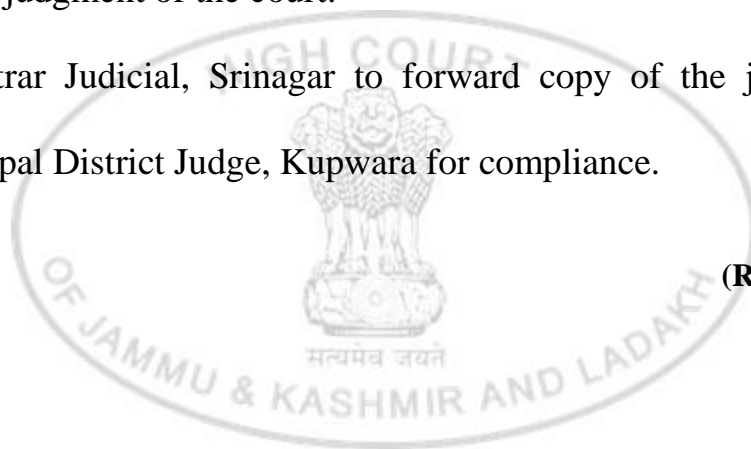
Under the Civil Procedure Code a temporary injunction can be granted only under one set of provisions namely, under Section 94(c) read with Order 39 Rules 1 and 2. The Court can grant temporary injunction in exercise of its inherent powers under Section 151 also but there it does not grant it under any power conferred by the Civil Procedure Code but under powers inhering in its very constitution which are saved by and under Section 151.

21. The above discussion makes it clear that Section 94(c) of the Code is not an independent source of the power of the Court to grant of an order of injunction. The argument of Mr. Banerjee, on this point, therefore, fails.”

26. Prudence in and of a judicial judgment is to get reflected both in terms of the way of its making and also in deciding the matter in issue and the order/judgment passed by the learned Principal District Judge, Kupwara, to put in modest tone, is poor on both counts.

27. The present petition thus deserves to be allowed though it has cost precious loss of time with respect to the lis. The impugned order/judgment dated 07/08/2021 of the court of Principal District Judge, Kupwara on file no.171/Misc is set aside. The appeal filed by the petitioners against order dated 07/08/2020 of the Sub-Judge, Handwara is held to be maintainable under Order 43 rule (1) (r) of the Civil Procedure Code, 1908. The Principal District Judge, Kupwara is directed to recall the appeal of the petitioners on file and adjudicate the same on merits within a period of 60 days from date of receipt of copy of the judgment of the court.

28. Registrar Judicial, Srinagar to forward copy of the judgment to the Principal District Judge, Kupwara for compliance.



(Rahul Bharti)
Judge

Srinagar :
07.10.2022
Pawan Chopra

Whether the order is speaking : Yes
Whether the order is reportable : Yes