

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP No.345/ 2023 in CS No.77/2022

Reserved on: 14.09.2026

OMP No.383/2022 in CS No.77/2022

Reserved on : 22.09.2026.

Decided on 07.10.2026

Date of uploading on Website: 07.10.2026

Hira Nand Sharma

....Plaintiff

Versus

Vivek Kumar and another

....Defendants

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

Whether approved for reporting?¹

For the plaintiff:

Mr. Shrawan Dogra, Senior Advocate,
with Mr. H.C. Sharma & Mr. Tejasvi
Dogra, Advocates.

For the defendants:

Mr. Vikrant Thakur, Senior Advocate,
with Mr. Shubham Singh, Advocate.

Sushil Kukreja, Judge

This common order shall dispose of two applications,
i.e. **OMP No.383 of 2022**, filed by the applicant/plaintiff, under
Order 39, Rules 1 & 2, read with Section 151 of CPC for an ad-

¹ Whether reporters of Local Papers may be allowed to see the judgment?

interim injunction and **OMP 345 of 2022**, moved on behalf of defendant No.1, under Section 151 of CPC for modification of order dated 01.07.2022, passed in OMP No.383 of 2022.

2. Brief facts of the case are that the plaintiff filed a suit for declaration, possession, permanent prohibitory injunction and damages against the defendants. As per the plaintiff, he is owner of land comprised in Khata No.8, Khatauni No.12, Khasra Nos. 3,6,26 & 27, total measuring 27-2 bighas, situated in Mauza Kalhog, Tehsil Kandaghat, District Solan, HP (hereinafter referred to as the suit land). Defendant No.1-Vivek Kumar approached the plaintiff to take a portion of the suit land on lease and the plaintiff agreed to give part of the suit land, measuring 24-2 bighas, out of 27-2 bighas, leaving 3-0 bighas, adjoining to residential house. Consequently a lease deed was executed on 16.01.2018 between the parties, vide registration No.28/2018, the period of which was 25 years for a total consideration of Rs.3,04,00,000/-, which was to be paid by defendant No.1 in different installments on yearly basis. After execution of the lease deed, defendant No.1 constituted a partnership firm under the name and style of 'Mountain Eco Tourism', as per registered Partnership Deed dated 28.02.2018 and

he made changes in the detail of accommodation and its registration as rooms of hotel etc. and also in the name of unit from 'Mountain Eco Health Resort' to 'Banjara Mountain Retreat' of his own, in violation of the purpose of lease because the leased land could not be utilized for constructing hotel over it. He instead of establishing Eco-Tourism Project, started huge digging over the land and raised concrete structures in the form of restaurant, reception, parking, pathways, Spa, conference hall, swimming pool, water tanks, residences and courtyard etc., contrary to the lease agreement. The plaintiff requested him and his agent many times not to raise concrete structures etc., but he paid no heed and caused a huge damage to the property of the plaintiff and also caused damage to the fruits trees and other valuable trees, existing over the land, removed all existing stone-retaining walls, blocked the egress and ingress of the plaintiff and other landowners of the adjoining land by fixing gates over the existing common path passing through the land in question. He and his agents have also done cutting and digging of the land in an unscientific manner which had resulted into slips and landslides and have also sprayed and drenched some chemicals on the leased land, thereby further

damaged the soil and changed the biological/chemical composition of the soil and making the same infertile.

