

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**AT SRINAGAR****CM (M) No. 11/2022****CM No. 363/2022****CM No. 466/2022****CM No. 806/2022****Mohammad Yousuf Mir**

...Petitioner(s)

Through: Mr. Mudasir Bin Hassan, Advocate

Vs.**Abdul Qayoom Mir and others**

...Respondent(s)

Through: Mr. M. Ashraf Wani, Advocate

CORAM:**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE****ORDER****20.04.2022**

The petitioners in the instant petition filed under Article 227 of the Constitution, challenged the order passed on 29.12.2021 by the court of Additional District Judge, Pulwama, in appeal titled as "*Abdul Qayoom & others Vs Mohammad Yousuf Mir & others*".

The background facts under the shade and cover of which the instant petition has been filed would reveal that a suit for permanent prohibitory injunction came to be instituted by the petitioner herein against the respondents herein before the court of Sub-Judge, Pulwama. In the application for interim relief accompanying with the said suit, the Trial Court initially passed an interim order on 05.04.2019 and confirmed the same on 09.04.2020 while finally disposing of the application for interim relief.

Aggrieved of the said order of the Trial Court, the respondent herein assailed the same before the Appellate Court whereupon the Appellate Court allowed the appeal and passed the impugned order. The perusal of the impugned order would show that the Appellate Court has decided the appeal fundamentally and primarily while placing reliance on the judgment of the Hon'ble Apex Court. The perusal of the impugned order would further reveal that the judgment referred to relied upon for the disposal of the appeal by the Appellate Court, even though related to a suit for perpetual injunction, however, has been settled on the basis of the judgment passed by the High Court in Civil Second Appeal finally by the Hon'ble Apex Court.

Law is no more *res integra* that the powers of the Appellate Court while considering the miscellaneous appeal are circumscribed and are not at par with the powers of the Appellate Court dealing with a regular appeal. The Appellate Court considering the miscellaneous appeal has to thrust the veracity or otherwise of an order passed by the court while exercising judicial discretion. The discretion so exercised by the Trial Court can be interfered with on limited grounds like perversity or exercise of discretion in non-judicious manner.

The appellate Court seemingly has proceeded in a wrong direction while considering and deciding the appeal and has misdirected itself while applying the law laid down by the Hon'ble Apex Court referred to in the impugned order.

Prima facie the matter has not been received proper consideration by the Appellate Court having regard to the facts and circumstances of the case and the

legal position governing the case. The matter, therefore, requires to be remanded back to the Appellate Court for reconsideration afresh with a direction to consider the same in accordance with law, having regard to the facts and circumstances of the case and the legal principles occupying the field. Accordingly, appeal is allowed and the order is set aside with a direction aforesaid.

The parties shall appear before the Appellate Court on 07.05.2022.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
20.04.2022
ARIF