

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.383 of 2026

Date of decision:06.08.2026

Inderjeet	...Petitioner
Versus	
Lalman & another	...Respondents

Coram:

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

Whether approved for reporting?¹

For the petitioner : Mr. B.L. Soni, Advocate.

For the respondents : Mr. R.K. Sharma, Senior Advocate with
Mr. Arun Kumar, Advocate.

Romesh Verma, Judge (oral):

The instant petition has been filed against the order dated 02.05.2026 as passed by the Learned Senior Civil Judge, Kullu, District Kullu, H.P.

2. The facts, as emerge in the present case, are that the decree holder/plaintiff Lalman filed a suit for specific performance of contract and permanent prohibitory injunction in the Court of the learned Senior Civil Judge, District Kullu on 27.05.2019 against the petitioner.

3. As per the case set up by the decree holder, the plaintiff and defendant No. 1, Inderjeet, entered into an agreement to sell in respect of the land/building comprising in Khata No. 721 min, Khatauni

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

No.937 min, Khasra No.3470/1, measuring 00-03-00 Bighas, situated at Mohal Kashawari/25/49, Tehsil Bhunter, District Kullu, H.P., for a total sale consideration of Rs.25,00,000/- on 05.11.2018.

4. The said suit was resisted by the judgment debtor Inderjeet, by filing written statement on various grounds.

5. The learned trial Court framed the issues in the said suit on 28.02.2021 and after calling for evidence from the respective parties, vide its judgment and decree dated 29.11.2024, decreed the suit of the plaintiff in the following manner:

“(i) Plaintiff is entitled for the decree of specific performance of agreement Ex. PW1/B and defendant No.1 is directed to execute the sale deed in favour of plaintiff within one month, failing which, execution will follow against defendant No.1 as per provision underlying Order 21 Rule 32 CPC. Plaintiff shall pay the remaining amount of Rs. 10,00,000/- (ten lacks) at the time of registration of sale deed.

(ii) Plaintiff is also entitled for alternative decree of recovery of his earnest amount of Rs. 15,00,000/- alongwith interest at the rate of 9% per annum from the date of agreement till date of decree and further interest at the rate of 6% per annum from the date of decree till realization of entire decretal amount.

(iii) Plaintiff is also entitled for the decree of permanent prohibitory injunction by which defendant No.1 is directed not to alienate the suit property to third person except plaintiff

(iv) However, it is made clear that this decree of specific performance against defendant No.1 shall not have any effect over the charge of the defendant No.2 over the suit land as mortgagee and its right to sell the suit property for realization of the loan amount. Hence, mortgage of defendant No.2 over the suit property shall remain continue till defendant No.2 recovers the entire loan amount from defendant No.1.

(v) No order as to costs. Decree sheet be prepared accordingly. File, after needful be consigned to the Records.”

6. After the passing of the decree in the year 2024, the decree holder, Lalman, filed an application under Order 21 Rules 10, 11, 32, and 35 of the Code of Civil Procedure for execution of ex-parte decree passed by learned trial Court.

7. It was contended in the application that the judgment debtor has not opted to assail the judgment and decree dated 29.11.2024, passed by the learned trial Court. Instead of filing an appeal, the Judgment debtor/present petitioner filed a false and malicious application under Order 9 Rule 13 of the CPC. Therefore, it was prayed that the execution petition be decided in accordance with law for the satisfaction of decree in favour of decree holder and against the judgment debtor.

8. The said execution petition under Order 21 Rules 10, 11, 32, and 35 of the CPC came to be resisted by the judgment debtor,

Inderjeet, by taking various preliminary objections. The judgment debtor/petitioner sought dismissal of the execution petition on the ground that since he had instituted an application under the provisions of Order 9 Rule 13 of the CPC for setting aside ex-parte decree dated 29.11.2024, therefore, the execution petition was not maintainable in its present form. The application under Order 9 Rule 13 of the CPC has also been appended with the present petition.

