2026:HHC:35417

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 198/2026
Reserved on: 04.08.2026
Decided on: 20.08.2026

Bharat Bhushan Sood .....Petitioner

Versus

Dhananjay Sood & others ...Respondents

Coram:

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

Whether approved for reporting?[1] *Yes*

For the Petitioner: Mr. Y. P. Sood, Advocate.

For the Respondents: Mr. Ashok Sood, Sr. Advocate with Mr. Rajat, Advocate.

Romesh Verma, Judge

The instant petition arises out of order, dated 06.03.2026, as passed by the learned Senior Civil Judge, Shimla, H.P. whereby an application filed by the defendant/petitioner for amendment of the written statement has been dismissed.

2 Facts, as emerge in the present case, are that the plaintiffs/respondents filed a suit before the learned trial court for recovery of possession of the suit premises against the

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

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defendant/petitioner and for recovery of damages for illegal and unauthorized use and occupation of the suit premises by defendant amounting to Rs.1,12,000/- with pendent lite use and occupation charges and mesne profits from the date of filing of suit till possession is restored to the plaintiffs and for permanent prohibitory injunction.

3 As per the case set up by the plaintiffs/respondents, they are owners of three storied building known as New Building near Bharat Cottage, Shankli, Shimla. Late Dharam Paul Sood, father of plaintiffs No.1 to 3, namely, Dhanajay Sood, Anirudh Sood and Smt. Sheetal Sood and husband of plaintiff No.4 Anila Sood had purchased a specific plot of land comprised in Khewat No. 5 min, Khatouni No.24 min and Khasra No.327/2/3 measuring 135 square yards and 5 square feet situated at Shankli, Station Ward Bara Shimla, Tehsil and District Shimla from its previous owners in possession vide registered sale deed dated 3.11.1976. As per the plaintiffs, Dharam Paul Sood constructed three storied building (plus attic) on the said land after spending his lifelong savings. Thus Dharam Paul Sood, predecessor-in-interest of plaintiffs was exclusive owner in possession of the said land and building. On demise of Dharam Paul Sood, the plaintiffs jointly inherited the said land and

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property being his only legal heirs and mutation No.282 qua inheritance was attested in favour of the plaintiffs.

4 It was averred in the plaint that the second floor of the said building is in physical possession of plaintiffs wherein they are residing and the ground floor and attic portion are in occupation of the tenants who are paying rent to plaintiffs. Late Dharam Paul Sood during his life time had allowed his real brother defendant, Bharat Bhushan Sood, to occupy the entire first floor of aforesaid building and use it as his residence in and around the year 1986 out of his love and affection for his real brother purely on license basis without creating any kind of right, title or interest in favour of his brother in said licensed premises and without charging any kind of monetary consideration. The defendant was allowed to reside in the said first floor (licensed premises) of building without charging any kind of monetary consideration and the possession thereof was given purely as licensee terminable at the sweet will of the owner. The defendant, in the absence of plaintiffs from Shimla, instead of acquiring or purchasing his own residential accommodation at Shimla, has manipulated by illegally raising unauthorised construction on joint ancestral land and property of plaintiffs situated at Dhalli. The plaintiffs objected the said illegal construction on joint property without their consent. The

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defendant has shifted his residence in the aforesaid joint ancestral property at Dhalli without vacating and restoring possession of aforesaid licensed suit premises i.e. First Floor to plaintiffs and has kept suit premises locked. Therefore, under such circumstances, the plaintiffs filed the suit, as aforesaid.

5 The aforesaid suit has been contested by the defendant/petitioner by filing written statement, wherein preliminary objections qua maintainability, estoppel, valuation, cause of action, limitation etc. were raised. As per the case of the defendant, the land was purchased with the funds of the joint family comprising of defendant, late Dharam Paul Sood and mother of the defendant. The funds for purchase of the land were spent out of the joint family funds, which comprised of the business income of the defendant as he was carrying on his business of general merchandise, ration shop and vegetable shop in Shop No.2, New Elgin Villa, Lower Lakkar Bazaar, Shimla. As per the defendant, since Dharam Paul Sood was in government service, therefore, land was purchased in his name as late Dharam Paul Sood had advised the defendant and their mother that since Dharam Paul Sood was in government service, therefore, he would be able to raise house loan from his employer in order to utilize the land.

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6 It was averred that predecessor-in-interest of the plaintiffs, defendant and mother of the parties were joint in mess, worship etc. As per the family arrangement made between Dharam Paul Sood, defendant and their mother, it was agreed that the building will be constructed from joint family funds and one floor in the building to be constructed will be provided to the defendant for his residence, whereas Dharam Paul Sood would retain the ground and second floor. The construction of the building was started in the year 1986.

7 As per the defendant, Dharam Paul Sood, defendant and their mother acknowledged and acted upon the family arrangement so made however the entire problem started after death of Dharam Paul Sood. All the averments as made in the plaint were specifically refuted and denied and the defendant prayed for dismissal of the suit.

