

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 801/2025

Reserved on: 21.09.2026

Decided on: 05.10.2026

Ishwar Singh (deceased) through LRs Petitioners

Versus

Roshan Lal Respondent

Coram:

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

Whether approved for reporting?¹

For the Petitioners: Mr. Bimal Gupta, Sr. Advocate with Ms. Kusum Chaudhary, Advocate.

For the Respondent: Mr. Tara Singh Chauhan, Sr. Advocate with Mr. Surya Chauhan, Advocate

Romesh Verma, Judge

The present petition arises out of the order, dated 26.09.2025, as passed by the learned Senior Civil Judge, Bilaspur, District Bilaspur, H.P., whereby the objections, as filed by the judgment debtor came to be dismissed and the execution petition, as filed by the decree holders, has also been dismissed.

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

2 The facts as emerge in the present case are that the decree holders/petitioners, filed a civil suit No. 86/1 of 1998 for dismantling of the structure constructed on the suit land by the judgment debtor/respondent and handing over the vacant possession to the plaintiff. The judgment and decree dated 20.07.2005, as passed by the learned trial Court, reveals that the decree holder had filed a suit for permanent prohibitory injunction against the defendant to restrain him from raising construction over the suit land comprised in Khasra No. 380/259 and Khasra No. 385/260, comprised in Khewat No. 10, Khatoni No. 10, situated in Up-Muhal Nihal, District Bilaspur, over which he had constructed his house and in addition to that, Khasra No. 373/259 was kept vacant, while Khasra No. 394/260 was being used as common path.

3 It was contended by the decree holder that the defendant had encroached over path comprised in Khasra No. 394/260 and started digging over Kharsa No. 380/259, belonging to the plaintiff, for constructing pillars of the house. Though, initially, suit as filed by the decree holder came to be dismissed by the learned trial Court, however feeling dissatisfied, he preferred an appeal in the Court of learned District Judge, Bilaspur. The learned first Appellate Court, vide its judgment and decree, dated 02.09.2006 in Civil Appeal No. 66 of 2005, decreed the suit as filed by the decree holder. The decree as passed by the learned trial Court was set aside, and it was held that the decree holder is entitled to possession of the suit land measuring 36 square meters area encroached upon by the

defendant, and further, he was restrained from interfering in the remaining vacant possession. The suit came to be decreed by the learned first Appellate Court by passing a decree of vacant possession to the extent of 36 square meters as per the Tatima attached with the demarcation report in the said suit.

4 It is an admitted fact that the defendant preferred a regular second appeal before this Court, and the said appeal also came to be dismissed. Thereafter, the decree holder instituted the execution petition under Order 21 Rule 32 of CPC for dismantling of the structure to the extent of 36 square meters on the basis of the decree, as passed by the learned District Judge, Bilaspur, on 02.09.2006. In the execution petition, it was prayed that that structure over 36 square meters of the suit land, as mentioned in Tatima attached with the demarcation report in the land comprising Khasra No.380/259/1 measuring 15 square meters and Khasra No. 385/260/1 measuring 21 square meters and vacant possession be handed over to the decree holder.

5 In the execution petition, warrant of possession was issued against the judgment debtor in terms of the decree. For the execution of the decree, local Commissioner was appointed to execute the warrant of possession. Before the warrant could be executed, the parties entered into a compromise on 15.11.2018. The said agreement was placed on record by the Local Commissioner, who had gone to execute the decree.

6 The parties had undertaken by virtue of the agreement to fulfill terms and conditions, as specified therein, instead of enforcing the decree. It was incorporated in the agreement that in order to have cordial relation between the parties, judgment debtor agreed to pay a sum of Rs. 4 lakh to the decree holder, for which he issued cheque No. 673635 dated 15.11.2018 for a sum of Rs. 3 lakh to be encashed immediately, and the other cheque No. 673636 of Rs. 1 lakh to be encashed on 10.01.2019. Further, the J.D./respondent was required to construct a concrete cement wall from the bottom of the cantilever on or before 10.04.2019, as per the satisfaction of the decree holder, with regard to length, breadth, and height and space to be occupied by the wall.