3. The plaintiff issued a notice dated 08.01.2021 to defendant No.1 for terminating the lease, whereby he was asked to hand over the possession of the suit land to him after restoration of the land to its original shape. Thereafter on 12.01.2021, a representative of defendant No.1 tried to pay a sum of Rs.5 lacs in cash to the plaintiff as lease amount for the year 2021, but the plaintiff refused to accept the same. However, the said amount was transferred by defendant No.1 in the account of the plaintiff, which fact came to his notice on 29.01.2021 after updating the bank entries in his pass-book. Defendant No.1 again deposited Rs.5 lacs in the UCO Bank account of the plaintiff on 11.01.2022 and in total, defendant No.1 deposited Rs.10 lacs in the account of the plaintiff after issuance of notice dated 08.01.2021 for termination of lease deed, but the plaintiff transferred back the aforesaid amount of Rs.10 lacs to the remitter's accounts. A suit (Civil Suit No.96 of 2021) was filed against the plaintiff on behalf of M/s Banjara Mountain Retreat, claiming to be a partnership concern. Since there

is no privity of contract between M/s Banjara Mountain Retreat and the plaintiff, therefore, no legal right can be claimed to be infringed.

4. In their written statement, the defendants took preliminary objections qua cause of action, there was no valid termination of the lease-deed, the plaintiff is estopped from filing the suit by his own conduct, no specific clause regarding type and nature of construction to be raised in the leased premises, the lease deed was entered subsequent to the Eco-tourism policy of the State and the suit being pre-mature. On merits, it is pleaded that the plaintiff had been working in HP University and his children were also occupied in their pursuit of obtaining education, therefore, the land in question was not being tilled. It is further pleaded that the lease amount was being paid regularly and the defendants intended to provide 13 double bed cottages (Swiss Tents), 30 Tents, a restaurant, health club, garden/terrace garden, conference hall, swimming pool, parking and other facilities. The total cost of the project was estimated at Rs.1.6 crores, out of which, approximately a sum of Rs.96 lacs was to be spent on buildings, the balance amount of Rs.64 lacs was to be invested on other fixed assets and the employment sought be generated was to the extent of 59

employees. The structures created at the site are temporary (pre fabricated tents), which have been made in a manner that no loss is caused to the land underneath the structures and can easily be removed upon termination of the lease and the land would be restored to its original state. It is denied that there was no meeting of minds between the parties that the leased land could be utilized for the purpose as detailed in the registration certificate and by change of name, there was no change in the activity being done at the site in question. As per the terms of the lease, the plaintiff was to provide space for setting-up a pump house on his land located in Ashwani Khud and the defendants had made huge investment in laying pipes from Ashwani Khud, however, the plaintiff has not provided the same till date and the plaintiff is raising ill-founded, baseless objections with the sole intent of harassing the defendants.

5. By way of the application, being OMP No.383 of 2022, filed on behalf of the applicant-plaintiff, under Order 39, Rules 1 & 2, read with Section 151 of CPC, a prayer has been made for an ad-interim injunction in respect of the suit land, thereby restraining the respondents-defendants from carrying on any business activity over the suit land; doing any kind of illegal and unauthorized construction

or changing its nature; mortgaging, creating sub-lease or creating any type of encumbrances; interfering in the peaceful enjoyment of property over the land measuring 3 bighas, which was expressly not a part of the lease agreement and is in continuous possession of the applicant; interfering with the easementary rights of the plaintiff and blocking common passages/link roads over the suit land.

6. In the reply to the said application, the respondents-defendants averred that the applicant/plaintiff has no *prima facie* case in his favour, balance of convenience is also against him and the alleged loss, as stated in the application/plaint, is recoverable in the monetary terms. Hence, it is prayed that the application may be dismissed.

7. Defendant No.1 also moved an application, OMP No.345 of 2023, under Section 151 of CPC, seeking modification of interim order dated 01.07.2022 passed in OMP No.383 of 2022, to the extent that he may be permitted to repair the structures in order to save his property and investment and also to raise temporary/removable structure to run his business.

8. The non-applicant/plaintiff filed reply to this application, wherein it has been averred that the plaintiff would suffer irreparable

loss and injury if the applicant/defendant No.1 is allowed to raise further construction over the immovable property owned by the plaintiff.

