HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
…

CM(M) No.127/2021
CM No.5797/2021

Reserved on: 09.09.2021

Pronounced on: 05 .10.2021

Mohammad Yaqoob Lone and others

…….Petitioner(s)

Through: Mr. M. A. Qayoom, Advocate

Versus

Hamidullah Lone and others

……Respondent(s)

Through: Mr. G. A. Lone, Advocate

CORAM:
HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. Through the medium of this writ petition filed under Article 227 of the Constitution of India, the petitioners seek setting-aside of the Order dated 23.08.2021, passed by the court of Principal District Judge, Kulgam (for short the "*Appellate Court*") in a Civil Miscellaneous Appeal titled as '*Hamidullah Lone and others vs. Mohd Yaqoob Lone and others*', by which the Order dated 17.06.2021, passed by the court of Sub Judge, Kulgam (for brevity the

"*Trial Court*") in a case titled '*Hamidullah Lone and others vs. Mohd Yaqoob Lone and others*', dismissing the interim application of the respondents, has been set-aside, on the grounds tailored therein.

2. Heard the learned counsel for the parties and considered the matter.

3. A civil suit (*Annexure II to writ petition*) titled '*Hamidullah Lone and others vs. Mohd. Yaqoob Lone and others*', has been filed by the respondents before the Trial Court, in which they state that the respondents and petitioner no.1 herein are the real brothers and are the owners in joint possession of the land measuring 47 Kanals and 17 Marlas, situated at Village Guffan Tehsil Yaripora District Kulgam (hereinafter for the sake of brevity is being called as the "*suit property*") which fact, according to the respondents, is evident from the revenue records. The suit land is claimed to be joint and unpartitioned as no legal partition thereof by metes and bounds have taken place.

3.1. It is maintained by the respondents in their plaint that the petitioner no.1 herein is issueless, without having wife and was, therefore, residing with his brother, i.e., plaintiff no.3 – respondent no.3 herein. It is also contended by the respondents in their civil suit that in the year 2019, the petitioner no.1 changed his residence from respondent no.3 to the house of his sister, namely, Mst. Zareefa W/o Nazir Ahmad and taking the undue advantage of this position, Mst. Zareefa and her husband, during lockdown in the month of August 2019, managed two documents consecutively, i.e., one gift deed dated 30.09.2019 and got it registered with the Sub Registrar, Kulgam on

04.10.2019 for a commercial plot of land out of the suit land measuring 04 Kanals falling under Survey No.209 Min, situated at Village Guffan Tehsil Yaripora District Kulgam and another the Sale Deed dated 29.10.2019 for the land measuring 04 Kanals falling under Survey No.209 Min, 243 Min, 252 Min.

3.2. It has also been mentioned by the respondents in their suit that they came to know about the abovementioned documents in the month of February 2020, when the defendants 2 to 5 – petitioners 2 to 5 herein, embarked a landed portion out of the suit land falling under Survey no.209 for construction of a building and the plaintiffs/respondents approached the Patwari concerned, where they got the information about these documents and they, accordingly, applied for certified copies thereof, which were provided to them on 18.02.2020 and 20.03.2020. Aggrieved of these documents, the plaintiffs/respondents have thrown challenge thereto in the civil suit before the Trial Court.

3.3. According to the plaintiffs/respondents, the suit land included the land mentioned in the documents also, is joint and unpartitioned as no legal partition of the suit land by metes and bounds have taken place in between the parties till date and in this way the plaintiffs and defendant No.1 are the co-owners/co-sharers of the suit land under law. It is also maintained that defendant No.1, being co-sharer of suit land with the plaintiffs, has no legal authority to execute the document with regard to the whole portion of the land falling under Survey No.209 as being of the commercial utility/prospects in favour of the defendant Nos. 2&3.

3.4. Plaintiffs/respondents have also insisted that if the documents are taken as legal, still the defendant Nos.2&3 stepped into the shoes of the defendant No.1 and will get the status of co-sharers with the plaintiffs on the suit land and may get the land mentioned in the documents from all the Khewat Nos.1, 2 and 4, at the occasion of the partition of the suit land by metes and bounds and in this way, the defendant Nos.2&3 have no legal claim on the land mentioned in the said documents.

