

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 522/2026

Decided on: 24.09.2026

M/s Thakur Enterprises

.....Petitioner

Versus

Vidyavati Memorial Educational Society

....Respondent

Coram:

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

Whether approved for reporting?¹

For the Petitioners: Mr. Sanjay Jaswal, Advocate.

For the Respondents: Mr. Vinod Thakur and Ms. Shine Sehgal,
Advocates.

Romesh Verma, Judge (oral)

The present petition arises out of the order dated 06.06.2026, as passed by the learned Senior Civil Judge, Nurpur District Kangra, H.P., whereby an application filed by the plaintiff/respondent under Order order 1 Rule 10 read with Section 151 of CPC came to be allowed.

2 The facts, as emerge in the present petition, are that plaintiff/respondent filed a suit for recovery of Rs.

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

5,00,000/- along with interest @ 12% per annum w.e.f. 31.10.2022 till the realization of the whole amount against the petitioner/defendant. It has been averred in the plaint that the plaintiff is an educational society and is running education institution in Village Malkwal, Tehsil Nurpur, District Kangra, H.P. The defendant/petitioner is a proprietor of M/s Thakur Enterprises and the said firm deals in supply of steel and wooden shuttering, plates etc. on rent basis. The plaintiff, through its President, placed an order to defendant for supply of steel and wooden shuttering, plates etc. on rent basis for erecting pillars and laying down lintel in the premises of Vidyawati Memorial Educational Society at Village Malkwal. As per request of the defendant, the plaintiff on 31.10.2022, transferred an amount of Rs.5,00,000/- in advance in the account of defendant firm from its account, which stands duly received by the petitioner. Though, the defendant withdrew the said amount, however despite receiving an amount of Rs.5,00,000/- in advance for the supply of steel and wooden shuttering, plates, on rent basis, the defendant neither provided above items nor returned the amount of Rs.5,00,000/- to the plaintiff, despite repeated requests. Hence the aforesaid suit.

3 The defendant/petitioner has contested the aforesaid suit by filing written statement, wherein preliminary objections with respect to maintainability, estoppel, locus standi, cause of action etc. were raised. In para 6 of the preliminary objections, it has been specifically stated by the defendant/petitioner that wife of the defendant is proprietor of M/s Thakur Enterprises, who deals in supply of steel and wooden shuttering, plates etc on rent basis. The defendant has denied all the allegations, as levelled in the plaint and prayed for dismissal of the suit.

4 After filing of the written statement, the plaintiff/respondent filed an application under Order 1 Rule 10 read with Section 151 of CPC for arraying defendant, M/s Thakur Enterprises through its proprietor, Anita Devi, wife of Baldev Thakur in place of Baldev Thakur, son of Avtar Singh on the ground that the defendant/petitioner himself has taken specific stand that he is not the proprietor of defendant-Firm and rather, his wife, Anita Devi is the proprietor of defendant-Firm.

5 The defendant/petitioner resisted the aforesaid application by filing a reply and prayed for dismissal of the application.

6 The learned trial court vide its order, dated 06.06.2026 allowed the application and M/s Thakur Enterprises was ordered to be arrayed through its proprietor, Anita Devi instead of Baldev Thakur.

7 Feeling aggrieved by the impugned order, dated 06.06.2026, the defendant/petitioner has approached this Court.

8 It is contended by learned counsel for the petitioner that the impugned order, as passed by the learned trial court is erroneous and liable to be quashed and set aside. He has submitted that M/s Thakur Enterprises was arrayed through its proprietor Baldev Thakur, therefore, name of Anita Devi could not have been arrayed in place of Baldev Thakur. He would urge that after accepting the present petition, application under Order 1 Rule 10 of CPC as filed by the plaintiff/respondent deserves to be rejected.

9 On the other hand, learned counsel for the plaintiff/respondent has defended the impugned order. He would submit that this court, while exercising the powers under Article 227 of the Constitution of India, will not disturb the well-reasoned order as passed by the learned trial Court.

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

11 Admittedly, in the present case, plaintiff/respondent has filed a suit for recovery of Rs. 5,00,000/- along with interest @ 12% per annum w.e.f. 31.10.2022 till the realization of the whole amount against M/s Thakur Enterprises, through its proprietor, Baldev Thakur, son of Avtar Singh. When the defendant/petitioner filed written statement, in the preliminary objections it was categorically contended that proprietor of the defendant firm is Anita Devi, wife of Baldev Thakur. When the said objection was taken in the written statement, immediately the plaintiff/respondent filed an application under the provisions of Order 1 Rule 10 of CPC for arraying Anita Devi, wife of Baldev Thakur to be proprietor of M/s Thakur Enterprises in place of Baldev Thakur.

12 Order 1 Rule 10 of CPC reads as under:-

" 10. Suit in name of wrong plaintiff.-(

1)Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties- The Court may at any stage of the proceedings, either upon or without the

application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended--Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

13 From perusal of the provisions of Order 1 Rule 10 of the CPC, it is specifically clear that civil court can add or alter any party during the pendency of the proceedings to ensure a fair and complete trial.

14 As has been admitted by the defendant/petitioner himself in his written statement that proprietor of defendant-

Firm is Anita Devi and not Baldev Thakur, therefore, the challenge, as laid to the impugned order, is not sustainable and acceptable in the present proceedings. The Courts are meant to impart substantial justice and not be swayed by technicalities. Once objection has been raised by the defendant in his written statement, the plaintiff has immediately invoked the provisions of Order 1 Rule 10 of CPC without any delay. The ground of challenge is without any basis and merit, which deserves to be rejected.

15 Lastly, the learned counsel for the petitioner has submitted that the petitioner/defendant has filed his written statement, therefore, Anita Devi may be permitted to file her own independent written statement. To such submission, learned counsel for the respondent/plaintiff has taken strong objection and submitted that this Court has to see legality of the order, which is under challenge before this Court.

16 The Hon'ble Supreme Court has repeatedly held that while invoking provisions of Article 227 of the Constitution of India, High Court will not act as an appellate court and it is only in those cases, where the impugned order is perverse or which has been passed without any jurisdiction, the High Court will exercise the jurisdiction under Article 227 of the Constitution of India.

17 The power under Article 227 is limited to see that the Courts below function within the limits of their authority or jurisdiction. The High Court cannot interfere with the findings of fact recorded by the subordinate Court or Tribunal while exercising its jurisdiction under Article 227. The Hon'ble Apex Court has held that, over the last 50 years, it has consistently been observed that the limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with findings of fact or by setting aside the judgments of the courts below on merits.

18 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.”

19 To the similar extent, the Hon’ble 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.”

20 In the considered opinion of this court and in view of the observations as made hereinabove, this court does not see any jurisdictional error, perversity, or illegality in the impugned order.

21 Consequently, in view of aforesaid exposition of law and discussion, the present petition, being devoid of any merit,

deserves to be dismissed. Ordered accordingly. Pending miscellaneous application(s), if any, also stands disposed of.

22 Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case.

24.09.2026
(pankaj)

(Romesh Verma)
Judge