

THE COURT OF DISTRICT JUDGE-03
SOUTH-EAST DISTRICT, SAKET COURTS, NEW DELHI

(PRESIDED OVER BY: ATUL AHLAWAT, DHJS)

CNR No. DLSE01-012017-2025
MCA DJ No. 23/2025



In the matter of:

M Basharat Hussain

..... Appellant

V E R S U S

**1. Management Committee of
Jamiat Ulema -I-Hind**
Through its Secretary
1, Bahadur Shah Zafar Marg,
New Delhi - 110002

2. Mufti Abdul Raziq

..... Respondents

Date of Institution : 13.11.2025
Arguments concluded on : 03.07.2026
Date of decision : 10.07.2026
Result : Dismissed

APPEAL UNDER ORDER XLIII RULE 1 (R) R/W SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 AGAINST THE ORDER DATED 08.10.2025 PASSED BY THE COURT OF LEARNED CIVIL JUDGE-01, SOUTH-EAST DISTRICT, SAKET COURTS, DELHI IN CIVIL SUIT SCJ NO. 339/2025.

JUDGMENT

(Pronounced on 10th day of July, 2026)

1. Vide this Judgment, I shall decide the appeal under Order XLIII Rule 1 (r) r/w Section 151 of the Code of Civil Procedure, 1908 against the order dated 08.10.2025, passed by the Court of Learned Civil Judge – 01, South-East, Saket Courts, Delhi, vide which the application moved by the appellant under Order XXXIX Rule 1 and 2 CPC, 1908 was dismissed.

2. This appeal has been preferred within the prescribed period of time and vide order dated 13.11.2025 passed by the Ld. Predecessor of this Court, the ex-parte ad-interim order restraining the respondents from digging up and/or re-using the grave of the plaintiff's wife till the next date of hearing was passed. The said interim orders were continued from time to time.

Case of the appellant/plaintiff

3. As per the appellant, the Ld. Trial Court had erroneously dismissed the application moved by him under Order XXXIX Rule 1 and 2 CPC, 1908, while completely overlooking the Constitutional Guarantees enshrined under the Chapter of Fundamental Rights, the settled principles governing the Law of Temporary Injunctions and most importantly the authoritative principles of Muslim Personal Laws governing the sanctity of burial and protection of the graves.

4. The appellant had further argued that if the impugned order is not set-aside and the interim protection is not granted, then the very subject matter of the suit would be destroyed and the suit would become infructuous. The Ld. Trial Court had wrongly recorded in the impugned order that the appellant could not establish the *prima facie* case and it had accepted the version of the respondents as a gospel of truth.

5. The appellant had further contended that his wife left for the heavenly abode on 19.04.2021 and she was buried in the Shaheen Bagh Qabristan, which is managed by the respondents and as per the *Hadis* governing the Muslim Personal Law, the graves cannot be re-used to bury someone else, till the body of the person who was previously buried there had completely decomposed. The said issue had established a serious triable issue and the appellant had a strong prima facie case, which was completely ignored by the Ld. Trial Court.

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6. The appellant had further contended that the entire defence of the respondents is based upon the alleged shortage of the burial space, however except for the bald assertions, the respondents failed to produce a single piece of cogent evidence before the Ld. Trial Court, in the form of either the Govt. Notification, Survey Report, Municipal Report, Waqf Board Direction, Capacity Report or The Cemetary Utilization Record or any scientific assessment and the Ld. Trial Court had wrongly relied upon the oral submissions made by the respondents through their Ld. Counsel. Therefore, the finding of the Ld. Trial Court is highly speculative and cannot be sustained in the eyes of law.

7. The appellant had further contended that the burden remained on the respondents to establish that the mortal remains of the wife of the appellant had completely decomposed, as is the requirement of the Muslim Personal Law, before the same burial land could be utilized for burying some other body. The Ld. Trial Court had wrongly relied upon the respondents submission of speculative and presumptive skeletonisation of the dead body, without there being any scientific evidence to the said effect and the said presumption raised by the Ld. Trial Court could not have become the basis for refusing the temporary injunction.