3.5. The plaintiffs/respondents also challenge the aforesaid documents on the ground that the said documents, on the face of it, seem outcome of the fraud and conspiracy *inter se* defendants as the admitted fact is that the defendant No.1 is without a wife, as such, is issueless and that the defendant No.1 has changed his residence in the month of August 2019 from the plaintiff No.3 to the defendant No.4 as his sister. There the defendant Nos.4&5 have chosen a time when the whole Kashmir valley was under lockdown due to abrogation of Article 370, managed the documents, i.e., Gift Deed and Sale Deed. The documents are witnessed by brother, son-in-law and son of the defendant No.5, besides the documents were managed in violation of the provisions of the Alienation of Land Act, which was in vogue on that point of time and the defendant, while managed the documents, also targeted the specific portion of the land from specific survey numbers, which are of the commercial utility and prospects out of the suit land. They have also stated in their suit that the documents are sham and fictitious as no consideration as shown in the sale deed was paid by defendant

No.3 to defendant No.1, nor it was possible for defendant No.3 to pay such a huge amount of black money as consideration and that defendant Nos.2 to 5 under the cover of the documents are bent upon to oust the plaintiffs from the joint ownership and possession of land mentioned in the documents and to achieve these objectives, the defendants have started the preparations to raise the construction on the land in such a way which will not only oust the plaintiffs from the joint possession of suit land, but also devalue the rest portion of the land falling under Survey No.209 as they are trying to raise the constructions on the best portion of the land. On the basis of case set up and grounds of challenge taken in the suit the plaintiffs have sought the following relief:

> "1. Decree for declaration, declaring the plaintiffs and defendant No.1 as owners in joint possession of suit land, the detailed description of which is given in para 1 of the plaint and accordingly declare the impugned documents, the detailed description of which is given in para No.4 of the plaint as inoperative, ineffective, null and void viz-a-viz the rights of plaintiffs on the suit land more particularly regard the land mentioned in impugned documents.
> 2. After determination of their shares, a decree for partition where under the concerned Assistant Collector 1st Class/ Tehsildar be commanded to affect the actual partition by metes and bounds with separate possession accordingly.
> 3. Til the same be affected on spot, the defendants be restrained from changing the nature by raising any sort of construction over the suit land particularly the land mentioned in the impugned documents be passed in favour of the plaintiffs and against the defendants with costs."

4. Alongside the said civil suit, the plaintiffs/respondents had also filed an application for grant of interim relief (*Annexure IV to writ petition*). The interim relief prayed for by plaintiffs/respondents is pertinent to be reproduced hereunder:

> "In the premises it is therefore most humbly prayed that the defendants be temporary restrained from changing the nature of the suit land by raising any sort of construction over the suit land particularly the land mentioned in the impugned documents i.e. Gift Deed and Sale Deed…"

5. Written Statement (*Annexure III to writ petition*) has been filed by the defendants – petitioners before the Trial Court, in which they contend that the suit property has already been partitioned on the spot and the plaintiffs/respondents cannot resile from this fact after a gap of eleven years. The petitioners/defendants admit that the plaintiffs and the defendant no.1 are the real brothers.

5.1. It is claimed by the petitioners/defendants in their written statement that the last property holder, Ramzan Lone, left behind the plaintiffs and defendants 1 & 4, as his legal heirs and during the settlement of village Guffan in the year 2013-14, the plaintiffs with the aid of the revenue agencies succeeded to record the estate of Ramzan Lone only in the name of the plaintiffs and defendant No.1, when as per law and Shariat, defendant no.4 was also entitled to one share from the property of her father, Ramzan Lone and that after the settlement, the name of plaintiffs and defendant No.1 only reflected in the revenue records and the name of the defendant No.4 is missing in the revenue records when she is entitled to one share from the left over property of her father, Ramzan Lone.

5.2. It has also been stated by the defendants/petitioners in their written statement that in the year 2009, the plaintiffs and the defendant no.1 had decided to partition the left over the property of their father,

Ramzan Lone, privately in metes and bounds with the consent of each shareholder and each shareholder had started living separately from the joint family and every shareholder had been put in possession of his share by way of the private partition and every party had taken the possession of his share from the left-over property of Ramzan Lone and since then they are in the cultivation and possession of their own shares in the property. The petitioners/defendants also claim that after the partition, the defendant no.1 out of his free will executed a gift deed in favour of his nephew – defendant no.2, and the sale deed in favour of the defendants 2&3, which was followed by the mutation. It is averred by the petitioners/defendants that the defendant no.1 is having wife, namely, Mst Ateeqa, who was residing with the plaintiffs for some time, but after the separation from the joint family, they were residing separately in a joint residential house of the plaintiff No.3 and they were forcibly thrown out from the joint residential house, the defendant No.1 and his wife are residing in the residential house of defendant No.5. It has also been contended by the petitioners/defendants that the respondents/plaintiffs have suppressed the facts as wife of the defendant No.1 is alive.

