

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP Nos. 310 and 539 of 2026 in COMS No. 7 of 2026

Reserved on 22.9.2026

Date of Decision: 30.9.2026

Bikram Singh Dhiman

.....Applicant/Plaintiff

Versus

Jasbir Kukreja and Anr.

.....Non-applicants/defendants

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes.

For the Plaintiff: Mr. R.K. Bawa, Senior Advocate with Mr. Ajay Kumar Sharma, Advocate.

For the Defendants: Mr. Vishal Mohan Goel, Senior Advocate with Mr. Gaurav Sharma, Advocate.

Sandeep Sharma, J.

OMP No. 310 of 2026

By way of instant application filed under Order 39 Rules 1 and 2 read with Section 151 CPC, prayer has been made on behalf of the applicant/plaintiff to restrain the non-applicants/defendants from interfering in any manner with the peaceful possession and management, day to day affairs and functioning of Hotel Auckland / suit property, situate at Lakkar Bazar, Shimla (hereinafter referred to as the "suit property"), by themselves, through their agents, representatives, family members or any other person during the pendency of suit. Besides above, applicant has also prayed that non-applicants/defendants may be directed to immediately

vacate the unauthorized illegal occupation of two rooms i.e. room Nos. 301 and 302 of Hotel Auckland / suit property, along with their two pets and further return/hand over booking register, attendance record, tourism register, day book and accounts files etc. illegally detained by her.

2. Pursuant to order dated 06.05.2026, whereby this Court while granting interim relief, restrained the non-applicants/defendants from interfering in any manner with the peaceful possession and management, day to day affairs and functioning of suit property by themselves, through their agents, representatives, family members or any other person during the pendency of suit, also called upon them to file reply to the application at hand.

3. Non-applicants/defendants have filed reply, wherein prayer has been made to dismiss the application at hand on the ground of suppression of material facts. It is also stated in the reply that applicant/plaintiff has not approached this Court with clean hands and as such, does not deserve to be granted equitable relief. While stating that no prima facie case, if any, exists in favour of applicant/plaintiff, it is also averred in the reply that balance of convenience is against the applicant/plaintiff and in case interim order dated 06.05.2026, is not

vacated, irreparable loss and injury shall be caused to the non-applicants/defendants, which cannot be compensated in terms of money.

4. For having a bird's eye view of the matter, certain undisputed facts which may be germane for proper adjudication of the application at hand are that applicant/plaintiff filed suit bearing number COMS No. 7 of 2026 titled *Vikram Singh Dhiman v. Jasbir Kukreja and another* under Sections 34, 38, 39 of Specific Relief Act and Section 16 read with Commercial Courts Act, 2015 for declaration, permanent prohibitory injunction, mandatory injunction and recovery of damages, averring therein that non-applicant/defendant No. 1 executed lease agreement with plaintiff on 30.7.2025 at Shimla with regard to suit property comprised in Khata/Khatauni No. 33/61, Khasra Nos. 827, 828, 829, 830 measuring 246/44 hectares in Up Mohal Shankli, Tehsil Shimla (Urban), District Shimla, for running the suit property, which is a hotel, on lease for a monthly rent of Rs. 1,66,667/-, throughout the initial three years lease term commencing from 1.1.2025 to 31.7.2028, amounting to total annual rent of Rs. 20,00,000/- each year.

5. Suit property comprises of nineteen guest rooms, attached bathrooms, staff accommodation, restaurant, kitchen, terrace and reception. Out of nineteen rooms, thirteen are deluxe rooms, five are

executive rooms and one is family four bed suite with open terrace plus store.

6. In terms of Clause-A of the lease agreement, non-applicant/defendant No. 1 agreed for a lock in period of three years commencing from 1.8.2025 and ending on 31.7.2028, during which period, either of the parties could not terminate the lease agreement dated 30.7.2025. It also came to be provided in the aforesaid lease deed that premature exit, abandonment or discontinuance of operation by lessee shall be deemed as a material breach of the agreement.

7. Clause-B of the lease agreement provided the terms and conditions with respect to unilateral termination of lease agreement. In terms of aforesaid lease agreement, the applicant/plaintiff was put in possession of hotel / suit property on 1.8.2025. Thereafter, applicant/plaintiff initiated process of obtaining necessary permission from competent authorities to run hotel / suit property and made all necessary arrangements for its smooth functioning.

