RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 24507/2025
CNR: RJHC011163952025 | URN: CW / 44392U / 2025

Rajasthan High Court
सत्यमेव जयते
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1. Prashant Prajapat S/o Gulab Chand, Aged About 30 Years, R/o Bigga Bas, Ward No. 24, Near Jhanwar Bus Stand, Sri Dungargarh, District Bikaner.
2. Ramesh Prajapat S/o Gulab Chand, Aged About 45 Years, R/o Bigga Bas, Ward No. 24, Near Jhanwar Bus Stand, Sri Dungargarh, District Bikaner.
3. Gulab Chand Prajapat S/o Satyanarayan Prajapat, Aged About 40 Years, R/o Bigga Bas, Ward No. 24, Near Jhanwar Bus Stand, Sri Dungargarh, District Bikaner.

----Petitioners

Versus

1. Hari Ram Pilaniya S/o Hanumana Ram, R/o Din Dayal Colony, Bigga Bas, Ward No. 24, Near Jhanwar Bus Stand, Sri Dungargarh, District Bikaner.
2. Mahavir Prasad Mali S/o Mohan Lal, R/o Din Dayal Colony, Bigga Bas, Ward No. 24, Near Jhanwar Bus Stand, Sri Dungargarh, District Bikaner.
3. Ram Gopal S/o Mohan Lal, R/o Din Dayal Colony, Bigga Bas, Ward No. 24, Near Jhanwar Bus Stand, Sri Dungargarh, District Bikaner.

----Respondents

For Petitioner(s)	:	Mr. Shreyansh Ramdev Mr. Priyanshu Gopa
For Respondent(s)	:	Mr. Surendra Singh Choudhary

HON'BLE MR. JUSTICE FARJAND ALI

Order

DATE OF CONCLUSION OF ARGUMENTS	**21/07/2026**
DATE ON WHICH ORDER IS RESERVED	**21/07/2026**
FULL ORDER OR OPERATIVE PART	**Full Order**
DATE OF PRONOUNCEMENT	**15/09/2026**

BY THE COURT:-

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1. The present petition under Articles 226 and 227 of the Constitution of India is directed against the order dated 06.12.2025 passed by the learned Additional District Judge, Sri Dungargarh, District Bikaner in Civil Misc. Appeal No.03/2025, whereby the appeal preferred by the respondents-plaintiffs came to be partly allowed and the order dated 23.06.2025 passed by the learned Senior Civil Judge, Sri Dungargarh, District Bikaner in Civil Misc. Case No.40/2025, declining their prayer for temporary injunction, was set aside. The principal question which falls for consideration is whether, in the facts and circumstances of the case, the learned Appellate Court was justified in interfering with the discretion exercised by the learned Trial Court in refusing interim relief.

2. In short the facts of the case are that the dispute arises out of a suit for perpetual and mandatory injunction instituted by the respondents, alleging that the petitioners were operating cutter machines in a residential locality, resulting in noise and air pollution and causing cracks in the adjoining structures. Along with the suit, an application for temporary injunction was filed seeking restraint against operation of the machines and allied commercial activities.

2.1. The petitioners contested the claim, stating that they had been residing at the premises and carrying on their family business dealing in sanitary articles, tiles and marble for the last 40-50 years. It was further stated that an area measuring 37.15 square metres had been regularised for commercial use by the Nagar Palika Mandal, Sri Dungargarh, vide order dated

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08.05.2025 and that the business was registered under the GST regime in the name of "Bherav Sanitary Store".

2.2. It was also brought on record that, on substantially the same grievance, proceedings under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023, had already been initiated before the competent authority on 05.03.2025 at the instance of Rajesh, son of plaintiff No.1, and were pending consideration. On this basis, it was urged that an efficacious statutory remedy was already being pursued and that the equitable relief of injunction deserved to be declined in view of Section 41(h) of the Specific Relief Act, 1963. The petitioners also alleged that the present proceedings were the outcome of an earlier dispute concerning parking of vehicles in front of their shop.

2.3. The learned Trial Court, after considering the rival pleadings and the material placed before it, declined the prayer for temporary injunction vide order dated 23.06.2025. It found that the respondents had failed to make out the necessary foundation for interim relief and, in particular, noticed the long-standing nature of the petitioners' business, absence of cogent material establishing excessive noise or violation of permissible limits, pendency of proceedings before the competent authority and the need for evidence to establish the allegations of structural and health-related damage.

