



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 2482 OF 2026 (GM-CPC)

BETWEEN:

M/S. SHRIRAM PROPERTIES LIMITED,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
LAKSHMI NEELA RITE CHOICE CHAMBER,
1ST FLOOR, NO. 9, BAZULLAH ROAD,
T. NAGAR, CHENNAI - 600 017.

HAVING ITS CORPORATE OFFICE AT
NO. 31, 2ND MAIN ROAD,
T CHOWDAIAH ROAD, SADASHIVANAGAR,
BENGALURU - 560 080
REPRESENTED BY ITS AUTHORISED
REPRESENTATIVE MRS. R SARANYA DEVI
ASSISTANT GENERAL MANAGER - LEGAL.

...PETITIONER

(BY SRI. ARUNA SHYAM, SR. COUNSEL A/W
SRI. J.P. DARSHAN, ADVOCATE)

AND:

1. SUVILAS PROPERTIES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT,
HAVING ITS REGISTERED OFFICE AT
NO. 52, DONNABAS TOWER,
1ST FLOOR, RAILWAY PARALLEL ROAD,



NEXT TO BETHESDA SCHOOL,
KUMARA PARK WEST,
BENGALURU - 560 020
REP. BY ITS MANAGING DIRECTOR
SUNIL CHOWDARY.

2. SUNIL CHOWDARY,
AGED ABOUT 53 YEARS,
S/O. MUNIVEERAPPA,
THE MANAGING DIRECTOR OF
M/S. SUVILAS PROPERTIES PVT. LTD.,
HAVING OFFICE AT NO. 52, DONNABAS TOWER,
1ST FLOOR, RAILWAY PARALLEL ROAD,
NEXT TO BETHESDA SCHOOL,
KUMARA PARK WEST,
BENGALURU - 560 020

...RESPONDENTS

(BY SRI. S.D.N. PRASAD, ADVOCATE FOR
SRI. UMESH M.N, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 19.01.2026 PASSED ON 1.A. NO. 1 BY THE XXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-14), BENGALURU, IN O.S. NO. 404/2026 PRODUCED AS ANNEXURE A, INsofar AS NOT GRANTING AN AD-INTERIM EX-PARTE ORDER OF TEMPORARY INJUNCTION AS SOUGHT IN I.A. NO. 1, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU



ORAL ORDER

1. The present petition seeks to challenge an order dated 19.01.2026 passed in O.S.No.404/2026 on I.A.No.1 passed by the XXXI Additional City Civil and Sessions Judge (CCH-14), Bengaluru (hereinafter referred as 'Impugned Order'). By the Impugned Order the Learned Trial Court had declined the grant of an ex-parte injunction based on an application under Order XXXIX Rule 1 and Rule 2 of Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") filed by the petitioner/plaintiff.

2. This Court had by its order dated 28.01.2026 had while issuing emergent notice in this matter, had directed an ex-parte stay of the proceedings before the learned Trial Court.

3. At the outset learned counsel for the respondents submits that the order is an appealable order in terms of the provisions of Order XLIII Rule 1 and 2 of the CPC and thus this petition is not maintainable. The learned counsel



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further seeks to rely upon two judgments of this Court in ***Sri. Kishan R. Shetty Vs. Gemini Shares and Stocks Pvt., Ltd.,¹ and another and Raju B.V. Vs. Gemini Shares and Stocks Pvt., Ltd., and another²***.

4. Learned Senior Counsel for the petitioner contends that the view has been taken by the co-ordinate benches that Article 227 of the Constitution of India (hereinafter referred as COI) is maintainable against an order under Order XXXIX Rules 1 and 2 of the CPC. He further submits that in any event the application under Order XXXIX Rule 1 and Rule 2 is pending before the learned Trial Court and the Trial Court may be directed to expedite the disposal of such application and until that period the interim order be remain in place.

5. Learned Senior Counsel further submits that a petition under Article 227 of the Constitution of India is maintainable when the order passed under Order XXXIX

¹ W.P.No.13888/2022 dated 22.01.2026 : NC : 2026 :KHC :3940

² W.P.No.13889/2022 dated 22.01.2026 : NC : 2026 :KHC :3942



Rule 1 and Rule 2 CPC is an ex-parte order and in other circumstances an appeal may be filed.