8. The appellant had further contended that the respondents have themselves relied upon the Muslim Shariat Law, however they had selectively relied upon the portions suiting their defence, while completely ignoring the mandatory authoritative Islamic

Jurisprudence that provides for the graves cannot be re-opened or re-used before complete decomposition and the disturbing of bones is prohibited and the exhumation is prohibited except for exceptional necessity recognized under the Muslim Personal Law.

9. The appellant had further contended that the Ld. Trial Court had failed to appreciate that the dignity of an individual does not end with his death and the constitutional guarantee extends to decent burial, dignity of the deceased and respectful treatment of his /her mortal remains. The appellant is not seeking the right of ownership over the said portion of the graveyard and he had not sought the injunction for indefinite period of time and the injunction has been sought only for the limited period as prescribed under the Muslim Personal Law or Seven years, which would have been sufficient for the decomposition of the body of his wife and the premature disturbance of the grave violates the fundamental rights of the appellant and his deceased wife, which did not travel in the grave with the body itself.

10. The appellant had further contended that if the injunction is not granted, then the appellant would suffer irreparable loss and injury, while the respondents would not suffer any loss, if the temporary injunction as sought by the appellant is granted. If the impugned order is not set-aside, subject matter of the suit would be permanently destroyed/lost and the suit would become infructuous, therefore, the balance of convenience overwhelmingly favours the appellant and if during the pendency of the suit, the respondents re-

used the grave then the injury to the appellant would become irreversible. Therefore, the triple test of temporary injunction is fully satisfied in the present case. The Ld. Counsel for the appellant has placed the reliance of the decision of Hon'ble Supreme Court of India in "*Dalpat Kumar Vs. Prahlad Singh (1992) 1 SCC 719*"; "*Ashray Adhikar Abhiyan Vs. Union of India (2002) 2 SCC 27*"; and "*Mohammad Abdul Lalif Magrey Vs. Union Territory of Jammu & Kashmir 2022 SCC OnLine SC 1203*".

Case of the Respondents

11. The Ld. Counsel for the respondents had vehemently submitted that the present appeal deserves to be dismissed, since the appellant does not possess any legal, contractual, proprietary, statutory, customary or religiously enforceable right to freeze one specific grave in public /community graveyard for any specific period of time, as claimed by the appellant in the suit before the Ld. Trial Court. The appellant's wife was given a dignified burial in the month of April, 2021 in accordance with the Muslim Personal Law and the respondents do not deny that the wife of the appellant or her body deserves the dignity, as protected under the Constitution of India and under the Islamic Law, however, creation of a private reserved grave inside a charitable public graveyard, which is meant for the Muslim Community at large, cannot be allowed. The alleged right of the individual has to be balanced with the rights of the community at large, especially when the graveyard is to be maintained by the respondents, is tasked with the onerous duty to keep the graveyard functional for all members of the public following the Islamic faith, without any favour, discrimination or private reservation.

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12. The Ld. Trial Court had rightly dismissed the application filed by the appellant by recognizing the scarcity of burial space, which is the unfortunate reality of the present times and the said fact had played a vital role in the passing of the impugned order, since the right of re-using the grave, when undertaken with dignity and in accordance with the accepted religious practice and necessity, could not be enjoined merely on the sentiments of one individual member of the community.

13. The Ld. Counsel for the respondents had also argued that the conduct of the appellant had also played a huge factor in passing of the impugned order, since the appellant had initially sought an injunction for protection of the grave of his wife for a period of 20 years, however later on he had amended the plaint and restricted the period to 7 years in the prayer clause, thereby clearly showing that he had based his case on an arbitrary demand, which had no backing of any rule of Law or the Customs applicable to the issues at hand.

14. The Ld. Counsel for the respondents had also stressed on the fact that the respondents are merely running the public graveyard, which is situated on the land belonging to the Irrigation Department of the Govt. of UP and the respondents never entered into any contract or allotted /licensed etc. or gave any undertaking to the appellant to keep any particular grave intact for any fixed period of time. There is no basis of any rule of the Muslim Personal Law or any other Bye-Laws etc., affecting the condition of burial.

