

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 450/2023

Decided on: 29.07.2026

Canara Bank

.....Petitioner

Versus

Kuldeep Sharma & anr.

...Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

*Whether approved for reporting?*¹

For the Petitioner: Mr. Arvind Sharma, Sr. Advocate with Mr. Hem Singh Thakur, Advocate.

For the Respondents: Mr. Mohit Jaitak, Advocate (through V.C.) and Mr. Abhishek Nagta, Advocate, for respondent No.1.

Respondents No. 2 to 4 ex-parte.

Mr. Anil God, Advocate, for respondent No.5.

Romesh Verma, Judge (oral)

The instant petition arises out of order, dated 6.5.2023, as passed by the learned Senior Civil Judge, Court No. II, Una, whereby an application filed by defendant No.1/petitioner under the provisions of Order VII Rule 11 of CPC came to be dismissed.

2 Facts, as emerge in the present case, are that the plaintiff/respondent filed a suit before the learned trial court

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

on 16.8.2017 seeking declaration to the effect that simple mortgage deed, dated 10.12.2013 by plaintiff/respondent No.1 in favour of defendant No.1/petitioner qua land measuring 0-05-25 hectares, comprised of Khewat No. 362, Khatauni No. 432, Khasra No.202/1, as entered in the jamabandi for the year 2008-09, situated in Upmahal Jalgran, Tehsil and District Una, H.P. with superstructure thereupon and subsequent mutation No.2328, dated 17.9.2015 on the basis of alleged mortgage deed are wrong, illegal, null and void being result of fraud and without consideration.

3 The defendant No.1/petitioner has filed comprehensive written statement denying therein all the averments as made in the plaint.

4 Before framing of the issues, defendant No.1/petitioner filed an application under VII Rule 11 of the CPC for rejection of the plaint stating therein that the suit is not maintainable and triable by the Court inasmuch as Section 34 of the SARFAESI Act 2002 bars the jurisdiction of Civil Court in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institution Act, 1993.

5 The aforesaid application came to be resisted by the plaintiff/respondent by refuting all the averments as made in the application. It was stated that since act and conduct of defendant No.1/petitioner is vitiated on account of fraud, therefore, the suit is very much maintainable before the learned trial court.

6 The learned trial court vide its impugned order dated 6.5.2023 dismissed the application, as filed by defendant No.1/petitioner.

7 Feeling dissatisfied by the order, dated 6.5.2023, defendant No.1/petitioner has approached this Court by filing instant petition under article 227 of the Constitution of India.

8 It is contended by Mr. Arvind Sharma, learned Senior Advocate, assisted by Mr. Hem Singh Thakur, Advocate, for the petitioner that the impugned order suffers from illegality on account of the fact that the same is non-speaking order and there is no consideration of the pleadings and submissions of the learned counsel for the parties. He has submitted that the impugned order has been passed by the learned trial Court in a routine manner and, thus, is not sustainable in the eyes of law.

9 This Court is in agreement with the submissions as made by the learned senior counsel. Perusal of the impugned order reveals that the learned trial court has not taken into

consideration the pleadings and submissions of the learned counsel for the parties and has failed to adjudicate the point in controversy in view of the proposition as laid down by the law. Perhaps, the impugned order, as passed by the learned trial court, does not assign reasons and the same is non-speaking order.

10 Having observed so, this Court has no other option but to quash and set aside the impugned order by relegating the parties to the learned trial Court with a direction to decide the application under Order VII Rule 11 of CPC afresh by affording an opportunity of hearing to both the parties and to take the same to its logical end. Ordered accordingly.

11 The parties are directed to appear before the learned trial court on **12.08.2026**.

12 Consequently, the instant petition is disposed of in the aforesaid terms. Pending application(s), if any, also stands disposed of.

13 Any expression of opinion, hereinabove, shall have no bearing on the merits of the case and shall be deemed to have been made only for the purpose of disposal of instant petition.

29th July, 2026
(pankaj)

(Romesh Verma)
Judge