6. At the outset, it is apposite to set out provisions of Order XLIII Rule 1(r) of the CPC which is set out below:

*"Order XLIII Rule 1. Appeal from orders—**An appeal shall lie from the following orders under the provisions of section 104, namely***

XXXX

XXXX

(r) an order under rule 1, rule 2, [rule 2A], rule 4 or rule 10 of Order XXXIX."

[Emphasis Supplied]

6.1 A plain reading of these provisions shows that any order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order XXXIX of the CPC is amenable to challenge by filing of an appeal.

7. The record reflects that the Impugned Order dated 19.01.2026 was passed in an application which was filed by the petitioner / plaintiff.

8. The issue whether such an order is appealable is no longer *res integra*. The Supreme Court in the case of **A.**



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***Venkatasubbaih Naidu Vs. S. Chellappan and others*³**

has held that the power to grant an *ex-parte* injunction is derived from Order XXXIX Rule 1 of the CPC, since Order XLIII Rule 1(r) of the CPC makes an order under this rule appealable, the choice of remedy which lies with the parties is that they can either move the Trial Court to vacate the order under Order XXXIX Rule 4 or file an appeal under Order XLIII Rule 1(r) of the CPC. The Court further held that the statute does not distinguish between *ex-parte* and final orders in exercise of the provisions under Order XXXIX Rules 1 and 2 of the CPC and thus the disposing of an application under Order XXXIX of the CPC would be amenable to such challenge. The relevant extract of this judgment is set out below:

*"6. The first respondent, on behalf of himself and Respondents 2 to 5, **filed a revision petition invoking Article 227 of the Constitution before the High Court of Madras alleging that they purchased the property from the owners thereof as per different sale documents executed on 15-3-1996, and they were in possession and enjoyment of the property.** They further alleged that one Ranganathan, MLA and one Hithayatullah together expressed a wish to purchase the*

³ (2000) 7 SCC 695



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property from the respondents, but it was not agreed to and then those two persons exerted threat and pressure on them to capitulate to their demand. As they did not yield to such threats a suit was filed in 1998 by some parties who are now supporting the present plaintiff. The respondents further alleged that the said suit was filed at the instance and instigation of those two named persons. When they failed to get any relief there from another suit was caused to be filed through one M. Devasinghamani on the strength of some concocted documents. As no relief was obtained in that suit also the present suit, which is the third one in the series, has been filed at the behest of the above-named persons, according to the respondents.

7. Learned Single Judge of the High Court of Madras who disposed of the revision made the observation that the trial court ought not have granted an order of injunction at the first stage itself which could operate beyond thirty days as the court had then no occasion to know of what the affected party has to say about it. Such a course is impermissible under Order 39 Rule 3-A of the Code, according to the learned Single Judge. He, therefore, set aside the injunction order "for the clear transgression of the provisions of law" and noted that this is the third suit filed in reference to the suit property and hence deprecated the grant of ex parte injunction without notice. Though learned Single Judge further declined to go into the other allegations, he has chosen to make the following observations also:

"However, prima facie, I am satisfied that these materials are relevant for consideration before granting ad interim injunction. As per the plaint and affidavit averments I admit that the first respondent is occupying a vacant portion of 1670 sq ft and running paper business and charcoal. But there is no document to show that the first respondent is actually in possession and running such a business except the lease deed. Hence the ex parte order is unsustainable. For all these reasons, I am of the view that the order passed by the learned Judge is liable to be set aside and it is accordingly set aside."



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8. After holding thus, learned Single Judge directed the trial court to take up the interlocutory application for injunction and pass orders on merits and in accordance with law expeditiously.”

