

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 421 of 2026
Date of Decision: 11.09.2026

Prakash Chand

...Petitioner.

Versus

Sh. Rajneesh Awasthi

...Respondent.

Coram

Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

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

For the respondent: Mr. Abhinav Ghabroo, Advocate.

Romesh Verma, Judge (oral)

The instant petition arises out of the order as passed by the learned Civil Judge, Baijnath, District Kangra, H.P., dated 21.07.2026, whereby the learned trial Court has issued necessary reference to the revenue authorities as well as to the SHO, Police Station, Baijnath, for providing police assistance to the Bailiff for the execution of the warrant of possession in terms of the decree passed by the learned trial Court dated 24th July, 2024.

2. The facts as emerge in the present case are that the respondent/plaintiff, Rajneesh Awasthi, filed a suit for permanent prohibitory injunction against the present petitioner/judgment debtor,

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

Prakash Chand, in the Court of learned Civil Judge, Baijnath, District Kangra, on 10th June, 2019.

3. As per the case asserted by the plaintiff, he is exclusive owner-in-possession of the suit land, having purchased the same by way of a sale deed dated 11th June, 2015, registered vide Registration No. 614/2015, from the previous owner of the suit land. The defendant is a complete stranger to the suit land and has no right, title, or interest over the same. It was averred that the plaintiff remains out of station in connection with his business work and, taking advantage of his absence, the defendant interfered with the suit land by removing/cutting trees and digging the suit land in order to raise a permanent structure. It was further stated that on 8th June, 2019, when the plaintiff visited his native village, he came to know about the unlawful act of the defendant and confronted him, whereupon the defendant admitted the construction work carried out by him on 5th June, 2019.

4. The said suit was contested by the present petitioner/judgment debtor on various grounds. It was denied that he interfered with the suit land by cutting bushes and digging the same in order to raise a permanent structure. It was submitted that he had carried construction of his own house, for which he had received a grant from the Government under the Pradhan Mantri Awas Yojana to the tune of ₹1,65,000/-.

5. The learned trial Court framed the issues in the matter on 20th February, 2020, and vide its judgment and decree dated 24th July, 2024, passed a decree for permanent prohibitory injunction restraining the defendant/judgment debtor from raising any construction, digging, or excavating upon the suit land of the plaintiff comprised in Khata No. 277, Khatauni No. 488, Khasra No. 363, measuring 00-04-04 hectares, situated in Mohal Kothi, Mauza Paprola, Tehsil Baijnath, District Kangra, H.P.

6. The learned trial Court further granted the relief of mandatory injunction directing the defendant to remove the encroachment found on the suit land as shown in the demarcation report (Exhibit PW-5/B), and the same was ordered to form part of the decree.

7. The said judgment was put to enforcement by the decree holder/respondent by filing an application for the execution of the decree under the provisions of Order 21 Rules 10 and 32 of the Code of Civil Procedure.

8. On 7th March, 2026, after consideration, the learned Executing Court issued warrant of possession against the present petitioner/judgment debtor for delivering possession of the suit land comprised in Khata No. 277, Khatauni No. 488, Khasra No. 363, measuring 00-04-04 hectares, situated at Mohal Kothi, Mauza Paprola, Tehsil Baijnath, District Kangra, HP and the encroachment,

if any found, was ordered and directed to be removed from the suit land. Further, the report of demarcation (Exhibit PW-5/B) was also annexed with the warrant for the assistance of the bailiff.

9. Thereafter, the warrant of possession could not be executed, and finally on 21st July, 2026, it was ordered by the learned Civil Judge, Baijnath, District Kangra, HP that the warrant of possession issued by the Court was received back unexecuted as the warrant could not be executed due to the obstruction caused by the judgment debtor, Prakash Chand. The learned trial Court accordingly issued directions for providing assistance to the bailiff for the execution of the warrant of possession.

10. Feeling dissatisfied, the judgment debtor/petitioner has approached this Court assailing the said impugned order.

11. It is contended by Shri R.K. Sharma, learned Senior Counsel assisted by Mr. Arun Kumar, Advocate, for the petitioner that the impugned order passed by the learned trial Court is erroneous and liable to be set aside. He further submits that the learned trial Court has not appreciated the point in controversy and has wrongly passed the said order.