9. At this stage, it would be relevant to reproduce order dated 01.07.2022, passed in OMP No.383 of 2022, which reads as under:-

"In the meanwhile, parties to lis are directed to maintain status quo qua nature, possession, further construction and alienation of the suit property comprised in Khata No.8, Khatauni No. 12, Khasra Nos. 3, 6, 26 and 27 measuring 24-2 Bigha situate at Mauja Kalhog, Tehsil Kandaghat, District Solan, Himachal Pradesh. Apart from above, defendants are also restrained from creating third party right, if any, by selling, mortgaging or creating third party charge qua the suit property, as detailed herein above. Defendants are further restrained from interfering in the possession of the plaintiff over 3 Bigha land, as stands specifically excluded in the lease deed."

10. The question now arises whether the *ex-parte* interim injunction order, which was granted in favour of the plaintiff at the initial stage on 01.07.2022, needs to be confirmed or be modified/ vacated.

11. It is an admitted position that the plaintiff had entered into a lease agreement dated 16.01.2018, with defendant No.1 with respect to the suit property. At this stage, it would also be pertinent to reproduce the relevant clauses of the lease agreement, which read as under:

- "1. That the Lessor has handed over with possession above land, the details of which have been given above on 16/01/2018 on lease for next 25 years. The lease amount will start from 16/01/2018.*
- 2. That the Lessor assures the lessee that the above landed property is in his possession and now possession has been handed over to the lessee for 25 years and the lessee has taken possession and has started his work. If above land is under loan or any other liabilities till the date of handing over the possession, the lessor will discharge the liabilities and the land will be made free of charge.*
- 3. That the Lessee will also fully be entitled to use the old and prevalent paths for the above landed property and if for the necessity of water for the land boring is required, the lessee could do boring.*
- 4. That the lessor on 15th January every year will take yearly lease money in one installment in advance and the lessee for next 25 years will be paying every year by 15th January annual lease amount in cash or cheque/draft.*
- 5. That the lessee now can obtain and submit papers concerning the land from the court of sub judge, Sub Divisional Magistrate, Administration, Tehsildar, Naib-Tehsildar, Registrar, Deputy Registrar, Collector, Asst. Collector IInd grade, Settlement Tehsildar, Naib-Tehsildar and any office and court of settlement, Supreme Court, High Court, bank, railway and any offices of state governments and government of India and any non-government office.*
- 6. That the lessee on the above land can do any work of agriculture, horticulture, animal husbandry and ecotourism for which he is taking land on lease and the lessor will have no objection for any of the works of the lessee. If the lessee makes some construction or incurs any other kind of expenditure, then on the cessation of lease can extract and take back the same and in that event the lessee will restore the land quite fit for agriculture. The lessor will not be liable and responsible for any of the expenditures by the lessee on the land.*
- 7. That the lessee can further transfer by lease the above land to any person, organization and can hand over possession to anyone. After 25 years, the responsibility to put in possession the lessor on the above land will be that of the lessee. If the lessee fails to pay advance by due date, then after the notice of 30 days the lease will end to which both parties fully agree and if the payments and behavior of the*

lessee remains regular and descent the lessor if he decides could further extend the lease. The lessor will not be responsible in any way for any dispute/transfer of possession and financial transactions of the lessee.

8. *That the words lessor and lessee used in the lease deed will in addition include their legal heirs.*
9. *That the lessor will help the lessee as far as possible in water lifting from Ashwani Khad and laying pipeline. The lessor will have no objection for installing pump house in the land in possession of the lessor in Ashwani Khad. This pipeline and pump house will be installed at the expenditure by the lessee. On the leased land the lessee at his own expenditure can do boring for water. The lessor will obtain necessary NOC from Panchayat. Water will be used by both the parties.*
10. *If the above land goes out of the possession and entitlement for possession of the lessee due to legal, incidental and adverse claim (Wazuz Dawa Shafi), the lessor will be liable to compensate for all kinds of losses. In future if any of the two parties violates the terms of lease the violating party will be responsible for all types of losses and expenditure for legal action."*