5.3. It is claimed by the petitioners/defendants that the partition has already taken place and only thereafter the documents were executed. It is stated that previous year also due to intervention of the respectables of the area, the plaintiffs gave a written assurance that they would not interfere in the share of the defendant No.1 and would not also interfere in the possession of the land owned and possessed

by the defendant Nos.2&3, on the basis of legal valid documents. It is claimed by the defendants/petitioners in their written statement that the defendant No.1 is mature and sane person, who has performed his Hajj along with his wife in the year 2018 and knows pros and cons of the life and knows what is good and bad for his survival.

6. Objections to the interim applications had also been filed by the petitioners/defendants before the Trial Court.

7. By the order dated 17.06.2021, the Trial Court dismissed the respondents' application for grant of interim relief. Against the said order, the respondents/plaintiffs preferred an Appeal. The Appellate Court vide Order dated 23.08.2021, impugned herein, set-aside the Trial Court order and directed the defendants/petitioners to make any construction on the suit land or to change its nature till disposal of the main suit.

8. A preliminary issue, raised by Mr. G. A. Lone, the learned counsel appearing for the plaintiffs/respondents, is that the instant writ petition is not maintainable. To this, Mr. M. A. Qayoom, has said that instant writ petition under Article 227 of the Constitution of India, is maintainable, and to cement his assertion, he has, amongst others, rightly placed reliance on the judgement passed by the Hon'ble Apex Court in the case of ***State of Jharkhand vs. Surendera Kumar Srivastava and others***. The Apex Court has said that the writ petition under Article 227, challenging the orders passed by civil courts refusing to grant the interim injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is maintainable. Thus, the Apex

Court has set at rest the question qua maintainability of writ petition under Article 227 and the judgement in ***Surendera Kumar Srivasta*** (supra) to this extent also applies to the case in hand. So, contention of learned counsel for respondents qua maintainability of instant writ petition has no impetus.

9. Now have a discourse on the merits of the present petition. It relates to grant or refusal of interim relief/temporary injunction.

10. The plaintiffs/respondents, in their plaint, have challenged the Gift Deed and Sale Deed and sought declaration to declare them as null and void. The plaintiffs/respondents have also sought the partition of the suit land as according to them partition till date has not been effected. However, the defendants/petitioners dispute and controvert the contention of the plaintiffs/respondents qua partition as according to them, the partition has privately taken place between the parties.

11. In the grounds of challenge taken in the instant writ petition, it has been exhorted by the defendants/petitioners that the findings given by the Appellate Court while passing the impugned order are erroneous and perverse because it was the case of the plaintiffs/respondents that the defendant No.1 has executed a Gift Deed as well as Sale Deed in favour of the defendant Nos.2 and 3 for 08 Kanals of land and it is only 18 Marlas of the land covered by Survey No.209 Min, on which the defendants 2&3 have started the raising of the construction and it was their case that they are not in possession of the said land measuring 18 Marlas and that the defendant Nos.2&3, who are in possession of the said land, have dumped the material on the said land

and they have started raising the construction of a building thereon. The finding of the Appellate Court that the change in the nature and the complexion of the suit land will thwart the process of partition among the co-owners in possession of the suit land is unfounded and baseless, and consequently the very premises of the impugned order is unsustainable in the eye of law and consequently the impugned order is liable to be set-aside. The Appellate Court is said to have not power or authority to pass impugned order directing defendants/petitioners not to raise any construction on the suit land or change its nature till disposal of main suit. It is also averred that it is true that the partition made in the year 2009, has not been reflected by the plaintiffs or the defendant No.1 in the revenue records but that by itself does not mean that no private partition between the parties had taken place or that each party had not received his share from the joint estate and were not in possession of their respective shares inasmuch as the partition can be written as well as verbal. In a family where the relationship is that of brother and sister, reducing the terms of partition into writing is not common as it is faith and trust which each one reposes on the other and plaintiffs and defendants were not strangers. Respondents are also stated to have approached Assistant Commissioner (R) Kulgam to restrain the petitioners from raising the construction, in which report was submitted that 52 Kanals & 17 Marlas of land was in the name of parties; out of which 13 Kanals and 04 Marlas fell to the share of Mohammad Yaqoob, from which he sold 04 Kanals to Shagufta Kounsar and gifted 04 Kanals to Ghulam Hassan, in whose