[Emphasis Supplied]

8.1. A contention as is being raised by the petitioner in this case, was raised by one party in the **Venkatasubbaiah’s** case. It was contended that the party aggrieved could have either filed an application for modification before the Trial Court or file an appeal before the Appellate Court. It was contended that a petition under Article 227 of the Constitution of India could not be entertained. The Supreme Court examined the provisions of Section 104 and Order 43 as well as Order 39 of the CPC and has held it cannot be contended that ex-parte orders are not amenable under Order 39 of the CPC. It was held that ex-parte orders like the remaining orders under Order 39 of the CPC, are also amenable to appeals under Order XLIII Rule 1(r) of the CPC. It was further held that the party aggrieved must file an application before the Appellate Court or the same Court as follows:



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9. *Shri Sivasubramaniam, learned Senior Counsel contended that the High Court should not have entertained a petition under Article 227 of the Constitution when the respondent had two remedies statutorily available to him. First is that the respondent could have approached the trial court for vacating, if not for any modification, of the interim ex parte order passed. Second is that an appeal could have been preferred by him against the said order. It is open to the respondent to opt either of the two remedies, contended the Senior Counsel.*

10. Section 104 of the Code says that:

"104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:

(i) any order made under rules from which an appeal is expressly allowed by rules:"

11. Order 43 Rule 1 says that:

"1. An appeal shall lie from the following orders under the provisions of Section 104, namely—

(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX;"

12. Order 39 Rule 1 says thus:

"1. 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,



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(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 disposition 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."

13. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief."

[Emphasis Supplied]

9. A similar view has been taken by the Supreme Court in the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabi and others Vs. Tuticorin Educational Society and others⁴** and **Mohamed Ali Vs. V.Jaya and Ors.⁵** wherein it has been held that, where a petition

⁴ (2019) 9 SCC 538

⁵ (2022) 10 SCC 477



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under Article 227 of the Constitution of India was filed challenging such an order held that the petition is not maintainable. The relevant extract of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabi's*** Case is below:

"11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. **It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu v. S. Chellappan [A. Venkatasubbiah Naidu v. S. Chellappan,⁶], this Court held that "though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy".**

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision

⁶(2000) 7 SCC 695



under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai]⁷, pointed out in Radhey Shyam v. Chhabi Nath [Radhey Shyam v. Chhabi Nath]⁸, that "orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts".

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. **Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.**"

[Emphasis Supplied]

10. Learned Senior Counsel for the petitioner has contended that the co-ordinate benches of this Court have taken a different view in the matter and have held that such ex-parte orders passed in an application under Order XXXIX Rules 1 and 2 of the CPC are amenable to Article 227 of the Constitution of India. This issue was already

⁷ (2003) 6 SCC 675

⁸(2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67



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examined by this Court in a matter captioned **Bharath Kumar v. Munivenkatappa**⁹. This Court examined the judgments of the Coordinate Bench and found that the Coordinate Bench relied on a judgment of a Division Bench in **M/s Parijatha & Another Vs. Kamalaksha Nayak and others**⁹ case to reach this conclusion. However, the judgment in **Parajitha** case was passed in the year 1981 and thereafter this issue has been settled by the Supreme Court in **Venkata Subbaiah's** case. The relevant extract of the judgment in **Bharat Kumar's** case, is set out below:

"4. On a question of maintainability of this petition, learned counsel for the petitioner has made the following submissions;

(i) That the Division Bench of this Court has held that an appeal is not maintainable, however under Order XLIII Rule 1 of the CPC and thus this petition under Article 227 of the Constitution of India is maintainable; and

(ii) Learned counsel for the petitioner has also relied upon two judgments of Co-ordinate Benches stating that the Division Bench judgment was followed in these two judgments and thus the petition under Article 227 of the Constitution of India filed by the petitioner is

⁹ W.P.No.21137/2021 (NC: 2026: KHC:802)



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maintainable. Reliance is placed on the following judgments:

(i) *M/s Parijatha & Another v. Kamalaksha Nayak and others*

(ii) *Procter & Gamble Home Products Private Limited v. Marico Limited and others*¹⁰

(iii) *R Ravindranath Manvi v. K.B. Ramesh*¹¹

5. The Division Bench of this Court has in its judgment of **M/s Parijatha case** while deciding the issue of preliminary objection as to maintainability of an appeal from an *ex parte* injunction under Rule 1 or Rule 2 of Order XXXIX of CPC has held that the appeal would not be maintainable against an *ex parte* order and that the remedy of the litigant would be to file an application under Rule 4 of Order XXXIX of the CPC in the first instance. It is apposite to extract the relevant part of the Division Bench order which is set out below;