8. Applicant/plaintiff paid up-to-date monthly rent payment of Rs. 1,50,000/- per month (Rs. 1,50,000/- x 8 months = Rs. 12,00,000/-) to defendant No. 1, GST Rs. 30,000/- per month (Rs. 30,00,000/- x 8 months = Rs. 2,40,000/-) and TDS Rs. 16,667/- per month (Rs. 16,667/- x 8

months = Rs. 1,33,336/-). In addition to aforesaid, applicant/plaintiff also paid sum of Rs. 1,50,000/- for fire hydrant to defendant No. 1 and same was to be deducted from the rent. Plaintiff also paid sum of Rs. 33,575/- on account of property tax in advance to be adjusted / deducted from rent. Sum of Rs. 2,26,600/- was also paid by the applicant/plaintiff towards refundable security with HPSEB Limited for deficit load security, which otherwise was to be paid by defendant No. 1.

9. In nutshell, applicant/plaintiff claimed that in total, he spent Rs. 44,49,444.87/- with effect from 01.08.2025 up to 31.03.2026 for maintenance, management and running the hotel / suit property, whereas his income was Rs. 25,07,695.79/-. It is averred in the plaint that when the hotel / suit property started its operation, defendant No. 1 became greedy and for one reason or the other, started interfering in the functioning of the hotel. Non-applicants/defendants did not mend their ways and started interfering, threatening and restraining the hotel staff from performing their day to day duties. Allegedly on 7.4.2026, defendant No. 1 along with her daughter and associate, in a pre planned manner, took law into their own hands by barging into hotel premises and threatened the hotel staff. Defendants not only committed offence of criminal trespass, but

also unlawfully restrained the hotel staff from performing their duties, causing further nuisance and disservice.

10. Applicant/plaintiff also alleged that with criminal intention to continue unlawful activities, non-applicants/defendants occupied two rooms, being Room Nos. 301 and 302 of the suit property along with their two pets. Though applicant/plaintiff repeatedly apprised defendants that in terms of lease agreement dated 30.07.2025, he is entitled to run the hotel smoothly, but yet defendants did not stop unlawful interference in the functioning of hotel, as a result thereof, hotel business started losing customers and is incurring losses. Allegedly, defendant No. 1, through her agent, forcibly stole and took away booking register, attendance record, accounts files etc. into their possession without any authority and threatened the hotel staff with dire consequences. Staff recruited by applicant/plaintiff, including Mr. Shabnam Rana, General Manager, Deepika, Housekeeping and other staff were restrained and stopped from performing their day to day duties and they also threatened the applicant/plaintiff as well as his partner, Mr. Rajender Kumar Goyal. In the aforesaid background, applicant/plaintiff was left with no other remedy, but to file a complaint at Police Post Lakkar Bazar, Shimla on 15.4. 2026, but yet illegal activity of the non-applicants/defendants continued and

turned from bad to worse. On 20.04.2026, police from Lakkar Bazar again visited the hotel premises and enquired into the matter. Defendants took law into their own hands, became agitated, created scene and started an altercation with wife of plaintiff, Ms. Deepika Dhiman, who was manhandled by defendant No. 2.

11. Applicant/plaintiff, while claiming that he is suffering losses of Rs. 45,000/- to Rs. 50,000/- per day with effect from 07.04.2026 onwards, has further submitted that despite subsistence of lease agreement dated 30.07.2025 with effect from 01.08.2025 up to 31.07.2028, non-applicants/defendants themselves and through their agents have continuously indulged in violation and unlawful acts of criminal trespass in the leased out hotel / suit property, as such, they need to be restrained by passing decree of declaration declaring that applicant/plaintiff is entitled to run and manage the hotel / suit property in terms of lease agreement dated 30.07.2025 without there being any interference on behalf of the defendants. While seeking permanent prohibitory injunction restraining defendants, it also came to be prayed at the behest of plaintiff to pass a decree for recovery of damages of Rs. 1,27,20,000/-.

