

S. No.104
Suppl. Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) no.95/2025

Dated: 07.03.2025

1. Hakim Nazir Ahmad S/o Hakim Habibullah R/o Umarabad HMT
Srinagar aged 55 years
2. Abdul Rashid Kirmani S/o Ghulam Ahmad Kirmani R/o Umarabad HMT
Srinagar aged 50 years

.....Petitioner(s)

Through: Mr Sajad A. Mir, Advocate

V/s

1. Commissioner, SMC, Srinagar
2. Chief Enforcement Officer, SMC, Srinagar
3. Ward Officer, SMC, Ward no.26

.....Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT (ORAL)

1. An order dated 30th December 2024, passed by Municipal Magistrate (1st Civil Subordinate Judge) Srinagar (for short "*Trial Court*") dismissing application of plaintiff preferred by them under Section 151 of the Code of Civil Procedure (CPC), is sought to be set-aside.
2. I have heard learned counsel for petitioners and considered the matter.
3. Following are the grounds of challenge:
 - a. Trial Court has not considered application seeking status quo ante in light of interim order dated 24th October 2024 so as to reinstall an iron gate into property of petitioners.

- b. The Code of Civil Procedure says that every application is subject to objections but the Trial Court has not even considered application under Section 151 CPC and did not even issue notice to respondents and passed order impugned in hot haste.
 - c. Dismissal of application under Section 151 CPC is contrary to established legal principles as Trial Court has failed to apply its judicial mind while deciding the matter. The Trial Court did not consider relevant acts, circumstances and legal principles before dismissing application, showing a mechanical approach rather than a reasoned one.
 - d. Impugned order is erroneous exercise of judicial discretion as the Trial Court has overlooked the facts and law applicable to the case. The Trial Court had discretion under Section 151 CPC to grant relief but it chose to dismiss application without consider proper exercise of discretion.
 - e. Impugned order is cryptic and lacks in detailed reasoning which is mandatory requirement for all judicial decision. The Trial Court did not assign any proper reason or justification for rejecting application thereby violating principles of natural justice.
 - f. Passing of order impugned has turned suit of petitioner infructuous inasmuch as Trial Court has decided final rights of parties and has left nothing for Trial Court to adjudicate upon.
 - g. Dismissal is based on misapplication of mind while dealing with Section 151 CPC. Application should have been considered and allowed based on circumstances of the case as Section 151 CPC allows the Court to make orders to meet ends of justice but this was not considered appropriately by Trial Court.
4. Before Trial Court, petitioners moved an application under Section 151 CPC, praying for passing of an order of status quo ante in their favour and against respondents and directing SHO police station Shalteng, Srinagar, to restore the position pertaining to suit property, i.e., iron

entrance gate existing on 24th October 2024 installed in the year 2009 by petitioners. Relevant portion of the application is necessary to be reproduced hereunder:

“1. That the plaintiffs are next door neighbours who are in possession of their respective properties along with their personal common pathway for their ingress and egress in the Vicinity of Umarabad HMT, Srinagar. The plaintiff no. 01 is the owner in possession of Double Storied residential house with attic along with the land underneath and appurtenant thereto measuring 11 Marla's of Land under Khasra/survey no. 1678/1228/219 Min and the plaintiff no. 02 is the owner in possession of Double Storied residential house with attic along with the land underneath and appurtenant thereto measuring 15 Marla's of Land filling under Khasra/survey no.1682/1228/219 Min at Mouza HMT Srinagar both having common lane (kocha) Zainakot Umarabad.

2. That the Plaintiffs submits that the plaintiffs had their houses constructed way back and whatever structures are existing since long are many decade old and that the plaintiffs presently are not raising any fresh construction nor have any intention to raise any sort of construction as of now. It is pertinent to submit here that the houses of the plaintiffs are existing on a rectangular plot having the personal pathway of the plaintiffs and at the beginning of the Pathway, the Main Gate of the plaintiffs are installed which is the Suit Property is existing since before 2009.