2.4. Aggrieved by the said order, the respondents preferred Civil Misc. Appeal No.03/2025. The learned Appellate Court, vide order dated 06.12.2025, partly allowed the appeal. While permitting

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commercial use of the area measuring 37.15 square metres, which had been regularised for such purpose, it restrained the petitioners, during pendency of the suit, from undertaking stone/ marble cutting, crusher operations and allied commercial activities upon the residential land situated behind and around the said commercial portion. Hence the instant writ petition.

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3. Learned counsel for the petitioners contended that the learned Trial Court had exercised its discretion after considering the relevant material and there was no justification for the learned Appellate Court to substitute its own view. According to learned counsel, no perversity, arbitrariness, caprice or disregard of settled principles had been pointed out in the order of the learned Trial Court. It was further submitted that the petitioners had been carrying on the business for several decades, that the relevant portion had been regularised for commercial use and that the respondents had produced no objective material demonstrating excessive noise, pollution or any causal connection between the alleged activities and the cracks complained of. The pendency of proceedings under Section 152 of the BNSS was also relied upon as a relevant circumstance against grant of equitable relief.

4. Per contra, learned counsel for the respondents supported the impugned order and submitted that the petitioners could not claim an unrestricted right to undertake commercial activities in the residential portion beyond the area of 37.15 square metres. It was argued that operation of cutter and crusher machines in a residential locality adversely affects the neighbourhood and the

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peaceful enjoyment of the respondents' property. The pendency of proceedings under Section 152 of the BNSS, according to learned counsel, neither ousts the jurisdiction of the civil Court nor prevents the respondents from seeking appropriate injunctive relief. The impugned order, it was submitted, represents a proper balancing of the competing interests and calls for no interference in exercise of supervisory jurisdiction.

5. I have heard learned counsel appearing for the parties and bestowed my anxious and thoughtful consideration upon the rival submissions advanced at the Bar and have also carefully scrutinized the impugned order and perused the material available on record.

6. At the outset, it is necessary to bear in mind the limited scope of appellate scrutiny in a matter concerning grant or refusal of temporary injunction. An appeal under Order XLIII Rule 1(r) CPC does not confer upon the appellate Court an unrestricted authority to reconsider the matter as though it were exercising the discretionary jurisdiction in the first instance. Where the Court of first instance has exercised its discretion judicially, upon consideration of the pleadings and relevant material, such discretion ordinarily deserves to be respected. Interference is justified only where the discretion is shown to have been exercised arbitrarily, capriciously or perversely, or upon disregard of the settled principles governing interlocutory relief.

7. This position has recently been reiterated by this Court in S.B. Civil Misc. Appeal No.1895/2026, *Hamid Vs. Farzina Bano &*

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Ors., decided on 14.07.2026, after considering the authoritative pronouncement of the Hon'ble Supreme Court in *Wander Ltd. & Anr. Vs. Antox India (P) Ltd.*, 1990 Supp SCC 727. This Court, while delineating the permissible limits of appellate interference, observed that the appellate forum does not exercise the original discretion afresh and cannot substitute its own view merely because another view may also be reasonably possible. The relevant observations in *Hamid Vs. Farzina Bano & Ors.* (supra), which aptly govern the controversy at hand, are reproduced hereunder:

> *4. The controversy before this Court is confined to the legality and propriety of the order refusing temporary injunction. At the outset, it deserves to be noticed that the jurisdiction exercised by an appellate Court while examining an order granting or refusing an interlocutory injunction is of a markedly restricted character. The appellate forum does not exercise original discretion afresh, nor does it function as a Court of substitution merely because another view may also be reasonably possible on the same set of facts.*
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> *5. It is trite that the grant or refusal of temporary injunction lies within the sound judicial discretion of the Court of first instance. Such discretion, if exercised upon due consideration of the pleadings, material available on record and the settled principles governing interim relief, is ordinarily immune from appellate interference. The appellate Court is concerned not with the correctness of every possible conclusion but with the legality of the exercise of discretion itself. The aforesaid principle stands authoritatively expounded by the Hon'ble Supreme Court in* ***Wander Ltd. & Anr. v.***

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Antox India (P) Ltd., 1990 Supp SCC 727, *wherein it has been held as under:-*

> *"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph observed:*
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> *'...These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is*

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well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.''