favour mutation order Nos.13& 14 stood attested and 05 Kanals & 04 Marlas are in his self-cultivating possession and that defendant No.1 and his brothers have separated some 11 years back and Patwari of the time had given each shareholder his share of the land after proper measurement. These facts, though brought to the notice of the Appellate Court, have not been taken into account by the Appellate Court while passing impugned order. It is maintained by petitioners that even if it is assumed that private partition had not taken place, yet defendant no.1 being in exclusive possession of land which he has gifted and sold to defendants 2 and 3, and which did not exceed his share and therefore, sale deed and gift deed executed by him are both legally valid and consequently defendants 2&3 are entitled to enjoy possession thereof. Another ground mentioned in the present writ petition is that it is well settled proposition of law that where a co-sharer is in exclusive possession of a piece of joint holding, which does not exceed his share, either by convenience or without any hindrance from other co-sharers, he can transfer his interest, but transfer will be subject to the right of other co-sharers at the time of partition and that where a co-sharer is in exclusive possession of a portion of land, he is entitled to remain in possession thereof and his possession cannot be disturbed by or at the instance of other co-sharers, who can only do so by seeking partition.

12. Mr. M. A. Qayoom, learned counsel appearing for the petitioners, has stated that merely because a party has a prima facie case, the temporary injunction cannot be granted by the court unless the party

seeking injunction satisfies the court as to the balance of convenience as well as irreparable loss and injury, being caused to the party. The impugned order is stated to have been passed by the Appellate Court irrationally which has impact of depriving the defendant Nos.2&3 to use the land gifted/purchased by them. The private partition, projected by the petitioners in their written statement, has not been entertained by the Appellate Courton the ground of it being not reflected in revenue records. He has relied upon the report of Patwari concerned (*Annexure IX, p. 85, to writ petition*] and produced translated version thereof, to contend that partition has already taken place between the parties.

12.1. Next contention of the learned counsel for the petitioners/defendants is that once the court of first instance, viz. the Trail Court, has declined to grant the temporary injunction in favour of the plaintiffs/respondents, it was not open for the Appellate Court to have a *de novo* consideration of the matter and form a different opinion on the issues of prima facie case, balance of convenience, irreparable loss and equity.

12.2. Learned counsel for the petitioners also states that while considering the application for grant of injunction, the court has to consider the conduct of the parties and if the party has approached the court with unclean hands and has suppressed the material facts, it is not entitled to grant of injunction. He, in support of his contentions, has placed reliance on ***Jai Singh & ors vs. Gurmej Singh, 2009 (15) SCC 747;Skyline Education Institute (Pvt.) Ltd. vs. S. L. Vaswani, AIR***

2010 SC 3221;State of Jharkhand vs. Surendra Kumar Srivastava and ors., (2019) 4 SCC 214; Bal Kishan vs. Ram Singh and ors, AIR 2001 P&H 253; Joginder Nath vs. Sudershan Kumar and ors, AIR 2004 J&K 118; Omkar Singh vs. Sain Singh, AIR 2010 J&K 9.

13. Mr. G. A. Lone, appearing for the respondents, has vehemently controverted the submissions of the learned counsel for the petitioners. He insists that the suit land is still joint and unpartitioned inasmuch as no legal partition of the suit land by metes and bounds as required under law has taken place as can be seen from perusal of the page 84 of the writ petition. He states that the provisions of Section 118 of the J&K Land Revenue Act provides that whenever there is a partition by the private means, the factum of the oral partition has to be necessarily reflected in the revenue record. He has in this regard placed reliance on a judgment passed by a Bench of this Court in ***Daulat Ram and anr v. Roop Chand & ors, 2019 SLJ (1) 383***.

14. In the above contextual discourse, whether this Court, while deciding the case in hand qua grant or refusal of temporary injunction, should delve deeper into the facts and circumstances of the case with reference to partition having taken place or not. Answer thereto is in negative. The reason being, if this Court discusses the factum of partition of suit property, it would tantamount to deciding the whole case and giving a particular opinion on the subject-matter of the case. So better it would be to confine the present discussion to Appellate Court's impugned as petitioners are only aggrieved thereof and seek setting-aside thereof.

