

**HIGH COURT OF JAMMU & KASHMIR**  
**AT JAMMU**

Civil Revision No.31/1995

C/W

Contempt No.491/1995

Date of Order: 22.11.2014

Vinod Bhalla

**Vs.**

J&K Housing Board &  
anr.

**Coram:**

*Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge*

**Appearing Counsel:**

For the petitioner(s): Mr. K. S. Johal, Sr. Adv. with Ms. Shahla Rafiqui,  
Adv.

For the respondent(s): Mr. N. A. Choudhary.

i)	Whether approved for reporting in Press /Media	:	<b>YES/NO</b>
ii)	Whether to be reported in Digest/journal	:	<b>YES/NO/OPTIONAL</b>

1. This revision is directed against the order dated 11.01.1995 passed by the Court of District Judge, Jammu, in Miscellaneous Appeal No.57/Misc.Appeal, where-under appeal has been allowed, interim order passed by the Court of Sub Judge (CJM), Jammu on 23.08.1994 has been set aside. The respondent Board has been directed not to transfer the property covered by the lease deed during the pendency of the suit with further clarification that same shall not construe to mean that any construction illegally raised is also to be protected.

2. On the presentation of this revision petition, operation of the order of District Judge, Jammu dated 11.01.1995 has been stayed and parties directed to maintain status quo as is clear from the interim order recorded on 29.03.1995.

3. Basically regarding strip of land measuring 440 Sq.ft. adjoining Raja Workshop Housing Colony, Shastri Nagar, Jammu, allotment order was issued in favour of revisionist (Vinodh Bhalla) by the respondent Board on 24.03.1994. A lease deed was executed and registered by Sub-Registrar, Jammu on 4<sup>th</sup> April, 1994 but subsequently said lease deed has been cancelled with effect from 18.5.1994.

4. The revisionist filed a suit for permanent prohibitory injunction for restraining the respondent Board from cancelling the lease deed and from causing any interference with his possession over the suit land. Along side, an application for grant of ad-interim relief had also been filed. Trial court (Sub Judge/CJM, Jammu) after dispensing with service of notice prior to the grant of relief in terms of Order 39 Rule 3-A CPC, granted interim relief to the effect that the respondents (non-applicants therein) shall not interfere in the peaceful possession of the revisionist(applicant therein). The said direction was subject to objections.

5. Respondent Board challenged the said order by medium of Civil Miscellaneous Appeal, maintainability of which was questioned on the ground that the order is subject to objections, therefore, appeal is not worth to be entertained. The said contention has been repelled by the Appellate Court

while relying on two judgments i.e. M/S Astral Traders v. M/S Haji Mohammad Shaban Dar & ors (1982 KLJ 325) and K. K. Puri v. A. K. Puri (1993 K.L.J 643), rightly so. Learned Appellate Court in its order has observed that base for the suit was laid on the lease deed dated 4<sup>th</sup> April, 1994 but same was cancelled, the cancellation order was not challenged, secondly the revisionist was never put in possession as is clear from the notice as was served upon the respondent Board by the revisionist through his counsel Mr. Bhupinder Singh Bhargva wherein it had been mentioned that the revisionist has not been given the possession despite repeated requests to the Board until July, 1994. Learned Appellate Court has also noticed that the revisionist filed the suit on 22<sup>nd</sup> August, 1994.

6. It was contended by the revisionist before the Appellate Court that in the written statement as filed by the respondent Board before the trial court it has been admitted that the revisionist is in possession. Considering that aspect of the case, learned Appellate Court has observed that the possession of the revisionist was illegal and taken over later in point of time regarding which the respondent Board had proceeded against him under Eviction of Unauthorized Occupants Act, 1988 which action of the respondents has not been challenged. Furthermore, it has been noticed that the respondents had

specifically highlighted that the revisionist later in point of time after the cancellation of lease deed had unauthorizedly taken over the possession.

7. Learned Appellate Court has also rightly dealt with the contention of the revisionist regarding decision on the contempt proceedings by holding that if there was any violation of the interim direction issued by the trial court, same would fall within the scope of Order 39 Rule 2-A CPC, therefore, further proceedings in the suit were not to await decision on such application.

8. Instant revision petition is pending for quite long time. During its pendency, Section 115 of the Code of Civil Procedure has been amended which provide that revision against an order which does not result in termination of suit proceedings shall not be maintainable. However, it was contended that it is an application for injunction which has been disposed of and thereafter appeal has been finally disposed of.

9. Revision against an order disposing of an appeal against the order of trial court, whether confirming, reversing or modifying the order of injunction, is not permissible. Reliance in this behalf is rightly placed on the judgment rendered by

Hon'ble Apex Court in ***Surya Dev Rai v. Ram Chander Rai & ors***, reported in **(2003) 6 SCC 675**.

10. Even otherwise there is no merit in the revision petition which, accordingly is dismissed. Trial court shall proceed with the trial of the case with promptitude by fixing its hearing after every ten days so as to conclude the trial as early as possible.

11. Copy of the order be sent to the trial court for information.

**Contempt No.491/1995;**

Mr. N. A. Choudhary, Adv. for petitioner;

Mr. K. S. Johal, Sr. Adv. with Ms. Shahla Rafiqui, Adv. for respondent;

Be de-linked and listed in the week commencing 8<sup>th</sup> December, 2014 in the regular cause list.

**(Mohammad Yaqoob Mir)**  
**Judge**

**JAMMU**  
**22.11.2014**  
*"Mohammad Ali Af"*