7 When the agreement was placed before the learned executing Court, though the J.D./respondent submitted to the Court that in terms of the agreement, he has complied with the same, however, the said fact was specifically denied by the decree holder.

8 In order to resolve the issue, the learned executing Court issued commission vide its order dated 02.04.2022 appointing Mr. Vijay Thakur, Advocate, to visit the spot and report compliance. As per the report of Mr. Vijay Thakur, Advocate, he returned the finding to the effect that he was not competent to report regarding the nature of the construction of the retaining wall. Thereafter, on the basis of the application, which was filed to appoint another Local Commissioner, Junior Engineer of H.P. Public Works Department

was directed to visit the spot and to file his report. The Junior Engineer in his report stated that he dismantled the portion of the wall in question covering an area of 1 meter in length, 15 centimeter thick, but could not find any steel in the same and he concluded that local material, i.e. Murram, has been used for the construction. Therefore, it is not an RCC wall.

9 To the said report, the J.D./respondent filed the objections, wherein it was stated that the report as submitted by the Junior Engineer is not proper, legal and effective in the eyes of law. As per the J.D./respondent, the Local Commissioner, in order to verify the quality of strength and material, dismantled/dug in the gap in each portion of the constructed portion, dismantled about 01 meter length and 15 centimeter thick, and found that the steel bar in the Danga has not been utilized, whereas local material in the disputed wall has been used. It was further stated that when the J.D./respondent started raising construction of RCC Danga for safety of his house, at the relevant time, decree holder did not make any objection in that regard and the concrete wall is good in compression and strength, as the same is around about 2 ½ feet wide.

10 It is the case of the objector/J.D. that he is not a professional Junior Engineer, but he is promoted by the Department from labour class to Junior Engineer. Further, he is not having degree and diploma in Civil Engineering, which clearly shows that his unprofessional work during inspection of the disputed wall

caused great loss to the J.D. It was stated in the objection that the report of the Local Commissioner is not based on the real facts, but is imaginary one. Therefore, fresh Local Commissioner be appointed by appointing Executive Engineer or Assistant Engineer of the HP Public Works Department, Bilaspur, by directing him to visit the spot and to inspect the disputed wall and report to the Court.

11 The said objections were duly replied by the decree holder and all the averments as made in the objection were specifically refuted and denied. As per the decree holder, Local Commissioner had visited the spot and checked the quality and material used in the construction of the disputed wall. As per decree holder, it was found that 'murram' material has been used while raising the construction of wall and even the steel has not been used in the same. The Local Commissioner found that the steel bar has not been used while raising the Danga. Therefore, it was denied that the J.D. has complied with the terms and conditions of the agreement dated 15.11.2018. It was stated that Junior Engineer is an expert and he was appointed with the consent of both the parties, therefore, there is no question of appointing fresh Local Commissioner.

12 The learned Executing Court, vide its impugned order dated 26.09.2025, while dismissing the objections as filed by the judgment debtor also dismissed the execution petition as filed by the decree holder on the ground that no further proceedings can be undertaken beyond the scope of decree.

13 Feeling dissatisfied, the decree holder/petitioner has approached this Court by assailing the impugned order passed by learned executing Court.

14 It is contended by Mr. Bimal Gupta, learned Senior Advocate, duly assisted by Ms. Kusum Chaudhary, Advocate, for the petitioners that the impugned order as passed by the learned executing Court is erroneous and liable to be quashed and set aside. He has submitted that learned executing Court has not appreciated the point in controversy and has closed the execution petition in a very casual and routine manner. He has urged that the present petitioner/decreed holder is fighting for his cause for the last more than 28 years and he is being harassed by the respondent/J.D. on one pretext or the other. He has contended that the Courts are meant to impart substantial justice and should not decide the cases on mere technicalities. He has submitted that after accepting the present petition, the impugned order is liable to be quashed and set aside and the executing Court be directed to execute the decree in its letter and spirit.

