IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

(THROUGH VIRTUAL MODE)

Reserved on: 01.09.2026
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Whether the operative part or full judgment is pronounced: ***Full***

RFA No.50/2026

M/S PRATHAM TRADERS **... APPELLANT(S)**

Through: - Mr. Pranav Kohli, Sr. Advocate, with Mr. Farhan Mirza, Advocate.

Vs.

UNION OF INDIA & ORS.

…RESPONDENT(S)

Through: - Mr. Vishal Sharma, DSGI, with Mr. Eishan Dadichi, CGC.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

Oswal 'J':

1) This appeal is directed against the order dated 17.08.2026, passed by the Court of learned Additional District Judge (Commercial Court), Jammu (for short, "the Trial Court"), whereby the application for grant of interim relief preferred by the appellant in the suit titled "**M/S Pratham Traders** vs. **Union of India and others"** has been dismissed.

2) The appellant has assailed the order dated 17th August 2026 on the following grounds:

(I) That, admittedly, the site was not handed over to the appellant for 213 days solely on account of failure attributable to the respondents and the respondents, in their written statement, have admitted the said fact and have further admitted that the contract period was of three years but despite that, the learned Trial Court has dismissed the application for grant of interim relief, to which the appellant was entitled to in view of the categoric admissions made by the respondents.

(II) That the learned Trial Court has failed to give effect to the admission made by the respondents, as recorded in paragraph 4 of the impugned order, that the appellant's claim for "force majeure relief" is under consideration before the competent authority, therefore, publication of a fresh e-auction notice for the very same site during the pendency of the appellant's claim before the competent authority is prejudicial to the appellant's case pending consideration before the competent authority.

(III) That having expressly held in paragraphs 15, 17 and 18 of the impugned order that the contract is not determinable and is specifically enforceable, the learned Commercial Court has fallen in a palpable error of law in denying interim protection to preserve the very subject matter of the enforceable right.

(IV) The finding of the learned Commercial Court that the appellant's rights stood extinguished by acquiescence is perverse and contrary to the record, as the appellant, on the third working day after taking possession, addressed letter dated 3rd April 2024, thereby formally recording the pendency of the earlier suit and the delay in handing over the site to the appellant. According to the appellant, silence during the continuance of a subsisting commercial relationship cannot amount to waiver of a valuable commercial right.

(V) That, in the ordinary course of the proceedings, once the impact of 213 days' deprivation began to be felt upon annual returns and the subsequent events of force majeure intervened, then only the cause for extension arose.

(VI) That the finding of the learned Commercial Court that no irreparable injury would be caused to the appellant because the appellant is free to participate in the fresh tender, is unsustainable both in law and on facts.

(VII) That the observation made in paragraph 20 of the impugned order that force majeure events would entitle the appellant only to compensation and not to extension proceeds on a misreading of the Special Conditions of Contract. According to the appellant, the Board's letter dated 24.02.2026 directs the case-to-case consideration, having regard to the actual force majeure events and the period of loss of earnings. The measure of relief is, therefore, expressly correlated to the period of loss of earnings and extension of the contract by the period of loss is a natural and permissible consequence of such consideration.

3) Mr. Pranav Kohli, learned Senior Counsel appearing for the appellant, has submitted that once there is an admission on the part of the respondents that the site was handed over to the appellant after an inordinate delay of 213 days, the appellant was entitled to extension of the contract period and further the respondents could not have issued a fresh tender for the very same site which was the subject matter of the earlier contract, particularly when the claim of the appellant on account of the losses suffered by him was pending consideration before the competent authority.

4) *Per contra*, Mr. Vishal Sharma, learned DSGI, has submitted that the appellant was allotted the parking contract at Railway Station, Jammu, Tawi, for a period of three years commencing from 1st September, 2023, and ending on 31st August 2026, and, as such, no vested right exists in favour of the appellant to seek extension of the contract, particularly when the date of expiry of the contract, i.e. 31st August 2026, is admitted by the appellant. Learned DSGI has vehemently argued that the claim of the appellant with regard to the loss suffered by the appellant is under consideration before the competent authority, but it doesn't mean that the appellant is entitled to extension of the contract.

5) Heard and perused the record.

6) Before addressing the rival contentions of the parties, it is pertinent to observe that the grant or refusal of interim relief by a trial court is a matter of judicial discretion. Appellate court's interference with such an exercise of discretion is warranted only where it is demonstrated that the discretion was exercised arbitrarily, capriciously, or in disregard of settled principles of law. The mere possibility of a plausible alternative view does not constitute a valid ground to set aside an interlocutory order, provided the view taken by the court below is reasonably sustainable on the record. In "**Shruti Manav Sharma v. Sunaina Singh**", **2026 INSC 843,** the Hon'ble Apex Court has observed as under:

> "36. **An order on an application for temporary injunction is a discretionary one, and an appellate court does not ordinarily substitute its own discretion for that of the court of first instance, save where the discretion has been exercised arbitrarily, capriciously or perversely, or in ignorance of the settled principles governing the grant or refusal of such relief. The principle laid down in Wander Ltd. & Anr. (supra) which has been approved by subsequent decisions of this Court, has been guiding the appellate courts in the country for decades while exercising the appellate jurisdiction considering the correctness of the discretion and jurisdiction for grant or refusal of interlocutory injunctions.** The order of the learned Single Judge, resting as it does on seven specific findings addressing the nature of the original plaintiff's interest under the Will, the doubt surrounding its finality, the plea of undue influence, and the alter-ego character of the defendant entities, cannot be said to be arbitrary, capricious or perverse, nor to have been passed in ignorance of settled principle. It is, on the contrary, an order squarely anchored in the three conditions that govern the grant of interim injunction. The Division Bench's substitution of its own appreciation of the Will, of the parties' conduct, and of the applicability of statutory provisions bearing on the final merits, for the exercise of discretion by the learned Single Judge, was not warranted on the standard it had itself correctly recited, and constitutes precisely the kind of interference that Wander Ltd. & Anr. (supra) forbids."

<u>**7)**</u> Briefly stated, the facts necessary for disposal of the present appeal are that the appellant filed the suit against the respondents seeking the following reliefs:

> a. Declare that the Plaintiff is entitled to an extension of the contract period of Contract Agreement No. LC-23-4859014080JAT-CV dated 21.07.2023 by 213 days, on account of the delay in handing over possession of the parking site occasioned by third-party litigation and consequent inaction, and the contract shall be deemed to remain valid and subsisting up to and including

31.03.2027 (or such other date as this Hon'ble Court may determine);

b. Declare that the Plaintiff is entitled to relief under the Force Majeure clause of the Standard Conditions of Contract for the period during which its business was adversely affected on account of the floods and Operation Sindoro/Sindoor-related disruptions from on or about 26.08.2025 onward, and direct the Defendants to compute and grant such relief/extension in accordance with the Railway Board's letter dated 24.02.2026;

c. Declare that the Plaintiff is entitled to seek, and direct the Defendants to consider and grant, extension of the contract period from 3 (three) years to 5 (five) years in terms of Para 3(a) &3(b) of the Railway Board's letter No. 2022/TG-IV/18/Misc/E-Auction dated 28.06.2022, subject to payment by the Plaintiff of the applicable escalated license fee and additional EMD/Security Deposit;

d. Set aside E Auction issued under Catalogue No. EA-JAT-PKG-2607 (Lot No. PARKING-JAT-JAT-PCCV-24-26-1) scheduled for 17.08.2026 and Permanent Prohibitory Injunction restraining the Defendants their officers, servants and agents, from finalising, confirming, acting upon or giving effect to the said E-Auction, or any other fresh auction/allotment in respect of the Commercial/Comprehensive Vehicle Parking Contract at Railway Station Jammu Tawi, or from handing over, allotting or creating any third-party right, title or interest

e. Pass such other and further order(s) as this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case, in the interest of justice.

8) The above-mentioned reliefs were sought on the ground that, after having emerged as the successful bidder, the appellant was allotted a commercial vehicle parking contract at Railway Station, Jammu, Tawi, with the contract start date as 1st September, 2023, and the end date as 31st August

2026. It was stated that as per Clause 3 of the e-auction, the period of five years contemplated under Clause 3(a) of the Standard SBD dated 28th June 2022 was reduced to three years extendable up to five years on additional payment, with enhancement of 10% of the licence fee in the fourth and fifth years over the previous year's fee.

9) It was pleaded by the appellant that, due to the civil suit titled "Taxi Operator Union & Ors. Vs. Union of India & Ors.", the parking site could be handed over to the appellant only on 1st April, 2024, i.e. after a delay of 213 days, which otherwise was required to be handed over to the appellant on 1st September 2023. It was further urged by the appellant that, after the commencement of operations in terms of the contract, Jammu Division witnessed severe and successive disruptions on account of natural calamities and operation Sindoor and as a direct and immediate consequence thereof, number of train services to and from Jammu Railway Station were either cancelled or suspended, resulting in substantial reduction of passenger footfall at the railway station and, consequently, decrease in the number of commercial vehicles. Respondent No. 5 brought the matter to the notice of Northern Railway Headquarters vide its letter dated 5th December 2025, in continuation of an earlier letter dated 12th September 2025, seeking guidelines for grant of relief in licence fee to NFR, catering and other lease/ commercial contractors, including parking contractors, whose business were adversely affected due to the reduced traffic of trains. The Railway Board, vide its communication dated 24th February 2026, addressed to the Principal Chief Commercial Manager, Northern Railway, in response to the representation, categorically confirmed that the force majeure clause existing in the Standard Conditions of Contract provides for relief in such eventualities and directed that an administrative decision regarding grant of relief may be taken on a case-to-case basis, keeping in view the actual cause being force majeure, the conditions of the contract for seeking such relief and the actual period of loss of earnings.

10) The appellant urged that his case was covered within the four corners of the aforesaid force majeure clause and the Railway's own contemporaneous acknowledgment thereof regarding the delay of 213 days in handing over possession of the site to the appellant and the subsequent floods/operation Sindoor resulting into reduced footfall. The appellant claims to have made numerous representations to the respondents but, instead of deciding the same, respondent No. 5 published a fresh e-auction notice dated 1st August 2026, inviting fresh bids for allotment of comprehensive vehicle parking contract at Railway Station Jammu Tawi for a period of three years in respect of the same site, subject matter of the earlier contract awarded to the appellant.