12 Now, the question here is whether the plaintiff has been able to make out a *prima facie* case for grant of interlocutory injunction order under Order 39, Rules 1 & 2 of CPC. The contentions, which should weigh with the Court in deciding the application for grant of ad interim injunction, are well settled. These are; (i) whether the plaintiff has made out a *prima facie* case, meaning thereby that there is a *bona fide* contention between the parties or a serious question to be tried, (ii) whether the balance of convenience is in favor of the plaintiff, that is to say, whether it would cause greater inconvenience to the plaintiff, if the ad interim

injunction is not granted than the inconvenience to which the defendant will be subjected if it is granted and, (iii) whether the plaintiff would suffer irreparable loss and injury if the prayer for grant of temporary injunction is refused. All these three considerations must be conjointly satisfied before the order of ad interim injunction is granted by the Court.

13. The Supreme Court in **Gujarat Bottling Co. Ltd. and Ors. Vs. Coca Cola Co. and Ors., (1995) 5 SCC 545**, has held as under:-

"The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favor of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time whether the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights which he could not be adequately compensated."

14. In **Colgate Palmolive (India) Limited vs. Hindustan Lever Limited, (1999) 7 SCC 1**, the Apex Court had examined the question of grant of interlocutory injunction and had observed that the following basic principles must be observed by the Court before such an injunction is granted:-

"24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being-non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below:-

- (i) Extent of damages being an adequate remedy;*
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor;*
- (iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;*
- (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;*
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case;*
- (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;*

- vii) *Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."*

15. It is clear from the law laid down by the Supreme Court that the grant of ad interim injunction is a discretionary relief and it should be granted where it is necessary to protect the legal right of a party until it is established at the trial when triple principles essential for grant of interlocutory injunction conjointly existed. It is also explicitly clear that mere allegation will not be enough to exercise discretion in favor of the plaintiff. The plaintiff to be entitled to interlocutory injunction order should produce facts, circumstances and available documentary evidence to *prima facie* establish that he may have rights in the subject matter of the suit which needed investigation and trial. Even a *bonafide* or serious contention which requires investigation and trial may in given facts would be sufficient to protect the interest of the plaintiff. But a bald claim of a right which is neither corroborated by facts and circumstances nor by documentary evidence would not be enough to be grant of ad interim injunction.

16. In the instant case, the perusal of the record shows that defendant No.1's possession originates from a valid lease deed/agreement and pursuant to the lease deed, defendant No.1

has remained in exclusive possession of the property and also developed the same by spending huge amount. It is an admitted position that for the period of first three years, the defendant No.1 had paid agreed rent to the plaintiff @ Rs. 5 lacs per annum in terms of the aforesaid lease agreement. It is also an admitted fact that the plaintiff, after having received a sum of Rs.15 lacs in respect of the lease amount of three years, refused to receive any further amount towards lease money on the pretext that he had already terminated the lease agreement with the defendant and an amount of Rs.10 lacs for the fourth and fifth year was reversed by the plaintiff on different dates and such refusal was made a ground to file the present suit.

17. The case of the defendants is that after entering into the lease deed, they had already raised 13 double bed cottages (Swiss Tents), 30 Tents, a restaurant, health club, garden/terrace garden, conference hall, swimming pool, parking and other facilities. As per the defendants, the total cost of the project was estimated at Rs.1.6 crores, out of which, approximately a sum of Rs.96 lacs was spent on buildings, the balance amount of Rs.64 lacs was invested on other fixed assets and the employment sought to be generated was

to the extent of 59 employees. The further case of the defendants is that the structures created at the site are temporary (pre fabricated tents) and have been made in a manner that no loss is caused to the land underneath the structures and can be easily removed upon termination of the lease and the land would be restored to its original state. Further case of the defendants is that they have invested approximately Rs.4 crores, hence, the returns anticipated would take into account the investment made plus the lease money to be paid.