12. On the other hand, Mr. Abhinav Ghabroo, learned counsel appearing for the respondent, has defended the impugned order passed by the learned trial Court. He submits that this Court, while exercising powers under Article 227 of the Constitution of India, will

not act as an appellate court and will not disturb the well-reasoned order passed by the learned trial Court.

13. I have heard learned counsel for the parties.

14. Admittedly, in the present case, a suit for permanent prohibitory injunction and mandatory injunction was filed by the plaintiff/respondent against the defendant/judgment debtor. The said suit came to be decreed on 24th July, 2024, whereby a decree for permanent prohibitory injunction and mandatory injunction was passed by directing the defendant to remove the encroachment as shown in demarcation report Exhibit PW-5/B. It has been fairly conceded by learned counsel for the parties that initially the said judgment was not assailed by the judgment debtor/petitioner. However, now, after the issuance of the warrant of possession, the defendant has preferred an appeal against the said judgment along with an application under Section 5 of the Limitation Act.

15. The learned trial Court had passed the judgment and decree on 24th July, 2024, and the said decree was put to execution by the decree holder/plaintiff. The learned trial Court, while enforcing the said decree, issued warrant of possession, and when the same could not be executed, the SHO, Police Station, Baijnath, was directed to provide police assistance to the Bailiff for the execution of the warrant of possession.

16. This Court is of the considered opinion that once a decree has been passed by the learned trial Court and there is no stay order granted by a superior Court, the only order which could have been passed by the learned executing Court is the impugned order which has been passed. This Court does not find any infirmity in the impugned order, and the same has been passed strictly in accordance with law. Once the decree has not been set aside and there is no interim protection granted to the judgment debtor, the learned executing Court was well within its right to pass the impugned order. The decree holder is well within his right to execute the decree. The executing Court in the absence of any interim order is bound to enforce the judgment and decree.

17. The Hon'ble Apex Court has repeatedly held that the scope of interference in a petition filed under Article 227 of the Constitution of India is very limited. The Hon'ble Apex in ***Civil Appeal No(s).13801 of 2025***, titled as ***Shri Digant vs M/s P.D.T. Trading Co. & others***, has discussed the scope of interference while exercising the power under Article 227 of Constitution of India. The relevant paragraphs thereof read as under:-

"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a threeJudge Bench of this Court in Radhey Shyam & another v. Chhabi Nath & Ors. 1 This Court held that judicial orders of civil courts are

not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."

23. In the case on hand, the appellate court had considered whether the proceeding in detail the issue as to court was justified in trial with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration surrounding circumstances, the appellate court held that the trial court had committed no wrong proceeding with the matter court representing with noticed the the that defendants matter. The appellate Court noticed tht the advocate representing the defndants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them therefore, they could not engage another counsel Besides that, the record also indicated that the intention of the defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification procedure went consider the procedure prescribed for withdrawal Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate Court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our

view, appellate court's order was not amenable to interference in exercise of jurisdiction under Article 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with well reasoned order of the appellate Court."

18. The Hon'ble Apex Court in ***M/S GARMENT CRAFT Vs. PRAKASH CHAND GOEL, (2022) 4 SCC 181***, decided on 11.01.2022, has held that High Court while exercising Supervisory Jurisdiction will not act as a Court of First Appeal to reappreciate, reweigh the evidence on facts upon which the determination under challenge is based. The Hon'ble Supreme Court has held as follows:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under [Article 227](#) of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.¹ The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse,¹[Celina Coelho Pereira \(Ms\) and Others v. Ulhas Mahabaleshwar Kholkar and Others, \(2010\) 1 SCC](#) violation of fundamental principles of law or justice. The power under [Article 227](#) is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under [Article 227](#), this Court in [Estralla Rubber v. Dass Estate \(P\) Ltd.](#)² has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under [Article 227](#) of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

19. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex-parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex-parte decree and therefore the submission that the appellant came to know of the ex-parte decree only on release from jail on 6th May 2017

is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt 30 that the application for setting aside the exparte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."

19. In view of the observations made here-in-above, this Court does not find any infirmity in the impugned order passed by the learned Trial Court. Consequently, the present petition, being devoid of any merit, is dismissed.

20. However, it is made clear that observations as made in the present case are meant only for adjudication of present petition.

All the pending miscellaneous application(s) if any, shall also stands disposed of.

(Romesh Verma)
Judge

September 11, 2026
(Nisha)