9. The learned trial Court, vide its impugned order dated 02.05.2026, came to the conclusion that the judgment debtor has made every effort to frustrate the decree passed by the Court. Consequently, the decree holder was directed to file the draft sale deed and deposit the balance sale consideration amount in the Court by the next date of hearing, i.e., 09.06.2026.

10. The matter was listed before this Court on 22.07.2026 and at the request of the learned counsel for the petitioner, the matter was fixed for 23.07.2026. On the said date, *dasti* notices were issued for the service of the respondents, returnable on 06.08.2026. Today, as per the report of the Registry, the respondents stand duly served and Mr. R.K. Sharma, learned Senior Counsel along with Mr. Arun Kumar, Advocate, has put in appearance on their behalf.

11. It is contended by Mr. B.L. Soni, learned Counsel for the judgment debtor/petitioner that the impugned order passed by the

learned trial Court is erroneous and liable to be quashed and set aside. He submitted that the learned trial Court erred in passing the impugned order in view of the fact that once an application under Order 9 Rule 13 of the CPC has been filed by the judgment debtor for setting aside ex-parte decree, the order under challenge could not have been passed. He further submitted that since the directions of the learned trial Court have not been complied with by the present respondent, therefore, the execution petition is not maintainable.

12. On the other hand, Mr. R.K. Sharma learned senior counsel, duly assisted by Shri Arun Kumar, Advocate, vehemently defended the impugned order passed by the learned trial Court, stating that the present petitioner is bent upon to frustrate the decree which stood passed way back on 29.11.2024. He further submitted that in order to frustrate the rights of the present respondent, the judgment debtor transferred the suit land in favour of his son in a clandestine manner. He submitted that keeping in view the conduct of the present petitioner, whereby he has been able to drag the present respondent in an uncalled for litigation for more than 8 years, the present petition deserves to be dismissed with heavy costs.

13. I have heard the learned Counsel for the parties and have also gone through the material available on record.

14. Admittedly, the learned Senior Civil Judge, Kullu, H.P., vide its judgment and decree dated 29.11.2024, decreed the suit by passing a decree for specific performance of the agreement, directing the defendants to execute the sale deed in favour of the plaintiff within one month, failing which execution would follow against defendant No.1 as per the provisions of Order 21 Rule 32 of the CPC. Further, the plaintiff was directed to pay the remaining amount of Rs. 10,00,000/- at the time of registration of the sale deed.

15. As per the decree, the plaintiff was also held entitled to an alternative decree for recovery of his earnest money of Rs. 15,00,000/- along with interest at the rate of 9% per annum from the date of agreement till the date of decree and future interest at the rate of 6% per annum from the date of decree till its realization. The plaintiff was held entitled for decree of permanent prohibitory injunction whereby defendant No. 1 was directed not to alienate the suit property to third person except the plaintiff.

16. Finally, it was held that the decree for specific performance against defendant No. 1 shall not have any effect over the charge of defendant No.2 over the suit land as a mortgagee and its right to sell the suit property for the realization of the loan amount. Hence, the mortgage of defendant No. 2 over the suit property shall continue till defendant No. 2 recovers the entire loan amount from defendant No. 1.

17. Admittedly, the said judgment and decree has not been assailed by the petitioner before any superior Court. However, it has been stated by the learned counsel for the petitioner that an application under Order 9 Rule 13 of the CPC has been filed for setting aside the ex-parte decree.

18. The case file reveals that the civil suit for specific performance of contract and permanent prohibitory injunction came to be instituted on 27.05.2019. The defendants were duly served in the civil suit and contested the same by filing separate written statements. However, subsequently, an ex-parte decree came to be passed against the said defendants. It has come on record that in order to prejudice the rights of the present respondent, the judgment debtor/petitioner transferred the suit land in the name of his son to create a multiplicity of litigation. The petitioner has been able to prolong the litigation, even though the agreement to sell was executed between the parties way back in 2018. For the last 8 years, the judgment debtor/petitioner has been able to prolong the litigation on one pretext or another with the sole endeavour to create hardship to the respondent.

