

**IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL**

ON THE 17<sup>TH</sup> DAY OF AUGUST, 2021

BEFORE:

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition (M/S) No. 1096 of 2021

**BETWEEN:**

Niyaz & others. ....Petitioners

(By Mr. Neeraj Garg, Advocate)

**AND:**

Mohammad Hussain & others. ....Respondents

(By Mr. Piyush Garg, Advocate)

**JUDGMENT**

This is defendants' petition under Article 227 of the Constitution against the order passed by learned Additional District Judge, Vikasnagar, Dehradun in Misc. Civil Appeal filed under Order 43 Rule 1(r) C.P.C. By the said order, the order passed by learned trial Court, refusing to grant temporary injunction, was set-aside and the defendants were restrained from interfering with the possession of the plaintiffs, over the suit property.

2. It is settled position in law that temporary injunction is a discretionary relief and this Court while exercising supervisory jurisdiction

under Article 227 of the Constitution will not interfere with the exercise of discretion by learned Courts below, unless such exercise is patently illegal.

3. It is well settled by now that while exercising power under Article 227 of the Constitution, this Court is not supposed to re-appreciate facts. The scope is limited to an enquiry as to the existence of some perversity or grave error in the order passed by Court or Tribunal that would call for rectification, as observed by Hon'ble Supreme Court in *India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and another*, reported in (1977) 4 SCC 587. Paragraph no.5 of the said judgment is reproduced below:

"5. The limitation of the High Court while exercising power under Article 227 of the Constitution is well-settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well-settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in *Waryam Singh v. Amarnath* where the principles have been clearly laid down as follows:

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

The same view was reiterated by another Constitution Bench of this Court in *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam*. Even recently in *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House

Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.”

4. Learned Appellate Court has considered all the three relevant factors and has recorded a finding that plaintiffs have a *prima facie* case and balance of convenience is also in their favour, therefore, learned trial Court erred in not granting temporary injunction in their favour.

5. Therefore, this Court does not find any reason to interfere with the impugned order.

6. In such view of the matter, writ petition fails and is dismissed. No order as to costs.

**(MANOJ KUMAR TIWARI, J.)**