15 On the other hand, Mr. Tara Singh Chauhan, learned Senior Advocate, duly assisted by Mr. Surya Chauhan, Advocate, has defended the impugned order. He has submitted that the learned executing Court has rightly decided the point in controversy and there is no illegality or perversity in the same. He has submitted that the judgment debtor/respondent, in compliance to the agreement which was entered between the parties, has fulfilled the terms and

condition thereof in its letter and spirit and nothing remains to be done by the J.D., and since the decree stands fully satisfied, therefore, the present petition deserves to be dismissed.

16 I have heard the learned counsel for the parties and have also gone through the records of the case carefully.

17 The petitioner/plaintiff had instituted the suit for permanent prohibitory injunction seeking to restrain the defendant from raising construction over the suit land, over which the plaintiff had constructed his house, in addition thereto, Khasra No. 373/259 had been kept vacant, and Khasra No. 394/260 was being used as common path. It was stated by the plaintiff in the said suit, which was filed in the year 1998, that the defendant had encroached over the path comprised in Khasra No. 394/260 and then he had started digging over Khasra No. 380/259 belonging to the plaintiff for raising the construction of the pillars of his house. Though, initially, the suit came to be dismissed by the learned Trial Court, thereafter, the appeal which was preferred by the plaintiff/decreed holder in the Court of learned District Judge was allowed vide judgment and decree dated 02.09.2006 in Civil Appeal No. 66 of 2005, whereby, after setting aside the decree of the learned trial Court, the plaintiff was held entitled for decree of possession of the suit land measuring 36 square meters as encroached upon by the defendant/J.D. and further, the J.D. was restrained from interfering over the suit land in any manner.

18 The suit was decreed for vacant possession of 36 square meter on the strength of the Tatima attached with the demarcation report. Thereafter, admittedly, the defendant/J.D. preferred regular second appeal before this Court that also came to be dismissed by this Court.

19 In the execution, when the warrant of possession was issued by the learned executing Court, on 15.11.2018, parties entered into an agreement, whereby it was agreed upon by the LR's of decree holder, Ishwar Singh, and the J.D. that the J.D. shall make payment of Rs. 3 lakh, which shall be immediately encashed by the decree holders, and thereafter, cheque amounting to Rs.1 lakh will be encashed on 10.01.2019 in favour of the decree holder. In the said agreement, it was agreed upon by the J.D. that he shall construct a cement wall/Danga, (RCC wall/Danga) from the bottom of the cantilever on or before 10.04.2019. Further, it was agreed upon that the J.D. shall not raise any other construction, save and except the concrete cement wall/Danga. The J.D. shall construct RCC wall/Danga as per the directions of the decree holder with respect to length, breadth, height, and space which will be occupied by the reinforced concrete cement wall/Danga (RCC wall/Danga).

20 Clause 6 of the agreement reads as under:-

“That the second party will withdraw the petition which is pending before the executing court, Civil Judge (Sr. Div.), Bilaspur, H.P. when the first party has complied with all the terms and conditions mentioned above. Further, if the first party fails to comply with the above mentioned terms and

conditions as agreed between the first party and second party the amount which is paid by the first party through the cheque in favour of the second party will be forfeited and the executing proceeding will continue against the first party.:

21 When the warrant of possession was issued by the learned executing Court, before the decree could be executed, the parties entered into an agreement, and the said agreement was placed on record by the local Commissioner, who had visited the spot to execute the same. Initially, the Court had appointed Mr. Vijay Thakur, Advocate, as Local Commissioner for seeking compliance in order to resolve the controversy between the parties. However, he reported that he is not competent to report regarding the nature of the construction of the retaining wall. Therefore, he submitted the report to the Executing Court. Thereafter, in another application, Junior Engineer, HP Public Works Department, was appointed as a Local Commissioner to visit the spot and report compliance with respect to the resolving of the issue inter se the parties.