15. The Ld. Counsel for the respondents had also argued that the respondents had taken the defence to re-use the burial land, as a matter of necessity due to paucity of the space and the said practice is not to disrespect the dead or to harm the sentiments of their family members, however the respondents are following the religious texts covering the *Hadis* and *Sunnah* governing the issue at hand, since no such mention of the re-use of the burial space is there in the holy *Quran*.

16. The Ld. Counsel for the respondents had also argued that the appellant had failed to produce any expert evidence, binding authority of Shariat Law or any other cogent evidence of the statutory rule, recognized custom or the judicial pronouncement showing that a grave in a public *Qabristan* situated at Delhi must remain untouched for the period of 7 years or 20 years, irrespective of decomposition, scarcity and necessity.

Analysis and Findings

17. The Muslim Law as applicable to the members of the Islamic faith in the areas governed under the personal relationship is branch of the un-codified law and the Shariat is the path that is to be followed and it is the law in the wider sense, since the Muslim Law is a revealed law and it is in the form of Doctrine of Duties and it is the totality of Allah's Commandments. In the absence of any direction for human actions in the words of the God or the Tradition of the Prophet Mohammad (P.B.U.H.), the human reasoning or the exercise of human knowledge in deciding the point of law has been held to be

necessary and this human reasoning has been recognized in the Muslim Personal Law as *Fiqh*.

18. The Shariat Act, 1937 is the most important and far reaching enactment dealing with the application of Muslim Law in India and it was brought into force with the aim to restore the law of Islam to all Muslims and their communities residing in India and doing away with the customs contrary to the *Shariat*. It applies to all the Muslims regardless of the school of Muslim thought they belong to and it applies to all kinds of property except for Agricultural Lands, Testamentary Succession and Charities other than *Waqfs*.

19. The Shariat is containing four primary sources of the Muslim Law, namely the Holy *Quran*; the *Sunnah* or the *Hadith/Hadis* (traditions); the *Ijma*; and the *Qiyas*. The level of authority of the said sources is favouring the former to the latter in the same order of merit. The entire Muslim Personal Law is based upon the said sources. The secondary sources which are also known as extraneous, since they do not form part of the *Shariat* includes the *Urf* (customs), judicial precedents, legislation/enactment and lastly, justice/equity and good conscience. The secondary sources generally explained and modified the primary sources in accordance to the changing needs of the Islamic Society.

20. The paramount source of the Muslim Law is the Holy *Quran* since it is containing the express revelations, as made in the

very words of Allah to Prophet Mohammad (P.B.U.H.), when he was bestowed with the office of the messenger of the God. The *Sunnah* or *Hadith* pertains to whatever the Prophet Mohammad (P.B.U.H.) said or did without referring to God's words. Therefore, they are his own words and deeds, which were not written down in his lifetime, however preserved by tradition and handed down by authorized agents from generation to generation. The *Sunnah* has been interpreted as implied revelations in the Prophet's sayings and actions, which includes what he said, what he did or what he tacitly allowed.

21. As far as the re-use of the burial space is concerned, the Ld. Counsels appearing before the Court could not bring to the notice of this Court any *Aayat* of the Holy *Quran* and they had both submitted that the authoritative text of the Holy *Quran* is completely silent on the said issue. Both the parties have relied upon the *Hadith/Hadis* on the issue at hand, which is also discussed and dealt with in detail by the Ld. Trial Court in the impugned order.

22. The *Hadith/Hadis* is not the same as *Sunnah*, since the former means literally the news/report containing the specific narratives of the written account of what the Prophet Mohammad (P.B.U.H.) said, did or silently approved, while the latter literally translates to the path/the way which includes the practices, habits, religious guidelines of the Prophet Mohammad (P.B.U.H.). While the former is text based and was intended to preserve the Prophet's words and events in history, however the latter was with the intention to serve as a practical model for how to live and practice Islam. The

reliance is placed on *Hadith/Hadis* to authenticate and reconstruct the *Sunnah* .

