2026:HHC:49217

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 271 of 2026
Decided on : 05.11.2026

Deepak Kumar …Petitioner

Versus

HPPWD …Respondent

Coram
The Hon'ble Mr. Justice Virender Singh, Judge.
Whether approved for reporting?[1]

For the petitioner : Mr. Ram Kumar, Advocate.

For the respondent : Mr. H.S. Rawat, Additional Advocate General.

Virender Singh, Judge (Oral)

Petitioner Krishna Devi has filed present petition, under Article 227 of the Constitution of India, for setting aside/modifying the order dated 02.03.2026, passed by the Court of learned District Judge, Bilaspur, H.P. (hereinafter referred to as 'the First Appellate Court'), in Civil Miscellaneous Appeal No. 8/14 of 2024, titled as 'Himachal Pradesh Public Works Department versus Krishna Devi'.

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[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. By way of the order dated 02.03.2026, the learned First Appellate Court has modified the well-reasoned order dated 30.10.2023, passed by the Court of learned Civil Judge, Bilaspur, H.P. (hereinafter referred to as 'the trial Court'), by virtue of which, the application, under Order 39 Rules 1 and 2 of the CPC, has been allowed, by restraining the defendant from causing any sort of interference over the suit land, till final disposal of the main suit.

3. Parties to the lis are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. Brief facts, leading to the filing of the present petition, before this Court, as borne out from the documents, annexed with the petition, may be summed up, as under:

4.1. Plaintiff Krishna Devi has filed a suit for permanent prohibitory injunction restraining the defendant from constructing or metalling the road over the land of the plaintiff bearing Khasra Nos.134, 366, 370, 394 Kita 4, Khewat/Khatauni No. 5/5, bearing 13-17-00 Bigha, in which,

the plaintiff is having 1/3rd share, situated in Mohal Bag, Patwar Circle Swahan, Kanoongo Circle Dhabeta, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P. (hereinafter referred to as 'the suit land'), through their agents, servants, contractors, labours, etc.

4.2. According to the plaintiff, the suit land is owned by the plaintiff as co-owner, whereas, the defendant is trying to construct and metal the road leading to village Dolra to Mehla through suit land, without the consent of the plaintiff.

5. The suit has been contested, on the ground, that the plaintiff has no cause of action; the plaintiff has no locus standi to file the suit; the plaintiff is estopped from filing the suit, on account of his act and conduct; the suit of the plaintiff is barred by limitation; the suit is bad for non-joinder and mis-joinder of necessary parties; and the suit is not maintainable.

6. According to the defendant, the construction work of the link road has been awarded to contractor on 22.06.2012, and the alignment of the above road has been made during the year 2012, with the oral consent of the land-owners.

7. According to the defendant, on the spot, cutting/ retaining wall, slab, culverts, construction has been completed and nowadays the work of wet mix and tarring work is in progress.

8. On the basis of the above facts, a prayer has been made to dismiss the suit.

9. Along with the suit, application, under Order 39 Rules 1 and 2 of the CPC, has been filed, with a prayer to restrain the respondent from causing interference and not to construct/mettle the road over the suit land.

10. The said application has also been contested on the same grounds, upon which, the suit has been contested.

11. The learned trial Court, vide order dated 30.10.2023, has allowed the application, under Order 39 Rules 1 and 2 of the CPC and the defendants have been restrained from causing any sort of interference over the suit land till final disposal of the suit.

12. This said order has been assailed by the defendant by way of Civil Miscellaneous Appeal No.8/14 of 2024, which

was decided on 02.03.2023 and the order passed by the learned trial Court on 30.10.2023 has been modified, by directing both the parties to maintain status quo, qua nature, possession and construction over the suit land till the disposal of the suit. The said order has been assailed before this Court.

13. The plaintiff is aggrieved from the order, passed by the learned Appellate Court, by virtue of which, the order of injunction has been modified, by directing parties to maintain status quo.

14. In this factual background, the material question, which arises for determination, before this Court, is with regard to the powers of the First Appellate Court, under the provision of Order 43 of the CPC.

15. Powers of learned First Appellate Court, under Order 43 of the CPC, has elaborately been discussed, by the Hon'ble Supreme Court, in ***Civil Appeal No.13001 of 2024, Special Leave Petition (Civil) No. 252 of 2023,*** titled as ***Ramakant Ambalal Choksi Vs Harish Ambalal Choksi***

& Others, 2024 INSC 913. Relevant paragraphs 20 to 32 of the judgment, are reproduced, as under:-

> *20. Order 43 of the CPC specifies the orders against which an appeal lies. Sub Rule (r) of Rule 1 of the said order provides that an appeal would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.*
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> *21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in* ***Wander Ltd. v. Antox India P. Ltd****. reported in* ***1990 Supp SCC 727****. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:*
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> *a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and*
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> *b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.*
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> *22. With regards to (a), this Court held thus:*
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> *"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or*

perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions … the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below … If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

23. This Court, while arriving at the above findings, relied on its earlier judgment in Printers (Mysore) v Pothan Joseph reported in (1960) SCC Online SC 62 where it was held thus:

"[...] as has been observed by Viscount Simon LC in Charles Osenton & Co v Johnston – the law as to reversal by a court of appeal of an order made by a judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."

24. It is pertinent to note that in Printers (supra) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in Charles Osenton & Co v Johnston reported in 1942 A.C. 130, after stating the above, went on to quote Lord Wright's decision in Evans v. Bartlam reported in 1937 A.C. 473:

"It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say

> *that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order."*

25. In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

> *a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and*
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> *b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.*

27. The principles of law explained by this Court in ***Wander's*** *(supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.*

28. In Neon Laboratories Ltd. v. Medical Technologies Ltd. reported in (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

29. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in Wander (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

> *"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have*

substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd."

(Emphasis supplied)

30. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

31. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

32. The appellate court in an appeal from an interlocutory order granting or declining to grant

> *interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case.*

16. As stated above, the learned First Appellate Court has allowed the appeal, without holding that the findings of the learned trial Court are suffering from perversity. The Hon'ble Supreme Court in ***Ramakant Ambalal Choksi'***s case supra, has also discussed the meaning of the expression 'perverse'. Relevant paragraphs 35 to 37 of the judgment, are reproduced, as under:-

> *35. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough reported in (1878) 1 LR 1r 331, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey reported in 106 NW 814, the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.*
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> *36. The expression "perverse" has been defined by various dictionaries in the following manner:*

a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed. Perverse-Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b. Longman Dictionary of Contemporary English-International Edition Perverse-Deliberately departing from what is normal and reasonable.

c. The New Oxford Dictionary of English-1998 Edition Perverse-Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition) Perverse-Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed. Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

37. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See: Damodar Lal v. Sohan Devi and others reported in (2016) 3 SCC 78)

17. If the facts and circumstances of the present case are seen in the light of the above decision of the Hon'ble Supreme Court, this Court is of the view that the learned First Appellate Court has exceeded its jurisdiction, by interfering with the well-reasoned order passed by the learned trial Court, as the ownership of the plaintiff, over the suit land has been admitted and the plea of oral consent, at this stage, without any documentary proof, cannot be taken into consideration.

18. Consequently, the petition is allowed and the order passed by the learned First Appellate Court is set aside and the order passed by the learned trial Court is upheld.

19. Any of the observations made herein above shall not be taken as an expression of opinion on the merits of the case, as these observations are confined only to the disposal of the present petition.

(Virender Singh)
Judge

November 05, 2026*(ps)*