12. Along with aforesaid suit, applicant/plaintiff also filed an application under Order 39 Rule 1 and 2 CPC, restraining the defendants

from interfering in any manner in the peaceful possession and management, day to day affairs and functioning of the suit property, as detailed above. Taking cognizance of averments contained in the application, this Court passed ad interim order dated 06.05.2026, relevant paras whereof read as under:

“OMP No. 310 of 2026

Notice in aforesaid terms. For the reasons assigned in order passed in OMP-309 of 2026, prayer made on behalf of the applicant/plaintiff for interim relief deserves to be allowed, accordingly, pending reply, the non-applicants/ defendants are restrained from interfering in any manner with the peaceful possession and management, day to day affairs and functioning of Hotel Auckland/Suit property, situated in Lakkar Bazar, Shimla-171001 by the applicant/plaintiff, by themselves, through their agents, representatives, family members or any other persons during the pendency of the suit.

(ii) The non-applicants-defendants are directed to immediately vacate the unauthorized illegal occupation of two rooms i.e. room Nos. 301 & 302 of the Hotel Auckland/Suit property along with their two pets and further return/hand over booking register, attendance records, tourism register, day book and accounts files etc. illegally detained by them.

(iii) restrained from entering the premises of Hotel Auckland, Lakkar Bazaar, Shimla, without prior permission of the applicant/plaintiff and the entry of the non-applicant/ defendants/her agents, representatives, or any person acting on their behalf within 50

Meters radius from the boundary of Hotel Auckland premises near Lakkar Bazaar, Shimla, H.P. is prohibited.

Thus, order shall be subject to compliance in terms of Order 39 Rule 3-A CPC.”

13. Pursuant to aforesaid order, non-applicants/defendants have filed written statement to main suit as well as reply to application at hand. Beside above, an application bearing OMP No. 539 of 2026 in Civil Suit No. 7 of 2026 under Order 39 Rule 4 CPC has also been filed by defendants, praying therein for vacation of stay granted by this Court vide order dated 06.05.2026.

14. Precisely, it is averred in the reply that ad interim order was obtained without disclosing rent arrears, utility dues, GST liability, violation of reserved room clause and occupation beyond the agreed premises. It is also averred in the reply that no forcible possession of the suit property was taken, rather applicant/plaintiff himself handed over possession of the suit property.

15. I have heard the learned counsel for the parties and gone through the records of the case.

16. Before ascertaining the correctness of rival submissions, this Court finds it necessary to take note of judgment passed by Hon'ble Apex Court in case titled ***Mahadeo Savlaram Shelke v. Puna Municipal***

Corporation, (1995) 3 SCC 33, wherein Hon'ble Apex Court, while relying upon its earlier judgment in ***Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719***, observed that phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for an incantation, but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances, and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiffs could be adequately compensated, if injunction is refused. The existence of prima facie 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 the 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 the one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing 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 which 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. Hon'ble Apex Court has held as under:

“...the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. The existence of prima facie right and infraction of the enjoyment of him 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 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 which 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. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

17. Apart from aforesaid well established parameters/ingredients, conduct of the party seeking injunction is also of utmost important, as has been held by Hon'ble Apex Court in case **M/S Gujarat Bottling Co.Ltd. &**

Ors. v. The Coca Cola Co. & Ors., AIR 1995 2372. In case a party seeking injunction fails to make out any of the three ingredients, it would not be entitled to injunction.

18. A Coordinate Bench of this Court in **Ashok Kapoor vs. Murtu Devi 2016 (1) Shim. LC 207**, had an occasion to deal with the issue of injunction, wherein it, having taken note of various judgments rendered by Constitutional courts, concluded as under:

“47. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff:-

- (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction;
- (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's right or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and
- (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted.

In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the Court with clean hands.”

19. Precisely, the case of the applicant/plaintiff as has been highlighted in the main suit as well as application at hand is that once vide lease agreement dated 30.07.2025, non-applicants/defendants had leased out the hotel / suit property for 15 years in his favour and no breach of terms and conditions of the lease agreement was ever made by the applicant/plaintiff, there was no occasion for the non-applicants/defendants to interfere with the peaceful possession of the applicant/plaintiff in the suit property.