8 The suit was filed on 05.07.2021, whereas the defendant filed written statement on 20.09.2021. Thereafter, the matter was fixed for evidence of the parties and when the evidence was led by the plaintiffs, in the mean time, the defendant filed an application for amendment of the written statement on the ground that the suit property is joint Hindu Undivided Family (HUF) property and Dharam Paul Sood, being Karta of said HUF was dealing with suit property on behalf of

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joint HUF and the defendant while preparing case for the purpose to cross-examine the plaintiffs laid off his hands to the documents pertaining to establishing the facts about existence of said HUF and showing Dharam Paul Sood, to be Karta of the said HUF. As per the defendant, said facts are relevant and required to be pleaded in strengthening the plea of defendant as stated in the written statement and in order to further clarify, the defendant sought to amend the written statement by inserting para 6(A)on merits.

9 The said application was vehemently resisted by the plaintiffs/respondents on the ground that the same is not maintainable and the same has been filed in order to prolong the litigation.

10 The learned trial Court vide its impugned order, dated 06.03.2026, dismissed the application for amendment of the written statement and the defendant/petitioner feeling dissatisfied, has approached this Court by filing instant petition under article 227 of the Constitution of India.

11 It is contended by Mr. Y. P. Sood, 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 the amendment, which is being sought to be incorporated, is only clarificatory in nature and in case the

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application for amendment of the written statement is allowed, the plaintiffs/respondents shall not be prejudiced in any manner, thus, after accepting the instant petition, the application as filed by the petitioner/defendant deserves to be allowed.

12 On the other hand, Mr. Ashok Sood, learned Senior Advocate, assisted by Mr. Rajat Rana, Advocate, for the plaintiffs/respondents has defended the impugned order and submitted that the learned trial court has rightly passed the impugned order after appreciating entire material placed on record. He has further submitted that a well reasoned order has been passed by the learned trial court, which does not suffer from any illegality or infirmity, therefore, while invoking provisions of article 227 of the Constitution of India, this Court will not interfere with a well reasoned order.

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

14 In the present case, the plaintiffs/respondents have primarily approached the learned trial court for seeking declaration on the ground that late Dharam Paul Sood had constructed the suit property and has permitted the defendant to reside in the entire first floor being his real brother out of love and affection. As per the case of the plaintiffs, the defendant has

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got no right, title or interest over the same, therefore, the suit has been filed for decree of possession of suit premises directing the defendant to hand over vacant physical possession of the same, recovery of damages, mesne profits and for grant for permanent prohibitory injunction.

15 Stand, as has been adopted by the defendant/petitioner in the written statement, is that the construction of the building in question was raised out of funds of HUF comprising of Dharam Paul Sood, defendant and their mother. He has submitted that entire construction has been raised by utilizing joint family funds and plea of licensee as has been taken by the plaintiffs is totally false and incorrect.

16 By means of application, which has been filed for amendment of the written statement, the defendant has sought to incorporate the plea that Dharam Paul Sood was Karta of HUF and for that purpose, he has intended to place on record deed of disclaimer, which has been appended with the present petition as Annexure P-3. As per the petitioner/defendant, while preparing case for the purpose of cross-examination of the plaintiff, he laid off his hand to some documents pertaining to establishing the fact about existence of HUF and showing Dharam Paul Sood to be Karta of HUF.

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17 It is contended by the learned senior counsel for the respondents/plaintiffs that admittedly suit was filed in the year 2021 and the issues were framed by the learned trial Court on 28.09.2022, however when the matter was going on while recording evidence of the plaintiffs, all of a sudden, application at hand was filed by the defendant/petitioner for amendment of the written statement in the year 2024 just to prolong and harass the plaintiffs/respondents.

18 It would be apposite to reproduce provisions of Order VI Rule 17 of the CPC, which read as under:-

> *"17. **Amendment of pleadings: -** The Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and no such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*
>
> *"Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

19 As per the aforesaid provisions, the court may at any stage of the proceedings allow either party to alter or amend their pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the

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purpose of determining the real question in controversy between the parties. However, it has been provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

20 Admittedly, trial has commended in the year 2022 and perusal of the application at hand shows that though word "due diligence" has been inserted in the application, however no reasons whatsoever have been assigned as to what prevented the defendant to place on record deed of disclaimer, which was executed on 09.01.1978 and the only averment which has been made in the application is that while preparing case for the purpose of cross-examination of the plaintiff, the defendant/petitioner laid off his hands to some document pertaining to establishing the fact about existence of HUF and showing Dharam Paul Sood to be Karta of HUF.

