

(2018) 06 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : OWP No. 998 OF 2018

JAGDEEP KUMAR & ANR

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND OTHERS

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 3A

Citation : (2018) 06 J&K CK 0014

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Judgement

1. The grievance as projected by the petitioners in this petition is that the respondent Nos. 3 & 4 have filed a civil suit seeking declaration that by

virtue of General Power of Attorney registered in favour of respondent Nos. 3 & 4 (Plaintiffs in the suit) and Agreement, pursuant where to

respondent No.3 had been authorized to raise Pacca Construction on the aforesaid land for the residential purposes. The respondent Nos. 3 & 4

appear to have sought declaration that by raising the Pacca construction of double storyed house, they have become full owner of the suit land over

which the petitioners herein (defendants) in the suit have got no right, title or interest etc. etc.Â

2. In the aforesaid suit, learned Munsiff, Bishnah after considering the material on record was pleased to issue interim directions on 17.08.2017, the

operative portion of which reads as under:-

â??Issue notice to the other side. Meanwhile, the parties to the suit are directed to maintain status quo on spot with respect to the suit property as

exist today till next date of hearing. This order is, however, subject to objections from other side and till next date of hearing, the other side is at liberty

to seek alteration/modification of order in case chooses so on or before next date of hearing. The plaintiffs are directed to comply the provisions of

Order 39 Rule 3 CPC and shall submit service compliance affidavit within 2 days. Let the file shall come up for filing objections from other side on the

next date of hearing on 26.09.17.â??

3. The petitioners claim that they have already caused their appearance in the suit and have even filed their written statement.

4. The grievance of the petitioners in this petition, however, is that despite the fact that the interim order of status quo with regard to the property,

subject matter of suit, was passed on 17.08.2017 on their request in the suit filed by the respondent Nos. 3 & 4, yet the respondent No.3 and 4 are

themselves violating the aforesaid interim directions. Submitted by learned counsel for the petitioners that with a view to restrain the respondent Nos.

3 & 4 from violating the interim directions passed on 17.08.2017, the petitioners filed an application before the learned Munsiff seeking implementation

of the aforesaid interim order in letter and spirit through the SHO, Police Station, Gangyal. The trial court intervenes in the matter and directed the

SHO, Police Station, Gangyal to implement the order passed on 17.08.2017 in letter and spirit.

5. The grievance of the petitioners in this petition, however, is that despite the fact the SHO, Police Station, Gangyal was specifically directed by the

trial court vide its order dated 09.05.2018 for ensuring the implementation of order dated 17.08.2017, he has not taken any step to prevent continuous

violation of the order by respondent Nos. 3 & 4.Â

6. Learned counsel for the petitioners urges that despite there being an order of status quo and direction to the SHO to implement the same in letter

and spirit, the respondent Nos. 3 & 4 are going ahead with the construction and are, therefore, changing the nature of the suit property.

7. Ordinarily, the directions sought for in this petition are not to be issued in exercise of the supervisory jurisdiction of this court. If an order is passed

by a civil court in a suit, it is the duty of the civil court to see that the same is not violated by the parties and if it is brought to the notice of the civil

court that such order is not being complied with in letter and spirit, the civil court has all the powers to enforce its implementation and punish for

disobedience. Order 39 Rule 3-A is a provision made in the Code of Civil

Procedure to address such contingency. The petitioners instead of persuading the civil court to proceed under Order 39 Rule 3-A has straightway approached this Court.

8. That apart, this Court cannot lose sight of the fact that there is a growing tendency amongst the citizens, more particularly the executive agencies of the State to take the orders of civil courts lightly. This perhaps may be due to the reason that many a times the civil courts have been showing leniency and not dealing with such situation with iron hand. Needless to remind, that the civil court is vested with vast powers to see that its orders are not disobeyed by anybody whosoever he/she may be. But it appears that due to lack of assertion of authority by the civil courts, the aggrieved persons have started approaching this Court short-circuiting the procedure laid down in the Code of Civil Procedure. This Court being a supervisory Court over the courts subordinate to it, cannot afford to be a mute spectator.

9. In the backdrop of facts and circumstances narrated above, I am of the opinion that limited indulgence in the matter is called for.

10. Notice in the main as well as in MP returnable within four weeks.

Requisites for service within one week.

11. List on 07.08.2018.

12. Meanwhile, subject to objections and till next date of hearing before the Bench, the SHO, Police Station, Gangyal shall ensure that the order passed by the learned Munsiff, Bishnah dated 17.08.2017 is not violated by any of the parties to the suit. He shall submit a report in compliance of the order of the learned Munsiff dated 09.05.2018 before the trial court within two weeks from today. The trial court shall proceed in the matter in accordance with law notwithstanding the pendency of this writ petition.