20. While making this Court peruse documents adduced on record along with plaint, Mr. R.K. Bawa, learned Senior Counsel representing the applicant/plaintiff vehemently argued that till the month of September, 2026, monthly rent stands paid to the non-applicants/defendants and at no point of time, peaceful possession of the suit property was handed over to the non-applicants/defendants, who, though, attempted to create ruckus by forcefully taking possession of two rooms of the hotel. He further submitted that though in terms of lease agreement, security amount of Rs. 5,00,000/- was payable to the non-applicants/defendants, but despite plaintiff's having tendered a cheque amounting to Rs. 5,00,000/-, they failed to encash the same within stipulated time and as such, they are estopped from claiming that there is a material breach of terms and

conditions of the lease agreement. Mr. Bawa, further submitted that there is no clause in the lease agreement, which enables the non-applicants/defendants to unilaterally terminate the lease deed, that too without giving any notice. He submitted that at no point of time, notice, if any, came to be served upon the applicant/plaintiff with regard to termination of the lease agreement, which otherwise could not have been terminated during the subsistence of lock in period.

21. On the contrary, Mr. Vishal Mohan, learned Senior Advocate, appearing on behalf of the non-applicants/defendants, while praying for vacation of interim order dated 06.05.2026, vehemently argued that applicant/plaintiff is not entitled to equitable relief of injunction on account of his having not approached this Court with clean hands. He submitted that applicant/plaintiff has withheld material facts from the Court and as such, is not entitled to equitable protection. He further submitted that at the time of passing order dated 06.05.2026, applicant failed to disclose that he did not pay monthly rent regularly and, at present, is in arrears of rent. Mr. Mohan, submitted that besides arrears of rent, there is a GST liability, which is to be cleared by the applicant/plaintiff in terms of the terms and conditions contained in lease agreement. He further submitted that as per terms and conditions contained in lease agreement, two rooms were to be

kept reserved for the non-applicants/defendants, but afore applicant/plaintiff never abided by the aforesaid condition, rather did not permit non-applicants/defendants to enter their own property. He submitted that defaulting lessee cannot claim protection against the owner by breaching the very lease on which he relies. Lastly, Mr. Mohan submitted that applicant/plaintiff is enjoying commercial property without clearing liabilities and as such, continued injunction causes direct prejudice to ownership and commercial rights of non-applicants/defendants. While stating that since dispute is about rent, possession and business loss, all of which are capable of monetary assessment, no irreparable injury is caused to applicant/plaintiff, rather on account of non-payment of rent, irreparable injury is being caused to the non-applicants/defendants.

22. To substantiate his aforesaid submissions, Mr. Mohan specifically made this Court peruse lease agreement, which specifically provides that in the event of material breach committed by the applicant/plaintiff, non-applicants/defendants would be entitled to terminate the lease without issuance of prior notice under Clause H(vii) defined in the agreement and mutually signed by both the parties. He further submitted that lock in period would not apply in the event of

material breach under Clause A of the agreement. He further submitted that otherwise also, after handing over possession of the hotel, lease agreement stands terminated. The possession was with plaintiff till 10.06.2026 when he handed over the same to defendant No. 1. He submitted that applicant/plaintiff committed several material breaches as specifically contained under Clause C of the lease agreement, including but not limited to non maintenance of hotel premises, failure to maintain the property in a clean and tenantable condition, failure to renew statutory licenses including tourism license, selling hotel rooms below the prescribed rates of Himachal Pradesh Tourism Development Corporation, thereby adversely affecting the goodwill and commercial reputation of the suit property, failure to properly maintain the infrastructure and other contractual defaults. While referring to Clause E of the lease agreement, Mr. Mohan, learned Senior Advocate, argued that applicant/plaintiff was under contractual obligation to deposit refundable security deposit of Rs. 5,00,000/- with defendant No. 1 at the time of execution of lease deed. However, despite repeated requests and reminders, applicant/plaintiff never deposited said security amount, and such failure constitutes a serious and fundamental breach of lease agreement from its very inception.

23. While stating that non-applicants/defendants have not received any dues from the applicant/plaintiff except the nine months' rent amounting to Rs. 13,80,000/- given by applicant/plaintiff, Mr. Mohan, submitted that a sum of Rs. 6,40,000/- plus GST and other bills are still payable to the non-applicants/defendants. While stating that non-applicants/defendants are not indulging in unlawful acts of trespass, nuisance in property or restraining the staff from performing their duties, Mr. Mohan, made this Court peruse document adduced on record, i.e. Day Book, to state that applicant/plaintiff himself handed over the possession of the suit property to the non-applicants/defendants on 10.06.2026. He submitted that bare perusal of averments contained in the plaint itself suggests that applicant/plaintiff was incurring losses and as such, he himself proceeded to hand over possession of the suit property to the non-applicants/defendants.