"15. For the forgoing reasons, we hold that order 43 Rule 1(r) of the Code does not allow the filing of an appeal from an ex parte interim order of temporary injunction granted under Rule 1 or 2 of order 39, but the remedy of the aggrieved person is to move the trial court under Rule 4 of order 39 of the code in the first instance. We further hold that even a stranger to the suit or proceeding can maintain such an application. We hereby over-rule the decisions of single judges taking a view in favour of the permissibility of an appeal against an interim ex parte order of temporary injunction, to wit, Keshavchand Gopalchand Gujjar v. Ningappa Pandappa Kolakar [1969 (2) Mys. Law Journal 525.] , Bhima Ningappa Khot v. Ratnabai [C.R.P. No. 3056 of 1978/6 d. d. 6-2-1979.] , and Mahila Samaja v. Smt. Varija Aithal [C.R.P. 2705/78 d. d. 5-2-1980.]."

¹⁰ MFA No.8990/2017 (CPC) order dated 30.11.2017

¹¹ MFA NO.3837/2018(CPC) order dated 21.12.2018



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[Emphasis Supplied]

6. A Co-ordinate bench of this Court while relying on the **Parijatha case** have also given similarly findings in **Procter & Gamble case** and in the matter captioned **R Ravindranath Manvi Vs. KB Ramesh**.

7. The issue whether such an order is appealable is no longer res integra. The Supreme Court in the case of **A. Venkatasubbaih Naidu Vs. S. Chellappan and others**¹² has held that the power to grant an ex-parte injunction is derived from Order XXXIX Rule 1 of the Code of Civil Procedure, since Order XLIII Rule 1(r) of the CPC makes an order under this rule appealable, the choice of remedy which lies with the parties is that they can either move the Trial Court to vacate the order under Order XXXIX Rule 4 or file an appeal under Order XLIII Rule 1(r) of the CPC. The Court further held that the statute does not distinguish between ex-parte and final orders in exercise of the provisions under Order XXXIX Rules 1 and 2 of the CPC and thus the disposing of an application under Order XXXIX of the CPC would be amenable to such challenge. The relevant extract is below:

"6. The first respondent, on behalf of himself and Respondents 2 to 5, **filed a revision petition invoking Article 227 of the Constitution before the High Court of Madras alleging that they purchased the property from the owners thereof as per different sale documents executed on 15-3-1996, and they were in possession and enjoyment of the property.** They further alleged that one Ranganathan, MLA and one Hithayatullah together expressed a wish to purchase the property from the respondents, but it was not agreed to and then those two persons exerted threat and pressure on them to capitulate to their demand. As they did not yield to such threats a suit was filed in 1998 by some parties who

¹² (2000) 7 SCC 695



are now supporting the present plaintiff. The respondents further alleged that the said suit was filed at the instance and instigation of those two named persons. When they failed to get any relief therefrom another suit was caused to be filed through one M. Devasinghamani on the strength of some concocted documents. As no relief was obtained in that suit also the present suit, which is the third one in the series, has been filed at the behest of the above-named persons, according to the respondents.

7. Learned Single Judge of the High Court of Madras who disposed of the revision made the observation that the trial court ought not have granted an order of injunction at the first stage itself which could operate beyond thirty days as the court had then no occasion to know of what the affected party has to say about it. Such a course is impermissible under Order 39 Rule 3-A of the Code, according to the learned Single Judge. He, therefore, set aside the injunction order "for the clear transgression of the provisions of law" and noted that this is the third suit filed in reference to the suit property and hence deprecated the grant of ex parte injunction without notice. Though learned Single Judge further declined to go into the other allegations, he has chosen to make the following observations also:

"However, prima facie, I am satisfied that these materials are relevant for consideration before granting ad interim injunction. As per the plaint and affidavit averments I admit that the first respondent is occupying a vacant portion of 1670 sq ft and running paper business and charcoal. But there is no document to show that the first respondent is actually in possession and running such a business except the lease deed. Hence the ex



parte order is unsustainable. For all these reasons, I am of the view that the order passed by the learned Judge is liable to be set aside and it is accordingly set aside."

8. After holding thus, learned Single Judge directed the trial court to take up the interlocutory application for injunction and pass orders on merits and in accordance with law expeditiously.