3. That the Plaintiff's submit that all the structure consisting of the Houses, Compound walling and the Main Common Entrance Gate of both the plaintiffs at the beginning of the Personal Pathway/Kocha of the Plaintiffs was existing on spot since long and no fresh construction has been taken place by the plaintiffs with regard to their existing Residential Houses as with regard to the Main Common Entrance Gate at the beginning of the Personal Pathway/ Kocha of the Plaintiffs but some Official members of the field staff of the defendants few days back on 20.10.2024 came on spot over the suit property and unreasonably without any justification or right directed the plaintiffs to remove the Main Common Entrance Gate (suit Property) when the fact of the matter is that the said gate is existing on spot since decades and is completely constructed upon the common proprietary land of the Plaintiffs for their personal use, ingress and egress.

4. That the plaintiffs have a right to protect and preserve their property which is already existing on spot since decades including the right of Privacy and right to live a dignified life as guaranteed by the Constitution of India. It is submitted that in case the field staff of the official defendants has not been made accountable to their illegal actions and have been given free hand to demolish the Main Common Entrance Gate (suit Property) of the plaintiffs without taking recourse without giving the plaintiffs reasonable to the law or opportunity of being heard or knowing the reasons for this type of unwarranted forcible demolition of the suit property the plaintiff shall suffer immeasurable losses and injury of their rights which later on cannot be compensated.

5. That since the order of restrain passed by this Honble court specifically on 24.10.2024 with regard to gate and the same was endorsed and acknowledged to the defendants /non applicants however the non applicant by using sheer muscle power and under the garb of some land mafia had come on spot two days before and have illegally and unlawfully demolished the said gate with electric cutters which were provided to them by the person of land mafia of the area claiming the suit property to be government land while as the fact of the matter

remains that as per the documentary proof before this Hon'ble court as well as documents given to SMC officials in clear terms show the private pathway /koucha on which the said gate was raised to be proprietary land rather than government land.

6. That the hon'ble court under the circumstances is not powerless to deal with the situation as the hon'ble court is governed by the principles of equity and justice which demand that the position existing in the suit property i.e. the iron gate installed on the private land by the plaintiffs date of passing order in interm duly endorse to the defendants/non applicant is restored by passing an order of Status Quo ante in favour of the applicant and against the non-applicants on the following grounds which are taken in alternative without prejudice to one another.

GROUNDINGS :

01. That the applicant / defendant is a lawful owner in possession of their properties and out of the proprietary land the passage /koucha was earmarked on which the entrance the gate was raised evidenced by the document on record and the defendants in deoration of law as well as in sheer contempt have without any authority or power broken the iron gate installed there decade back on the behest of some land mafia and for the nefarious gains.

02. That the Order of Status Quo ante is in place and warranted by the circumstances as the orders of hon'ble court are meant to advance the cause of justice and to protect the aggrieved person and not the invader or aggressor, The principles of equity and justice have been abused by the non-applicants consciously and willfully by forcible demolition of the applicants suit property as such appropriate orders compensating the applicant's loss and agony are warranted by the circumstances which are possible only by invoking Section 151 of C.P.C in the matter, besides allowing the applicants to raise the gate on its original position.

03. That the non-applicants are tress passers and aggressors who are guilty of breaching the order supra much to the detriment and disadvantage of the applicant. The non-applicants have abused the mercies of law for their advantage and have consciously and deliberately played a fraud upon the court while telling concocted facts and assertions to the plaintiff forcefully. The order supra passed by this hon'ble court has been brazenly abused and misused by the non-applicants as such hon'ble court is not precluded by law to correct the whole process by ordering restoration of the original position pertaining to the suit property i.e.iron gate existing on 24.10.2024.

04. The hon'ble court derives power U/S 151 of C.P.C under these circumstances to seek corrective measures and to arrest the mischievous and illegal process unleashed by the non-applicants for accomplishment of their designs.”