24. Admittedly, in the case at hand, lease agreement dated 30.07.2025 was executed inter-se parties, whereby non-applicants/defendants agreed to lease out the suit property for fifteen years in favour of applicant/plaintiff for a monthly rent of Rs.1,66,667/- throughout the initial three years lease term commencing from 1.8.2025 to 31.7.2028, amounting to total annual rent of Rs. 20,00,000/-. In terms of

the lease agreement, non-applicants/defendants were granted lease of suit property for a fixed lock in period term of three years, during which period none of the parties could terminate the lease, however, it came to be specifically provided in the aforesaid lease agreement that premature exit, abandonment or discontinuance of operation by lessee shall be deemed as a material breach of the agreement. Clause H(vii) clearly provides that lock in period would not apply in the event of material breach under Clause A of the agreement. Allegedly, applicant/plaintiff committed several material breaches as specifically contained under Clause-C of the lease agreement. Clause E of lease agreement suggests that applicant/plaintiff was under contractual obligation to deposit refundable security of Rs. 5,00,000/- with non-applicants/defendants at the time of execution of lease deed.

25. As per non-applicants/defendants, aforesaid security amount never came to be paid. Interestingly, aforesaid factum, if any, never came to be pleaded in the plaint, as such, this Court is persuaded to agree with learned Senior Counsel for non-applicants/defendants that applicant/plaintiff has not approached this Court with clean hands. However, during arguments, it came to be argued at the behest of applicant/plaintiff that though sum of Rs. 5,00,000/- on account of security was paid to the non-applicants/defendants by way of cheque, but

they failed to encash the same within period of validity. Though aforesaid claim of the applicant/plaintiff has been seriously refuted by the defendants, but even otherwise, documents adduced on record by the applicant/plaintiff with regard to audit report submitted by Chartered Accountant of the applicant/plaintiff clearly reveal that amount, if any, paid on account of security by the applicant/plaintiff has not been shown in the books of accounts.

26. Though Mr. R.K. Bawa, learned Senior Counsel representing the applicant/plaintiff, attempted to argue that since cheque of Rs. 5,00,000/- issued in favour of non-applicants/defendants was never presented for encashment, as a result thereof, same was never debited from bank account of the applicant/plaintiff, there was no occasion, if any, for Chartered Accountant to show aforesaid amount in the balance sheet / accounts, but this Court is not persuaded to agree with learned Senior Counsel representing the applicant/plaintiff for the reason that once accounts of the applicant/plaintiff were audited by a Chartered Accountant, amount, if any, tendered / paid towards security, that too through cheque, ought to have been taken into consideration while preparing audit report. Moreover, having perused the audit report submitted by Chartered Accountant qua the bank accounts maintained by

the applicant/plaintiff, this Court is persuaded to agree with learned Senior Counsel representing the non-applicants/defendants that there are variations in accounts.

27. Besides, it is apparent from the record that applicant/plaintiff, after his having entered into lease agreement dated 30.07.2025, failed to deposit the refundable security of Rs. 5,00,000/-. Non-applicants/defendants, on account of aforesaid material breach, were not required to issue prior notice under Clause H(vii) to the applicant/plaintiff expressing therein intention to terminate the contract. Similarly, bank statements placed on record by the applicant/plaintiff clearly prove that he defaulted on a number of occasions in paying the monthly rent. Bank statement placed on record clearly reveals that sum of Rs. 13,80,000/- was received by the non-applicants/defendants, which is rent for nine months.

28. Though there is also some dispute with regard to balance payment, which as per plaintiff comes out to be Rs. 6,40,000/- plus GST and other bills, but this Court, at this stage, need not go into the aforesaid aspect of the matter, rather shall confine itself to ascertain the correctness of submissions made at the behest of applicant/plaintiff that there is a material breach committed by the applicant/plaintiff, as a result of which, non-applicants/defendants were entitled to terminate the lease without

issuance of prior notice under Clause H(vii) defined in the agreement, signed by both the parties.

29. Material breach Clause-A clearly provides that in the event of breach of any condition contained in aforesaid clause, non-applicants/defendants could terminate the lease and there was no requirement, if any, to issue notice. Leaving everything aside, this Court, having carefully perused the extract of Day Book, is persuaded to agree with the non-applicants/defendants that applicant/plaintiff himself handed over the possession of the suit property to them on 10.06.2026.