9. *Shri Sivasubramaniam, learned Senior Counsel contended that the High Court should not have entertained a petition under Article 227 of the Constitution when the respondent had two remedies statutorily available to him. First is that the respondent could have approached the trial court for vacating, if not for any modification, of the interim ex parte order passed. Second is that an appeal could have been preferred by him against the said order. It is open to the respondent to opt either of the two remedies, contended the Senior Counsel.*

10. Section 104 of the Code says that:

"104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:

(i) any order made under rules from which an appeal is expressly allowed by rules:"

11. Order 43 Rule 1 says that:

"1. An appeal shall lie from the following orders under the provisions of Section 104, namely—



(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX;"

12. Order 39 Rule 1 says thus:

"1. 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 disposition 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."

13. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. *The choice is for the party affected by the order either to move the appellate court or to approach the same*



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court which passed the ex parte order for any relief.”

[Emphasis Supplied]

11. In addition, it is clear from a reading of the judgments of the Coordinate Bench that the recent judgments of the Supreme Court were not brought to the notice of the Coordinate Bench(s). Thus, the law as laid down in the ***Parajitha’s*** case is no longer good law. Given the law as settled by the Supreme Court, this Court is unable to take any other view.

12. Concededly, the petitioner instead of availing the statutory remedy available to them, have chosen to file a petition under Article 227 of the Constitution of India. Given the settled position of law as is reproduced above, this cannot be sustained. No doubt the powers of superintendence under Article 227 of the Constitution of India cannot be curtailed, however where there is a statutory remedy available to the petitioner, the remedy ought to be exercised.



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13. The learned counsel for the petitioner contends that he would be filing his reply to this application within one week from today. Learned counsel for the petitioner has further contended that the ex-parte interim protection granted to the petitioner by this Court on 28.01.2026 be extended till the next date of hearing before the Trial Court which is 13.03.2026.

14. As stated above, in the present case, this Court had granted ex-parte interim protection restraining alienation of the suit schedule property pending consideration of the matter. The Supreme Court in ***Mangal Rajendra Kamthe v. Tahsildar, Purandhar***¹³ case has clarified the scope of granting interim protection when the High Court declines to entertain a writ petition on the ground of availability of an alternative remedy. The Supreme Court held that once the High Court declines to entertain a writ petition on the ground of the availability of alternative efficacious remedy, the proceedings must terminate at that stage and the

¹³ 2026 SCC OnLine SC 297



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Court cannot grant interim relief merely to enable the petitioner to approach the alternative forum, as interim relief can only be granted in aid of the final relief sought in the petition. It is apposite to extract the relevant extract of the ***Mangal Rajendra Kamthe***'s case below:

"5. Orders of similar nature have engaged our attention where the high courts, while declining to entertain writ petitions under Article 226 of the Constitution on the ground of availability of an efficacious alternative remedy to the writ petitioner(s) concerned have, nonetheless, granted relief [either by staying operation of the order(s) under challenge or directing maintenance of status quo] to be operative for a limited period to enable such petitioner(s) to seek appropriate relief from the alternative forum.

6. It is settled law that once the high court, upon application of mind, declines to entertain a writ petition in the exercise of its discretionary jurisdiction on the ground that an efficacious alternative remedy for grant of relief is available but such remedy has not been pursued by the petitioner, the proceedings do not survive and must draw to an end then and there; however, in such a circumstance when no final relief can effectively be granted on the petition, it is impermissible to pass an order in the nature of an interim relief [either by granting stay of operation of the order under challenge or by directing status quo to be maintained] till such time the aggrieved petitioner approaches the alternative forum. Such an order, as and when passed, would be in the teeth of a Constitution Bench decision of this Court in *State of Orissa v. Madan Gopal Rungta*¹⁴."

[Emphasis Supplied]

¹⁴ 1951 SCC 1024



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15. In view thereof the petition is ***disposed of*** granting liberty to the petitioner to take appropriate steps in accordance with law, if he so chooses. The learned Trial Court shall take up the application under Order XXXIX Rules 1 and 2 of the CPC on the next date of hearing.

16. The respondents are also at liberty to file an application for advancing the date of hearing before the learned Trial Court, if they so desire.

17. It is clarified that this Court has not examined the matter on merits. The rights and contentions of both parties are kept open to be agitated before the Trial Court.

18. All pending applications stand closed.

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

BVK / KS
List No.: 3 Sl No.: 18