5. The Trial Court after reproduction of all the contents of petitioners’ application, as quoted above, has given following innovative reason to dismiss application under Section 151 CPC:

“3. *Heard and perused the record.*

4. *For the reasons stated in the order of the application IA/3, the application also lacks merit and is therefore dismissed. Disposed of and made part of the main file.”*

6. What Section 151 CPC provides and says, is worthwhile to be reproduced hereunder:

“151. Saving of inherent powers of Court

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

7. Section 151 CPC is a saving clause in CPC, enshrining inherent powers in the court by providing that nothing in CPC shall be deemed to have limited or affected inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. So, CPC confers discretionary and inherent power on the court to make such order that is not given in terms of laws for securing justice or for checking misuse of the method of the court.
8. Section 151 CPC does not formulate any new doctrine but is only a legislative recognition of the well-known principle that every Court has inherent power to act *ex debito justitia* and to do that real justice for administration of which alone it exists. “Ends of justice” are solemn words and no mere polite expression in juristic methodology and here secreted in the solemn words is the aspiration that justice is the pursuit and end of all law. But the words "ends of justice" wide as they are do not, however, mean vague and indeterminate notions of justice, but justice according to the statutes and laws of the land. They cannot mean that express provisions of the statute can be overridden at the dictates of what one might by private emotion or arbitrary preference call or conceive to be justice between the parties.
9. It is a common knowledge that judges are heroes of reason-giving and the courts are portrayed as deliberative institutions. It is being pointed

out that courts' legitimacy must be established on reasons. The Courts make decisions in closed sessions, many of their processes are open to public. The courts hear oral arguments for a large portion of the cases they decide. They engage in public discussion with lawyers at oral arguments. Their reasoned opinions expose legal reasoning to public view and comment. The judges' justifications, which connect judicial decisions to prior democratic acts embodied in the Constitution or in statutes, function as procurator for democratic legitimacy. The idea is that when courts publicly articulate their decisions, citizens will perceive them as legitimate. Reasons provide citizens with a content-independent basis for obeying the law. The mechanism of adjudicative legitimacy is one of persuasion. [See: *Henry S. Richardson, Democratic Autonomy: Public Reasoning about the ends of Policy* 27 (2003); and *Amy Gutmann & Dennis F. Thompson, Democracy and Disagreement* 100 (1996)].

10. Recording of reasons in support of conclusions arrived at in a judgment or order by the Courts in judicial system has been recognized since very inception of system. Right to know the reasons for decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of words or language of a provision in an order or judgment without any mention of the relevant facts and

the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play

11. In *Hindustan Times Ltd. v. Union of India*; (1998) 2 SCC 242, the

Supreme Court made germane observation in the context:

“In an article on Writing Judgments, Justice Michael Kirby (1990) 64 Austr L.J p.691) of Australia, has approached the problem from the point of the litigant, the legal profession, the subordinate Courts/tribunals, the brother Judges and the Judge's own conscience. To the litigant, the duty of the Judge is to uphold his own integrity and let the losing party know why he lost the case. The legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind, had properly applied them and is entitled to examine the body of the judgment for the learning and precedent that they provide and for the reassurance of the quality of the judiciary which is still the centre-piece of our administration of justice. It does not take long for the profession to come to know, including through - the written pages of published judgments, the lazy Judge, the Judge prone to errors of fact, etc. The reputational considerations are important for the exercise of appellate rights, for the Judge's own self discipline, for attempts at improvement and the maintenance of the integrity and quality of our judiciary. From the point of view of other Judges, the benefit that accrues to the lower hierarchy of Judges and tribunals is of utmost importance. Justice Asprey of Australia has even said in *Petit v. Dankley* (1971) (1) NSWLR 376 (CA) that the failure of a Court to give reasons is an encroachment upon the right of appeal given to a litigant.

12. It was concluded by the Supreme Court by saying that:

“In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal. In that case, the order of dismissal of the writ petition by the

High Court was affirmed by us but the task fell on the Supreme Court, to inform the appellant why it had lost the case in the High Court.”

13. The Supreme Court in *M/s Shree Mahavir Carbon Ltd v. Om Prakash*

Jalan (Financer) and another, [2013] 10 SCF 541 : 2013 AIR SCW

6209 : 2015 (12) SCC 653, has made the following observations:

“12. It is nowhere suggested by us that the judgment should be too lengthy or prolix and disproportionate to the issue involved. However, it is to be borne in mind that the principal objective in giving judgment is to make an effective, practical and workable decision. The court resolves conflict by determining the merits of conflicting cases, and by choosing between notions of justice, convenience, public policy, morality, analogy, and takes into account the opinions of other courts or writers (Precedents). Since the Court is to come to a workable decision, its reasoning and conclusion must be practical, suit the facts as found and provide an effective, workable remedy to the winner.