30. Though Mr. R.K. Bawa, learned Senior Counsel, while referring to aforesaid document, attempted to argue that same cannot be construed to be handing over possession, rather material / articles mentioned in the aforesaid document were handed over on the insistence of applicants/plaintiff, who was unnecessarily causing unlawful interference in peaceful possession of the suit property, however, having regard to the nature of articles mentioned in aforesaid document, this Court is of the view that in case applicant/plaintiff had no intention to hand over the possession, there was no requirement, if any, for him to hand over linens as well as other articles.

31. Careful perusal of averments contained in plaint as well as other documents adduced on record by the respective parties, this Court finds that non-applicants/defendants have suffered huge monetary loss to the tune of Rs. 1,27,20,000/-. If it is so, this Court is compelled to draw an inference that on account of his having suffered losses, applicant/plaintiff was not in a position to run the hotel and as such, he himself handed over possession of the same to non-applicant/defendant No. 1 on 10.06.2026, as is otherwise being claimed by the non-applicants/defendants.

32. Having taken note of aforesaid facts, this Court has no hesitation to conclude that no prima facie case exists in favour of applicant/plaintiff as far as grant of equitable relief of injunction is concerned, rather, on account of his having not approached this Court with clean hands, no equitable protection as prayed for can be granted.

33. If the plaint filed by applicant/plaintiff is read in its entirety, there is suppression of material facts. It never came to be pleaded by the applicant/plaintiff that he is in arrears of rent and has failed to deposit security amount. A defaulting lessee cannot claim protection against the owner, especially when there is overwhelming material adduced on record by the defendant suggestive of the fact that plaintiff has breached the terms and conditions of the lease. Balance of convenience is also against

applicant/plaintiff, who is enjoying commercial property without clearing liabilities. To the contrary, continued injunction, if permitted, would cause direct prejudice to ownership and commercial rights of the defendant. Since dispute is about rent, possession and business loss, and there is material adduced on record suggestive of the fact that applicant/plaintiff is in arrears of rent, no irreparable injury can be said to have been caused to him. To the contrary, non-applicants/defendants on account of non-payment of monthly rent are suffering continuous loss. Applicant/plaintiff cannot be permitted to occupy the hotel premises without there being payment of rent and other charges.

34. By now it is well settled that a person who seeks equity must first do equity. Since in the instant case, applicant/plaintiff has not performed his own obligation under the lease deed, rather has attempted to conceal the facts, he cannot be granted equitable relief of injunction. Reliance in this regard is placed upon *Gujarat Bottling Co. Ltd. (supra)*.

35. Reliance is also placed upon judgment passed by Hon'ble Apex Court in ***S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs and others, AIR 1994 SC 853***, wherein it came to be ruled that a litigant who approaches the Court must come with clean hands. Fraud and suppression vitiate judicial proceedings.

36. In *Prestige Lights Ltd. v. State Bank of India*, (2007) 8 SCC 449, Hon'ble Apex Court held that suppression of material facts disentitles a party from discretionary equitable relief.

37. In *K.D. Sharma v. Steel Authority of India Limited and others*, (2008) 12 SCC 481, it came to be ruled by Hon'ble Apex Court that a party invoking equitable jurisdiction must disclose all material facts fully and fairly, concealment is abuse of process.

38. In *Kishore Samrite v. State of Uttar Pradesh and others*, (2013) 2 SCC 398, Hon'ble Apex Court held that false pleadings, suppression and abuse of process must be dealt with firmly by the Court.

39. Since this Court is convinced that order dated 06.05.2026 has been obtained by concealing material facts, prayer made on behalf of non-applicants/defendants to vacate the interim protection deserves to be allowed.

40. Consequently, in view of detailed reasoning recorded hereinabove, this Court finds no merit in the present application and as such, same is dismissed and interim order dated 6.5.2026 is vacated.

41. Needless to say, observations or findings recorded hereinabove shall remain confined to the disposal of the application only and shall have

no bearing on the main suit, which shall be decided on the basis of totality of pleadings and evidence led on record by respective parties.

OMP No. 539 of 2026

42. In view of order passed in the aforesaid application, application under Order 39 Rule 4 CPC is allowed and the same is disposed of accordingly.

COMS No.7 of 2026

43. List after four weeks.

September 30, 2026

(Manjit)

**(Sandeep Sharma),
Judge**