

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 593 of 2025

Date of decision: 09.07.2026.

Om Prakash Garg (deceased) through LRs & another
...Petitioners.

Versus

Rakesh Kapila
...Respondent.

Coram:

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

*Whether approved for reporting?*¹

For the petitioners : Mr. Neeraj Gupta, Sr. Advocate
with Mr. Ajit Pal Singh Jaswal,
Advocate.

For the respondent : Mr. Naresh Sharma, Advocate.

Romesh Verma, Judge (Oral):

The instant petition arises out of impugned orders as passed by the learned Civil Judge, Court No.5, Shimla dated 20.07.2024 and dated 09.08.2024, whereby the evidence of the defendant/counter claimant was closed and counter claim came to be dismissed and thereafter the application filed by the petitioner/defendant under Order 47 read with Section 151 CPC was also dismissed.

2. Brief facts of the case are that plaintiff/respondent filed a suit for recovery of Rs. 1,20,000/- along with 12% interest per annum from the date of filing of the suit till realization of the amount against the petitioners/defendants.

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

3. The suit was contested by the petitioners/defendants by filing comprehensive written statement. The petitioners/defendants also filed counter claim against the plaintiff/respondent with a prayer that the non-claimants are liable to pay a sum of Rs. 1,52,338/- to the defendants/counter claimants for the restoration of the damaged portion.

4. After framing of the issues, the matter was fixed for leading the evidence by the respective parties.

5. Record reveals that the issues were framed by the learned trial Court on 19.01.2017. Thereafter, the case was fixed for the evidence of the plaintiff/respondent on 05.04.2017. Thereafter, the case was listed on different dates and finally the plaintiffs concluded their evidence on 16.09.2021. Thereafter, the matter was listed for the evidence of DWs on 25.10.2021, on which date, the case was adjourned and it was ordered that the examination-in-chief of the witnesses be filed by way of affidavit. Thereafter, the case was listed on 10.12.2021 and on the said date, learned counsel for the petitioners/defendants sought time for DWs and the matter was ordered to be listed for 19.02.2022. On the said date again, learned counsel for the defendants sought adjournment and the case was ordered to be listed for 15.06.2022. On the said date two DWs were present before the Court, however, the

said witnesses were deferred as the record was not available. Thereafter, the case was posted for 15.07.2022 and on the said date, the matter was adjourned for 28.08.2022. On the said date, it was observed that no DWs are present. The summons issued to DWs were received served but they did not remain present despite service. Thereafter, the case was adjourned for 10.10.2022. On the said date Presiding Officer was on leave and the case was ordered to be listed for 26.11.2022. On 26.11.2022 fresh notice was issued to the parties, returnable for 16.12.2022. Thereafter, on 16.12.2022, it was observed that the notice issued to the defendants did not receive back either served or unserved and it was ordered that fresh notice be issued for their presence as well as to their counsel, returnable for 04.03.2023.

6. Thereafter, again the case was listed on different dates and on 03.01.2024, DW from Municipal Corporation, Shimla was present but he had brought incomplete record and no other DWs were present. Therefore, it was ordered that the DWs be summoned for 18.04.2024. On 18.04.2024, the matter was adjourned for 18.05.2024 and it was observed that since the case file received by way of transfer from the Court of learned District Judge, Shimla, let notice be issued to defendants through counsel for 21.6.2024. On 21.06.2024, it

was observed by the learned Civil Judge, Court No.5 that perusal of the previous zimin orders shows that ample opportunities were granted to the defendants but till date, the defendants failed to adduce the evidence. It was ordered that since the Court deems it proper to grant last opportunity to the defendants to produce their evidence on self-responsibility for 20.07.2024. On the said date, the impugned order was passed by closing the evidence of the defendants and counter claim was dismissed.

7. Thereafter, petitioners/defendants filed an application under Order 47 read with Section 151 CPC for recalling the order dated 20.07.2024 and the said application came to be dismissed by the learned trial Court on 09.08.2024.

8. Feeling dissatisfied against these two orders, the petitioners/defendants have approached this Court by filing petition under Article 227 of the Constitution of India.

9. It is contended by the learned Senior Counsel for the petitioners that the impugned orders as passed by the learned court below are erroneous and liable to be quashed and set aside. He submits that the petitioners/defendants had taken steps for the service of DWs and on account of unavoidable circumstances, the DWs could not be examined. Therefore, no fault lies with the petitioners/defendants and the impugned

orders are very harsh and deserve to be quashed and set aside and after affording opportunity to the petitioners/defendants to lead the evidence and setting aside the order of dismissal of counter claim, the learned trial Court may be directed to proceed in the matter, in accordance with law.

10. On the other hand, learned counsel for the plaintiff/respondent has defended the impugned orders. He would submit that the learned court below has passed the well reasoned orders, which do not call for any interference while exercising powers under Article 227 of the Constitution of India.

11. I have heard learned counsel for the parties and have also gone through the case file.

12. Perusal of the case file reveals that admittedly various opportunities were granted to the petitioners/defendants to lead/conclude their evidence but since they failed to do so, the learned trial Court was well within its right to pass the impugned orders.

13. This Court is in agreement with the orders as passed by the learned trial Court, whereby it has been observed that various opportunities have been granted to the petitioner/defendants but they failed to lead their evidence. Thereafter, the Court was constrained to pass the impugned orders. This Court is of the considered opinion that after perusing the

record, it transpires that though steps were taken by the petitioners/defendants for leading the evidence of DWs, however, for one reason or the other, petitioners failed to examine those witnesses.

14. Therefore, this Court finds no infirmity in the impugned order to the extent whereby evidence of defendants /counter claimants has been ordered to be closed. However, in the interest of justice and as a matter of indulgence, one last and final opportunity is granted to the petitioners/defendants to lead/conclude their evidence by taking dasti summons and for that purpose, the learned counsel for the petitioner shall take appropriate steps within a period of two weeks from today. However, the indulgence is being shown to the petitioners, subject to payment of Rs. 20,000/- as costs to be paid to the plaintiff/respondent.

15. The learned counsel for the parties undertake to appear before the learned trial court on **17.07.2026**, on the said date, the learned trial Court is directed to fix the date for leading the evidence by the petitioners/defendants in support of their defence/counter claim. It is made clear that in case the cost, which has been imposed by this Court is not paid to the plaintiff/respondent, the benefit of the present order shall not be applicable to the petitioners/defendants.

16. In the natural consequences of the present order, the orders as passed by the learned Civil Judge, Court No.5, on 20.07.2024 and 09.08.2024 are ordered to be quashed and set aside by permitting the petitioners to lead/conclude their evidence as a last and final opportunity. The counter claim as filed by the petitioners/defendants is ordered to be restored to its original number with the direction to take the same to its logical end.

17. Accordingly, the petition is disposed of along with pending applications, if any.

(Romesh Verma)
Judge

9th July, 2026.
(kck)