23. Since, the Holy *Quran* and the *Sunnah* are silent on the issue of the reuse of burial space, therefore, to understand the Muslim Personal Law, the *Hadith/Hadis* as relied upon by the appellant himself had to be appreciated carefully. As per the said *Hadith/Hadis*, although it is *Haraam* to put one dead person next to another, before the first one has completely disintegrated, however in the case of necessity, it is permissible to burrying two people together in the grave at the same time. The other authoritative text also record that if there is no place that can be found to bury the dead, except by digging up a grave in which there is a dead body, then it is permissible because it is a case of necessity, however even in the said case, it is not permissible to remove the bones of the first deceased person from the grave.

24. The scope of interference in an appeal under Order XLIII Rule 1 (r) CPC, 1908 is extremely narrow and the Court is not required to re-hear the injunction application as if it was the Court of first instance and the inquiry is limited to the examination whether the discretion exercised by the Ld. Trial Court was arbitrary, capricious, perverse or contrary to the settled principles of the law. When the discretion is properly exercised, then the Appellate Court must not substitute its own discretion, merely because another view is also possible. That is the governing test to be followed in the present case. Reliance is placed on the decision of the Hon'ble Supreme Court of

India in *Wander Ltd. Vs. Antox India (P) Ltd., 1990 SCC OnLine SC 496* and *Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi, (2024) 11 SCC 351.*

25. The Ld. Trial Court had duly considered the submissions of both the parties and the Islamic *Fatwas* and *Hadis*, as relied upon by the appellant were duly considered by the Ld. Trial Court. The defence taken by the respondents was also carefully considered including the fact that that the graveyard is located on the public land, given on lease/license by the Govt. of Uttar Pradesh and there is no cogent material being produced before the Ld. Trial Court with respect to the decomposition of the body and the time line of the said decomposition.

26. The Ld. Trial Court had correctly appreciated the facts of the present case in light of the Muslim Personal Law governing the burial and reburial on the same piece of land, since neither party could adduce any scientific or cogent other evidence with respect to the approximate time that is required for a body to fully decomposed and turned into dust. The temporary injunction as sought by the appellant to preserve the dignity of the body of his deceased wife, could not be granted for any particular period of time, since it would have amounted to creating a private right on the scarce public land, which is utilized for the needs of the society as a whole and the Muslim populace in particular. The words of the Prophet Mohammad (P.B.U.H.) as recorded in the authoritative texts of the Islamic Scholars such as Al-Mawawi, Ibn Qudammah and Ahmad duly

records that although under the Islamic Law digging of the grave is generally forbidden (*Haraam*), since it violates the sanctity of the deceased, whose body is treated with the same respect as of a living person and to afford a decent burial is a collective obligation on the entire Muslim Community called as *Fard Kifayah*, however the re-use of the same space is allowed in the case of necessity.

27. The appellant did not bring any scientific evidence to even prima facie establish that the body of his wife is yet to be fully decomposed. No such effort was made on behalf of the appellant to bring on record any cogent evidence, even in the present appeal before this Court. The onus remained on the appellant and merely by asserting a fact that the body of his deceased wife is yet to fully decompose or that it would require minimum 7 years, without there being any foundational scientific evidence to support the said assertions, could not satisfy the test of prima facie case, in absence of which no temporary injunction could have been granted to the appellant, and the Ld. Trial Court had rightly dismissed his application under Order XXXIX Rule 1 and 2 CPC, 1908. However, it is made abundantly clear that the observations given in this judgment is only with respect to the issue of the temporary injunction as sought by the appellant and the appellant can still adduce the evidence in support of his case before the Ld. Trial Court, to discharge the onus cast upon him.

28. The Ld. Trial Court had correctly appreciated the facts in the background of the applicable laws and this Court does not find

any perversity or arbitrariness in the impugned order. Therefore, there is no merit in the present appeal and the same is hereby dismissed. The impugned order is accordingly upheld.

29. Let the copy of this judgment be sent to the Ld. Trial Court along with the TCR.

30. The appeal file shall be consigned to record room, after due compliance.

31. Copy of this Order be given *dasti*.

**Announced & dictated in
the open Court on 10.07.2026**

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District Judge-03/South-East District
Saket Courts, New Delhi/10.07.2026**

**Certified that this Judgment contains 14 pages and each page is
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(Atul Ahlawat)
District Judge-03/South-East District
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