13. We are of the opinion that while recording the decision with clarity, the Court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at on an objective consideration.

14. When we talk of giving “reasons” in support of a judgment, what is meant by “reasons”? In the context of legal decision making, the focus is to what makes something a legally valid reason. Thus, “reason” would mean a justifying reason, or more simply a justification for a decision is a consideration, in a non-arbitrary way in favour of making or accepting that - decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason.

15. We are not entering into a jurisprudential debate on the appropriate theory of legal reasoning. It is not even a discourse on how to write judgments. Our intention is to simply demonstrate the importance of legal reasoning in support of a particular decision. What we have highlighted is that instant is a case or arriving at a conclusion, in complete absence of reasons, what to talk of adequate or good reasons that justify that conclusion.

16. In the given case, it was required by the High Court to take note of the arguments of the complainant on the basis of which complainant insist that ingredients of the particular offences alleged are *prima facie* established justifying the cognizance of the complaint and the arguments of the respondents herein on the basis of which respondents made an endeavour to demonstrate that it was a pure civil dispute with no elements of criminality attached. Thereafter, the conclusion should have been backed by reasons as to why the arguments of the complainant are meritless and what is the rationale basis for accepting the case of accused persons. We hope that this aspect would be kept in mind by the High Court while deciding the case afresh.”

14. In *Union Public Service Commission v. Bibhu Prasad Sarangi* AIR 2021 SC 2396, it has been observed by the Supreme Court that the size of judicial output does not necessarily correlate to a reasoned analysis of the core issues in a case. Technology enables judges to bring speed, efficiency and accuracy to judicial work. Judges are indeed hard pressed for time, faced with burgeoning vacancies and large case-loads. Crisp reasoning is perhaps the answer. The Supreme Court went to say that doing what the High Court had done presented a veneer of judicial reasoning, bereft of the substance which constituted the heart of the judicial process. It held that reasons constitute the soul of a judicial decision. Without them one is left with a shell. The shell provides neither solace nor satisfaction to the litigant. The Supreme Court said it was constrained to make those observations since what it had encountered in that case was no longer an isolated aberration. This had become a recurring phenomenon. How judges communicate in their judgments is a defining characteristic of the judicial process. While it is important to keep an eye on the statistics on disposal, there is a higher value involved. The quality of justice brings legitimacy to the judiciary.
15. Let me advert to the instant case. The Trial Court while giving his opinion in the impugned order has said “*Heard and perused the record. For the reasons stated in the order of the application IA/3, the application also lacks merit and is therefore dismissed. Disposed of and made part of the main file.*” These expressions cannot be, in view of well settled legal position, said to be reasons given by the Trial Court but can be said to be cryptic inasmuch as Trial Court has not discussed what provisions of Section 151 CPC provide for, what petitioners plead

in their application, what they seek for on the basis of the case set up in the application, and why and what are the reasons to dismiss the application. It is well settled that judicial order necessarily has to be a reasoned one, where the mind of the Court needs to be revealed and cogent and convincing reasons need to be stated. However, when we go through impugned order, it order reflects total non-application of mind on the part of Presiding Officer. He needs refreshment course through J&K Judicial Academy.

16. In view of above, the instant petition is allowed and impugned order dated 30th December 2024, passed by Municipal Magistrate (1st Civil Subordinate Judge) Srinagar, is set-aside. The Trial Court shall decide the application under Section 151 CPC preferred by petitioners before it, after getting response/objections from other-side and after hearing both the parties.

17. **Disposed of.**

18. Presiding Officer, who has passed order impugned, needs to be sent/deputed to J&K Judicial Academy for refreshment course. In this regard, the Registry of this Court shall place a copy of this order before Hon'ble the Chief Justice for passing of appropriate orders.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

07.03.2025

'Qazi Amjad, Secy'

Whether approved for reporting? Yes