21 Learned senior counsel for the plaintiffs/respondents has drawn attention of this Court especially page 52 of the paper book, which shows that the said document was obtained by the defendant/petitioner on 03.05.1983. The said fact clearly falsifies the case of the defendant/petitioner, whereby it has been stated in the application for amendment of the written statement that it

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is only during process of cross-examination of the plaintiff, said fact came to the knowledge of the defendant/petitioner. Admittedly, copy of deed of disclaimer was obtained by the defendant/petitioner way back in the year 1983, therefore, now after elapse of more than 40 years, the defendant/petitioner cannot be permitted to place on record said document. Even otherwise, entire pleadings of the respective parties and especially in the written statement, averments which are sought to be incorporated by way of amendment are already part and parcel of the written statement.

22 This Court is in agreement with the aforesaid submission of learned senior counsel for the plaintiffs/respondents that the averments which have been made in the application at hand are repetitive in nature and said facts are already part of the written statement, which cannot be permitted to be re-agitated.

23 The learned trial court has rightly declined prayer of the defendant/petitioner for amendment of the written statement by holding that except for elaboration of the contentions as raised by the defendant in the written statement, no such new fact or circumstance has been sought to be placed on record.

24 Learned counsel for the petitioner has vehemently argued that the amendment which has been sought to be

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incorporated in the pleading goes to the root of the case and it will help the Court to determine point in controversy effectively and properly, however in the attending facts and circumstances of the case, this Court does not find any merit in the present petition as averments made in the application do not depict the true facts.

25 This court is of the considered opinion that the submission and averments as made in the application at hand are false and incorrect and the same has been filed to prolong the suit, which has been filed by the plaintiffs/respondents for possession. The amendment application seems to be dilly dallying tactics being adopted by the defendant/petitioner to deprive the plaintiffs to get fruits of the possession of the suit property, which is admittedly in possession of the defendant. The petitioner has not been able to make out a case that the amendment as being sought is necessary for the purpose of determination of real point in controversy inter se the parties. Save and except for elaboration of the already existing facts in the written statement, there is no new averment in the application, which demonstrates or shows that the facts which are required to be incorporated are must for determining point in controversy. The defendant has failed to establish due

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diligence for the incorporation of the amendment which he has sought in the application.

26 As observed above, trial has commenced in the year 2002 and case is fixed for evidence of the plaintiffs and thus, the application at hand seems to to have been filed just to prolong litigation unnecessarily.

27 From the perusal of provisions of Order VI Rule 17 of CPC, it is evident that ordinarily, an amendment in pleadings is not to be allowed after the trial has commenced, unless the court is satisfied that the party concerned could not apply even after the exercise of due diligence. In other words, it was incumbent upon the defendant/petitioner to have specifically pleaded that in spite of due diligence, he could not raise the matter now sought to be raised.

28 The Hon'ble Apex Court has interpreted the proviso to be a mandatory requirement to prevent frivolous applications for amendment intended only to delay the trial.

29 In ***Salem Advocate Bar Association vs. Union of India*, AIR 2005 SC 3353**, it was held as under:-

> *"27. Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in*

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> *spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."*

30 What is 'due diligence' has not been defined in the Code, but it has been explained by the Hon'ble Apex Court in ***Chander Kanta Bansal vs. Rajinder Singh Anand*, (2008) 5 SCC 117**, in the following terms:

> *"16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn.2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn.13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."*

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31 Further, the Hon'ble Apex Court ***in M. Revanna vs. Anjanamma, (2019) 4 SCC 332***, held that the burden lies upon the person, who seeks an amendment after the commencement of the trial to show that he could not have sought the amendment before the commencement of trial, and it was observed as follows:

> *"7. .. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after the commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."*

32 The said position was reiterated in ***Vijay Hathising Shah vs. Gita Devi*, (2019) 5 SCC 360**, wherein it was observed as follows:

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> *"9. In our view, the trial court was right in rejecting the application. This we say for more than one reason. First, it was wholly belated; second, Respondent 1-plaintiff filed the application for amendment of the plaint when the trial in the suit was almost over and the case was fixed for final arguments; and third, the suit could still be decided even without there being any necessity to seek any amendment in the plaint. In our view, an amendment in the plaint was not really required for the determination of the issues in the suit."*

33 In view of the aforesaid exposition of law and the provisions of Order VI Rule 17 of the CPC, the defendant /petitioner has failed to make out a case for the amendment of the written statement. The application, as filed, is belated and no reason has been assigned why the said plea was not taken at the first instance. The averments, as made in the application, do not show due diligence on the part of the defendant/petitioner. Admittedly, trial in the case at hand has commenced. No plausible explanation has come forward that what prevented the defendant/petitioner to take such plea at the time of filing of the written statement.

34 This Court is of the considered opinion that the learned trial court has passed a well-reasoned order, and it does not suffer from any illegality, irregularity or jurisdictional error.

35 The power under Article 227 is limited to see that the Courts below function within the limits of their authority or

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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.

36 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.*
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> *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:-*

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"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

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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."

37 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

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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."

38 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, shall also stand disposed of.

39 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 and the same shall be

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adjudicated upon uninfluenced by any observation made here-in-above, which are only for the purpose of the instant petition.

(Romesh Verma)
Judge

20th August, 2026
(pankaj)

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