15. The Appellate Court has, after making a brief discussion of the facts of the case, taken into account the requirements and ingredients for grant or refusal of the temporary injunction. The Appellate Court has rightly discussed the provisions of Order XXXIX Rule 1 of the Code of Civil Procedure as also the three cardinal principles for grant of the temporary injunction, viz. prima facie case; balance of convenience; and irreparable loss. The Appellate Court has also rightly discussed a number of the judgements on the subject and thereafter found that the plaintiffs/ respondents are entitled to the grant of temporary injunction.

16. Learned counsel for the petitioners has relied upon a judgement rendered in the case of ***Skyline Education Institute (Pvt.) Ltd*** (supra). In the said case the Supreme Court has said that once the court of first instance exercises its discretion to grant or refuse the relief of temporary injunction, the appellate court should be loath to make any interference. However, the Supreme Court, while saying so, has made it clear that if the appellate court comes to the conclusion that the discretion exercised by the trial court in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done, then interference in such circumstances would warrant.

17. Order XXXIX of the Code of Civil Procedure envisions as to temporary injunctions and interlocutory orders. Rule 1 thereof provides:

> "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."

18. Rule 1 of Order XXXIX, thus, says and envisages that in the event in a suit it is by affidavit or otherwise proved that any property, which is in dispute in a suit, is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in an execution of a decree or that the defendant threatens or intends to remove or dispose-off his property with a view to defrauding his creditors or that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property, which is 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 until the disposal of the suit or until further orders. It is necessary to be seen that if the property in dispute is tried to be wasted, damaged, alienated, sold, disposed-off or there are chances of dispossessing the plaintiff from any property, which is in dispute in the suit and/or which may cause injury to the plaintiff concerning any property,

which is in dispute in the suit, the Court may grant the temporary injunction. So, grant of temporary injunction is not to put an end to the litigation, but it is a beginning of the litigation and grant of the temporary injunction is aiming at preserving the property, which is in dispute in the suit because if the temporary injunction is refused to be granted, it would pave way for either of the parties before the Court to alienate, sell, dispose of and/or change the nature of the property, which is in dispute in the suit and in such situation the purpose of litigation would be futile and/or endless for both the parties. Thus, as can be professed from the Rule 1 of Order XXXIX, grant of temporary injunction is to prevent damageor wastage to 'any property' which is in dispute in the suit.

19. Grant of an order of injunction is intended to preserve and maintain in status quo the rights of the parties and to protect the plaintiff, being the initiator, of the action against the incursion of his rights and for which there is no appropriate compensation being quantified in terms of damages. The basic principle of the grant of an order of injunction is to assess the right and need of the plaintiff as against that of the defendant. To fortify this saying, I lend support from a decision of the Supreme Court in the case of Wander Ltd vs. Antox India P. Ltd, 1990 Supp (1) SCC 727, in which it was observed and held:

> "Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the

> interlocutory injunction, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case."

20. The Supreme Court, in the case of ***Gujarat Bottling Co. Ltd. v. Coca Cola Co. and ors, AIR 1999 SC 2372***, has said that the decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of the interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved and that in order to protect the defendant while granting an interlocutory injunction, the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial. It would be profitable to reproduce paragraph 43 of the aforesaid judgement hereunder:

> "43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory

> injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection, has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. (see: Wander Ltd. Vs. Antox India (P) Ltd, (1990 (supp) SCC at pp.731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial."

21. In the above backdrop, it is worthwhile to mention here that the Appellate Court has rightly relied upon the judgement of the Supreme Court rendered in the case of ***Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass (2004) 8 SCC 488***, in which it has been held that lower appellate court and the High Court were not justified in permitting the respondent therein to change the nature of the property by putting up the construction as also by permitting the alienation of the property whatever may be the condition on which the same is done inasmuch as in the event plaintiff's claim being found baseless, ultimately it was always open to the respondent to claim damages or in appropriate case, the court may itself award damages for the loss suffered.

If that being the position, the Appellate Court, in the present case, has been right to set-aside the Trial Court order and grant interim injunction in favour of plaintiff/respondent.

22. In view of the aforesaid analysis, the writ petition at hand *lacks in* merit and is, accordingly, **dismissed** with connected CM(s).

23. Copy be sent down.

(Tashi Rabstan)
Judge

Srinagar
05 .10.2021
'Madan, PS'

Whether the order is reportable: Yes.