19. As far as the contention raised by the learned counsel for the judgment debtor that the respondent failed to comply with the judgment passed by the learned trial Court is concerned, learned senior counsel for the respondent submitted that from day one, his

client is ready and willing to perform his part of the agreement and to show his *bona fides*, his client has deposited the remaining sale consideration before the learned trial Court.

20. It is contended by the learned senior counsel for the respondent that the story which has been projected by the present petitioner that the respondent failed to comply with the directions passed by learned trial Court is false, incorrect and misleading. It is submitted that initially, after filing the written statement, the judgment debtor/petitioner absented himself from the Court proceedings and only after when the decree was passed, he filed an application for setting aside the ex-parte decree. Immediately, after the passing of the decree, the present respondent/decreed holder requested the petitioner to execute the sale deed and accept the balance amount of sale consideration. However, the thrust of the petitioner/ judgment debtor is to avoid the execution of the decree.

21. This Court is of the considered opinion that there is no infirmity or perversity in the impugned order passed by the learned trial Court. The judgment and decree passed by the learned Senior Civil Judge, District Kullu, H.P., dated 29.11.2024, is strictly in consonance with the provisions of law. The conduct of the judgment debtor/petitioner is not above board, whereby he has transferred the suit land in favour of his son, which clearly demonstrates that the

object of filing the present petition is to linger on the proceedings and to avoid execution of decree.

22. It is a well-settled principle of law that a judgment and decree has to be implemented in its letter and spirit. Once a decree is passed by the competent Court of Law, the judgment debtor/petitioner cannot be permitted to approbate and reprobate or to unnecessarily harass the decree holder. Whatever best the decree holder could have done, he has done in the attending facts and circumstances of the case. Ever since the institution of suit, the respondent/decreed holder is stating that he is ready and willing to perform his part of the contract, however, the judgment debtor absented himself after filing the written statement and only after the passing of the decree against him, he has filed an application for setting aside the said decree.

23. In order to show his *bona fides*, the decree holder has deposited the balance sale consideration before learned trial Court. Therefore, the only consequence which follows is that the decree which stood passed by the learned trial Court on 29.11.2024 has to be executed. This Court is convinced by the submission of the learned senior counsel that the petitioner has not approached the Court with clean hands, as in order to prejudice the rights of the respondent, he sold the suit land to his son to frustrate the rights of the decree holder in the present proceedings.

24. The learned counsel for the petitioner could not point out any perversity or illegality in the impugned order. As a result of which, this Court is of the opinion that the impugned order as passed by the learned trial Court does not suffer from any perversity and the same is legal, valid, and justifiable, and requires affirmation.

25. The Hon'ble Apex Court has repeatedly held that while exercising supervisory jurisdiction under Article 227 of the Constitution of India, the High Court does not act as an Appellate Court to interfere with the Orders passed by Subordinate Courts.

26. Hon'ble Apex Court in **Civil Appeal No. 2226 of 2010**, titled **State of Haryana & others vs. Manoj Kumar**, decided on 09.03.2010 has held as follow:-

“23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of Mohd. Yunus v. Mohd. Mustaqim & Others (1983) 4 SCC 566. The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. for this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. This court again clearly reiterated the legal position in Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this court in Rena Drego (Mrs.) v. Lalchand Soni & Others (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

28. *In Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others* (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.”

27. To the similar extent, the Apex Court in **Civil Appeal No. 3072 of 2022**, titled as **Ibrat Faizan vs. Omaxe Buildhome Private Limited**, decided on 13.05.2022 has held as follows: -

“14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58 (1) (a) (iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97, which has been consistently followed by this Court (see the recent decision of this Court in the case of *Garment Craft v. Prakash Chand Goel*, 2022 SCC Online SC 29). Therefore, while exercising the powers under Article 227 of

the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigor of the powers to be exercised under Article 227 of the Constitution of India.”

28. No other point was urged by the learned counsel for the parties.

29. Consequently, in view of the observations made hereinabove, this Court finds no merit in the present petition and the same is accordingly dismissed with costs.

(Romesh Verma)
Judge

6th August, 2026.
(vt)