22 The copy of the report, dated 07.03.2024 as submitted by the said Junior Engineer has been placed on record at page 23 of the paper-book. He had sought permission from the Court that a small portion of the wall is required to be dismantled, but the J.D. has refused for the dismantling of the said Danga, raising safety concern. Thereafter, after seeking permission from the Court on 03.04.2024, the Local Commissioner filed his report, which reads as under:-

“As per order of this Hon'ble Court dated 18/01/2004 and further dated 7-3-2004, I went to the disputed spot with labour in the presence of both parties. The wall as measured is 11.80 mts. in length and 3.30 mts. in height constructed at spot.

It is further submitted that in the presence of both the parties five Nos. different portion of said wall has been dismantled/digging in gaps for check the steel and each portion dismantled about (1.00 mts in length and 15 cm thick). But steel has not been found in wall/ danga. Local material (muram) has been used for the construction of wall. It is not RCC wall at site.

It is therefore report submit for kind information please.”

23 In the report, it was submitted by the Junior Engineer, H.P. Public Works Department, that while raising the construction, steel has not been found in the wall/Danga, and local material, (Murram), has been used for the construction of the wall and as per his report, the wall as constructed is not a RCC wall at site.

24 It has been contended by the learned Senior Counsel for the J.D./respondent that since, as per the terms and condition of the agreement, his client has paid the entire agreed amount of Rs.4 lakhs to the present petitioner/decreed holder, and the said fact has been duly acknowledged by the decreed holder, therefore, the present proceeding have been initiated just to harass the J.D. for nothing.

25 On the other hand, it is case of the decreed holder/petitioner that the payment of Rs.4 lakh was a condition precedent in order to fulfill the terms and conditions of the

agreement, which have been incorporated in the agreement, especially in clauses 3 and 6 thereof.

26 As per Clause 3 of the agreement, the J.D. had agreed to raise the construction of a wall/Danga, (RCC wall/Danga), from the bottom of the cantilever on or before 10.04.2019. It was agreed that the RCC wall/Danga shall be constructed as per the directions of the decree holder with regard to the length, breadth, height, and space which will be occupied by the said reinforced concrete cement wall/Danga.

27 It is the grievance of the present petitioner/decreed holder that the judgment debtor has not complied with the terms and conditions of the agreement and has not raised RCC wall/Danga on the spot and has constructed a wall by using local material, (Murram), which is in violation to the spirit of the agreement.

28 The learned Senior Counsel for the petitioner has vehemently harped on clause 6 of the agreement, whereby it has been categorically stated that the decree holder shall withdraw the petition which is pending before the Executing Court, when the first party complies with all the terms and conditions as stipulated in the agreement. In the said clause, it has further been stipulated that in case J.D. fails to comply with the terms and conditions of the agreement, in that event, the decree holder shall be entitled to forfeit the said amount, and the execution proceedings shall continue against the J.D. It has been contended by the learned Senior Counsel that since condition No. 3 of the agreement has not been

complied with by the judgment debtor, therefore, the impugned order by closing the execution petition is bad in the eyes of law.

29 From the perusal of the impugned order, it is apparent on the face of record that primarily, the learned executing Court has been swayed away by the fact that since a sum of Rs.4 lakh has been received by the decree holder, therefore, nothing remains to be done in the present proceedings, and based upon that, it closed the execution petition.

30 This Court is not in agreement with the findings as recorded by the learned executing Court. The Court has to maintain balance between the parties and is of the considered opinion that the decree holder is fighting for his cause for the last more than 28 years. The LRs of decree holder were kind enough to compromise the matter with the J.D. after obtaining the decree of possession to the extent of 36 square meters. Despite entering into an agreement and despite of the fact that the decree holder, after being successful from this Court, in order to resolve the issue, entered into an agreement with the J.D./respondent, this Court has to see the agreement in its totality in conjunction with the pleadings and other material placed on record. Merely the fact that a sum of Rs.4 lakh has been paid to the decree holder will not absolve the J.D. from his part of performance. The learned executing Court has not discussed or touched the other points as raised by the decree holder/petitioners in the impugned order.