18. At this stage, except for the bald assertions, no material has been placed on record by the plaintiff that instead of establishing Eco-Tourism Project, the defendants started huge digging over the land and raised concrete structures and also caused damage to the fruits trees and other valuable trees, existing over the land as well as removed all existing stone-retaining walls and the defendants further damaged the soil and changed the biological/chemical composition of the soil making the same infertile. No report of any expert has been placed on record by the plaintiff even to *prima facie* show that the defendants have started huge digging over the suit land and raised concrete structures,

causing damage to the land as well as the trees. The plaintiff's case is based on his bald allegations which do not find corroboration from any facts and circumstance or documentary evidence. Conversely the case of the defendants is that he is in possession of the suit property by way of a valid lease agreement and has invested huge amount in the sum of Rs.4 Crores on the development etc. of the suit land. As per the lease agreement, the defendant can do any work of agriculture, horticulture, animal husbandry and ecotourism on the suit land for which he has taken land on lease and it further stipulates that the plaintiff will have no objection for any of the works of the defendant. The perusal of lease deed further shows that in case, the defendant makes some construction or incurs any other kind of expenditure, then on the cessation of lease, can extract and take back the same and in that event the defendant will restore the land quite fit for agriculture. As per the lease deed, the defendant no. 1 can even further transfer by lease the above land to any person, organization and can hand over possession to anyone. Admittedly for the period of first three years, defendant No.1 had paid rent to the plaintiff @ Rs.5 lacs per annum in terms of the aforesaid lease agreement and after having

received a sum of Rs.15 lacs in respect of the lease amount of three years, the plaintiff refused to receive any further amount towards lease money. These facts show the ill-intention of the plaintiff for not permitting the defendants to run their business and to develop and raise temporary structures over the land in terms of the lease deed as agreed between the parties.

19. As discussed earlier, while deciding the question of grant of injunction, the three basic parameters, namely, existence of a *prima facie* case, balance of convenience being in favour of the party concerned and that in the event of the ad interim injunction not being granted in its favour, it is likely to suffer an irreparable loss, are the conditions which are required to be established. In the instant case, seen on this parameter, if the material which has been produced by the plaintiff as well as by the defendants before this court till now is perused, then it can safely be held that at this stage, the plaintiff has not been able to establish a *prima facie* case for grant of interim injunction or that the balance of convenience is in his favor or its non-grant would cause any greater inconvenience to him than to the defendants or that he would suffer irreparable damage. Rather, in view of the facts and circumstances of the case,

the defendants would suffer irreparable injury in case interim relief is granted to the plaintiff as the defendants have already spent huge amount on the development of land and had also raised temporary structures on it. Thus the defendants would suffer huge loss and would not be in a position to pay the agreed rent if they are not permitted to maintain/repair/raise the structures and to develop the suit land in order to run the business.

20. Therefore, order dated 01.07.2022 is modified to the extent that the defendants are permitted to maintain/repair/raise the structures in order to run their business and also to raise temporary/removable structures/pre-fabricated tents and to develop the suit land as well as to raise further construction on the entire suit land (except over 3 Bigha land, as stands specifically excluded in the lease deed) in terms of the lease agreement which can easily be removed upon termination of the lease and the defendants can further transfer the suit land by lease to any person, organization and can hand over possession to anyone in terms of the lease agreement. Needless to add that on the cessation of lease, the defendants will restore the land quite fit for agriculture.

21. Hence, both the applications, i.e. OMP No.383 of 2022, filed by the plaintiff and the application being OMP No.345 of 2023, moved by defendant No.1, are disposed of in the aforesaid terms.

22. Be it stated that the observations made hereinabove are purely for the disposal of these applications and shall have no bearing on the merits of the main suit.

October 07, 2026
(V.Himalvi)

(Sushil Kukreja)
Judge