The principle emerging from the aforesaid exposition is unambiguous. The appellate Court is not expected to embark upon a fresh appraisal of the factual controversy with a view to determine whether another conclusion was equally possible. The jurisdiction is one of judicial restraint, and not of substitution. Unless the exercise of discretion is shown to be arbitrary, capricious, manifestly perverse or demonstrably opposed to settled legal principles, appellate interference would be wholly unwarranted.

6. Having examined the impugned order in the backdrop of the aforesaid settled principles, this Court is unable to discern any jurisdictional infirmity warranting interference. The learned trial Court has considered the rival pleadings, adverted to the material placed before it and has recorded reasons while arriving at its prima facie satisfaction. Merely because the appellant asserts that a different inference ought to have been drawn from the same material would not furnish a legitimate ground for this Court to supplant the discretion exercised by the Court below with its own.

6.1. The principal submission advanced on behalf of the appellant essentially invites this Court to reassess the merits of the rival claims relating to succession, inheritance and the validity of the impugned Release Deed. These issues constitute the very substratum of the pending civil suit and necessarily require adjudication upon appreciation of oral as well as documentary evidence. At the interlocutory stage, any exhaustive examination thereof would amount to prejudging the issues awaiting trial. The learned trial

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Court has consciously refrained from recording findings touching the final merits and has exercised its discretion on the basis of the material then available before it. Such an approach cannot be characterised as either arbitrary or legally untenable.

6.2. Equally significant is the fact that no material has been brought to the notice of this Court demonstrating that the learned trial Court ignored any relevant consideration or took into account any extraneous circumstance while declining interim relief. The order does not suffer from perversity, patent illegality or manifest non-application of mind. Rather, it reflects an exercise of judicial discretion founded upon reasons which cannot be said to be wholly implausible or impermissible in law.

6.3. It deserves reiteration that even assuming that another view could also have been formed on the same material, such possibility by itself does not clothe the appellate Court with jurisdiction to interfere. The appellate Court cannot substitute its own subjective satisfaction merely because, had it been the Court of first instance, it might have exercised discretion differently. Judicial discipline obliges appellate Courts to respect discretionary orders so long as they represent a reasonably possible view founded upon settled legal principles.

7. In the considered opinion of this Court, the appellant has failed to demonstrate that the discretion exercised by the learned trial Court is vitiated by arbitrariness, perversity, caprice or disregard of the settled principles governing grant of temporary injunction. Consequently, the impugned order does not warrant interference within the narrow parameters delineated by the Hon'ble Supreme Court in ***Wander Ltd. (supra).***

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The aforesaid principle is of particular significance in the present case. The question before this Court is not whether another conclusion could have been reached on the material available, but whether the discretion exercised by the learned Trial Court was so flawed as to warrant its displacement in appeal.

7.1. On examination of the order dated 23.06.2025, this Court finds that the learned Trial Court did not decline interim relief mechanically. It considered the nature of the allegations, the rival assertions and the circumstances relied upon by both sides. It took note of the fact that the petitioners had been carrying on their business for a considerable period and also noticed the absence of convincing material to substantiate the allegation of excessive noise or violation of permissible limits.

7.2. The allegation that the operation of the machines had caused cracks in the adjoining structures or adversely affected the health of the respondents' family members was also a matter requiring appropriate proof. In the absence of supporting material, the learned Trial Court cannot be said to have acted unreasonably in declining to treat such allegations, at the interlocutory stage, as sufficient by themselves to establish a prima facie entitlement to injunction.

7.3. The pendency of proceedings under Section 152 of the BNSS was another circumstance which the learned Trial Court was entitled to take into consideration. Section 41(h) of the Specific Relief Act embodies the principle that injunction ought not ordinarily to be granted where an equally efficacious relief can

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certainly be obtained through another usual mode of proceeding. Though the provision does not take away the jurisdiction of the civil Court, the existence of an efficacious statutory proceeding is plainly relevant while considering the discretionary and equitable relief of injunction.

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7.4. Thus, the order of the learned Trial Court cannot be characterised as one passed in disregard of the settled parameters governing temporary injunction. The three familiar considerations prima facie case, balance of convenience and irreparable injury were kept in view, and the conclusion reached was one which was reasonably open to the Court on the material before it.

7.5. The approach of the learned Appellate Court, however, warrants closer scrutiny. The principal reason which appears to have weighed with it was that only an area measuring 37.15 square metres had been regularised for commercial use, whereas the remaining portion continued to retain its residential character. That circumstance may undoubtedly have relevance while the rights of the parties are finally adjudicated. It may also require examination as to the precise area in which the petitioners are carrying on their activities and whether such activities are permissible under the applicable municipal and other regulatory provisions. But that circumstance, by itself, does not establish that the discretion exercised by the learned Trial Court was arbitrary, capricious or perverse.