11) The appellant, along with the suit, had also filed an application for grant of interim for restraining the respondents from proceeding with the impugned e-auction and from creating any third-party interest in respect of the subject site during the pendency of the suit.

12) The respondents filed their written statement, wherein, besides raising preliminary objections, they stated that the contract was allotted to the appellant for three years only but the site could not be handed over to the appellant due to pendency of the suit filed by Taxi Operators and the site was ultimately handed over to the appellant after a period of 213 days, however, the licence fee for the said period has not been recovered from the appellant. It is further asserted by the respondents that the licence fee has been recovered from the appellant for the period of actual period of contract, i.e. from 1st April 2024 to 31st August 2026 and the advance licence fee of Rs.25,25,000/- has already been adjusted against the subsequent outstanding licence fee payments. Further the earnest money deposited by the appellant would be refunded after completion of the contract, subject to fulfilment of the contractual obligations and completion of the requisite formalities. It is further pleaded by the respondents that grant of relief on account of disruption of business is to be considered by the competent authority and the representation of the appellant for grant of compensation on account of disruption of works due to floods and Operation Sindoor is under consideration before the competent authority. It is further stated that the communications/representations submitted by the appellant had been duly replied to by the respondents. It is also averred that the e-auction of commercial parking at Jammu Tawi Railway Station is scheduled to be conducted on 17.08.2026 through the IREPS module and the said e-auction is open and the appellant is free to participate therein.

<u>13)</u> The learned Trial Court, after hearing the parties, in terms of order dated 17th August 2026, dismissed the application for grant of interim relief filed by the appellant.

<u>14)</u> The first contention raised by the appellant is that, on account of failure of the respondents to hand over possession of the parking site for a period of 213 days, the appellant was entitled to extension of the contract for a corresponding period of 213 days.

<u>15)</u> It is the positive stand of the respondents that they have not charged any licence fee in terms of the contract for the above mentioned period. The appellant has not been able to dispute the said averment made by the respondents in their written statement. Further, as per the own admission of the appellant, the appellant submitted its first representation only on 4th June 2025, i.e. for more than a year, the appellant did not raise any plea regarding delayed handing over of the site. Even after filing of the representation till the issuance of fresh e-NIT, the appellant remained silent and, in fact, by its conduct, acquiesced in the delay caused in handing over the site to it. Appellant in terms of e-auction was allotted the abovementioned contract only for three years, and while reducing the period of contract the communication dated 28th June 2022 of the Railway Board has been taken note of, and as such the learned trial court is right in returning finding that contract agreement nowhere provides for extension of the contract beyond the period of three years.

16) The conduct of a litigant is also required to be considered while considering an application for grant of emergent relief. In the present case, after handing over the site to the appellant, the suit came to be preferred by the appellant after two years and four months when the contract was going to expire on 31st August 2026. Therefore, in our view, the appellant was not entitled to the relief for extension of the contract by 213 days, by way of interim relief.

17) Next it was contended by the appellant that the representation of the appellant for indemnification of the loss suffered on account of force majeure events, i.e. floods and Operation Sindoor, was pending before the competent authority and, while the same was pending, the respondents could not have floated a fresh tender.

18) It is admitted by the appellant that the contract end date was 31st August 2026. The respondents, in paragraph 11 of their written statement, have stated that the representation for grant of compensation on account of disruption of works due to floods and Operation Sindoor is under consideration. The respondents have nowhere stated that the extension of contract was also under active consideration of the competent authority.

19) Be that as it may, the loss suffered by the appellant on account of force majeure events, by itself, cannot entitle the appellant to the relief of extension of contract. Otherwise also, the appellant has not been able to demonstrate any specific clause in the contract which provides for extension of the contract on account of force majeure events. The loss, if any, suffered by the appellant on account of force majeure events or on account of delayed handing over of the parking site, can be quantified in monetary terms and it cannot be said that the appellant would suffer irreparable loss in the event the interim relief sought by the appellant is denied. Where a harm is capable of complete monetary compensation, the essential element of 'irreparable injury' is not satisfied. In "**Dalpat Kumar and another Vs. Prahlad Singh and others, AIR 1993 SUPREME COURT 276,** the Hon'ble Supreme Court of India has held as under:

> 5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. **Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages.** The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of

substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

20) We have examined the order passed by the learned Trial Court and find that the discretion exercised by the learned Trial Court cannot be termed as perverse or contrary to the settled principles of law so as to necessitate interference by this Court.

21) In view of the above, we do not find any reason to show indulgence so to interfere with the order dated 17th August 2026 passed by the learned Trial Court. The appeal lacks merit and is dismissed accordingly along with connected CM(s).

(M. A. Chowdhary) **(Rajnesh Oswal)**
Judge **Judge**

Srinagar,
08.09.2026
"Bhat Altaf-Secretary"

Whether the **JUDGMENT** is reportable: **NO**