31 There is a specific report of the Local Commissioner, dated 03.04.2024 which is appended with the present petition at page 24, whereby it has been observed by the Local Commissioner that in order to check the steel, small portion of the Danga was dismantled, but no steel was found in the wall. As per the report, for raising the construction of the wall, local material/Murram has been used for the construction, and there is no RCC wall at site.

32 This Court is in agreement with the submission of the learned Senior Counsel for the petitioners, whereby in clause 3 of the agreement, it has been stipulated that the J.D. shall construct a cement wall/Danga, (RCC wall/Danga), from the bottom of the cantilever on or before 10.04.2019. Further, there is a condition that the J.D. shall raise RCC wall/Danga as per the direction of the decree holder. There is a categorical stipulation in the agreement whereby the J.D. was required to construct RCC wall on the spot.

33 The learned executing Court has not taken into consideration report of the Local Commissioner in its true perspective. Neither it has discussed the report of the Local Commissioner, nor it has bothered to deal with the same.

34 In order to maintain balance between the parties, it was incumbent upon the executing Court to have taken into consideration the entire material placed on record and thereafter to have rendered the findings either way. This Court is of the considered opinion that the learned executing Court has not passed

a speaking order and has not dealt with all the issues which were raised by the respective parties, including the petitioners.

35 Mere payment of Rs. 4 lakh to the decree holder will not absolve the J.D. from performing his part of the agreement, as the raising of RCC wall/Danga was a sine qua non in conjunction with the payment of Rs.4 lakh to the decree holder. But the impugned order does not deal with those issues as raised by the petitioners, and this Court is of the opinion that the agreement which was entered between the parties has not been dealt with by the learned executing Court in its true perspective, as a result of which the impugned order is not sustainable as no reasons have been assigned.

36 The Hon'ble Supreme Court in ***Maya Devi (dead) through LRs vs. Raj Kumari Batra (dead) through LRs, (2010) 9 SCC 486*** has held as under:-

“24. In Union of India & Ors. v. Jai Prakash Singh & Anr. 2007 (10) SCC 712, reasons were held to be live links between the mind of the decision maker and the controversy in question as also the decision or conclusion arrived at.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate Court or the authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate Court or the authority of that advantage and casts an onerous responsibility upon it to

examine and determine the question on its own. An appellate Court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower Court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate Court may notwithstanding the absence of reasons in support of the order under appeal before it examine the matter on merits and finally decide the same at the appellate stage. Whether or not the appellate Court should remit the matter is discretionary with the appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the appellate Court is of the view that it will prolong the litigation.”

37 The Hon’ble Supreme Court in **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla and Brothers, (2010) 4 SCC 785** has held as under:-

“19. Besides referring to the above well-established principles, it will also be useful to refer to some text on the subject. H.W.R. Wade in the book "Administrative Law, 7th Edition, stated that the flavour of said reasons is violative of a statutory duty to waive reasons which are normally mandatory. Supporting a view that reasons for decision are essential, it was stated:-
".....A right to reasons is, therefore, an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice...

.....Reasoned decisions are not only vital for the purposes of showing the citizen that he is receiving justice: they are also a valuable discipline for the tribunal itself....."

28. The order in the present case is as cryptic as it was in the case of Sunil Kumar Singh Negi (supra). Being a cryptic order and for the reasons recorded in that case by this Court which we also adopt, the impugned order in the present appeal should meet the same fate."

38 Without going into the merits of the main case, this Court is of the considered opinion that the impugned order is liable to be quashed and set aside by relegating the parties to the learned executing Court, who shall decide the case afresh on the material placed on record by passing a speaking order after affording an opportunity to the respective parties. Ordered accordingly.

39 Consequently, after setting aside the impugned order as passed by learned executing Court, the parties are relegated to the learned executing Court with a direction to it to decide the case afresh in view of the observations made hereinabove.

40 Parties are directed to appear before the learned executing Court on **16.10.2026**.

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

05.10.2026
(pankaj)

(Romesh Verma)
Judge