7.6. What was required of the learned Appellate Court was to identify an error in the exercise of discretion by the learned Trial

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Court. The impugned order does not, however, demonstrate that the findings of the learned Trial Court were based upon irrelevant considerations, that any material circumstance had been ignored, or that the settled principles governing temporary injunction had been misapplied. Instead, the learned Appellate Court appears to have reassessed the factual position and, on that basis, fashioned an interim arrangement of its own.

7.7. Such an approach, though understandable in an attempt to balance the competing claims of the parties, cannot substitute for the limited appellate scrutiny contemplated in an appeal against exercise of judicial discretion. As observed in ***Hamid Vs. Farzina Bano & Ors.*** **(supra)**, the appellate jurisdiction in such matters is one of judicial restraint and not of substitution. Merely because the appellate Court may have considered another course preferable, the discretion of the Trial Court could not have been displaced unless the exercise thereof was shown to suffer from a recognised legal infirmity.

7.8. There is yet another aspect which assumes significance. Whether the alleged cutting and allied activities are actually being carried on beyond the regularised commercial portion; whether such activities generate noise or air pollution beyond permissible limits; whether the alleged cracks in the adjoining structures are attributable to the petitioners' activities; and whether the activity complained of amounts to actionable nuisance are all matters which depend upon factual determination and, where disputed, upon appropriate evidence.

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7.9. At the interlocutory stage, the Court ought not to undertake an exhaustive adjudication of such disputed questions, lest the findings recorded for the limited purpose of interim relief prejudice the final adjudication of the suit. The learned Trial Court appears to have consciously avoided doing so. Its refusal to grant interim relief, in the circumstances, cannot be regarded as a failure to exercise jurisdiction or as an exercise of discretion contrary to settled law.

7.10. The principle laid down in ***Wander Ltd. (supra), as*** reiterated by this Court in ***Hamid Vs. Farzina Bano & Ors. (supra)***, therefore squarely applies. An appellate Court is not expected to reassess the entire material merely to arrive at a conclusion different from one which was reasonably possible for the Court of first instance. The appellate power is to correct an erroneous exercise of discretion, not to replace a permissible exercise of discretion with another merely because the latter appears preferable.

7.11. Viewed from this perspective, the order dated 23.06.2025 passed by the learned Trial Court does not suffer from any perversity, arbitrariness, caprice or patent illegality. The learned Appellate Court, in setting aside the said order without recording any cogent reason demonstrating such infirmity, travelled beyond the permissible limits of appellate interference.

7.12. It is clarified that the conclusion reached herein is confined strictly to the question of interim relief. Nothing contained in this order shall be construed as an expression of opinion on the merits

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of the suit, including the legality or otherwise of any commercial activity beyond the regularised area, the alleged environmental impact, nuisance, structural damage or any other issue requiring adjudication upon evidence.

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7.13. For the foregoing reasons, this Court is of the considered view that the learned Appellate Court was not justified in displacing the discretion exercised by the learned Trial Court. The impugned order dated 06.12.2025, therefore, cannot be sustained.

8. Consequently, the present petition is allowed. The order dated 06.12.2025 passed by the learned Additional District Judge, Sri Dungargarh, District Bikaner in Civil Misc. Appeal No.03/2025 is quashed and set aside. The order dated 23.06.2025 passed by the learned Senior Civil Judge, Sri Dungargarh, District Bikaner in Civil Misc. Case No.40/2025, whereby the application for temporary injunction filed by the respondents-plaintiffs was dismissed, is restored.

8.1. It is, however, made clear that dismissal of the application for temporary injunction shall not prevent the respondents-plaintiffs from establishing their case at the trial by leading appropriate oral and documentary evidence. Equally, the petitioners shall remain subject to all applicable statutory and regulatory requirements governing the use of the property and conduct of their business.

8.2. The learned Trial Court is requested to proceed with the suit expeditiously and make every endeavour to decide the same at

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the earliest, without granting unnecessary adjournments, and strictly in accordance with law. The suit shall be decided uninfluenced by any observation made in the present order, all such observations being confined solely to the adjudication of the interlocutory controversy.

9. The present petition stands disposed of accordingly. Pending applications, if any, also stand disposed of.

(FARJAND ALI),J

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