IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.355 of 2025 a/w
CMPMO No.255 of 2025
Reserved on : 15.06.2026
Decided on:- 21.07.2026
Uploaded on:- 21.07.2026

CMPMO No.355 of 2025

Narip Bajwa ...Petitioner

Versus

Sanjeev Maria ...Respondent

CMPMO No.255 of 2025

Sanjeev Maria ...Petitioner

Versus

Narip Bajwa ....Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?* *Yes.

1.		**CMPMO No.355 of 2025**
For the petitioner	:	Mr. Anuj Gupta and Mr. Rohit Sharma, Advocates.
For the respondent	:	Mr. P.S. Goverdhan, Senior Advocate, assisted by Mr. Rakesh Thakur, Advocate.
2.		**CMPMO No.255 of 2025**
For the petitioner	:	Mr. P.S. Goverdhan, Senior Advocate, assisted by Mr. Rakesh Thakur, Advocate.
For the respondent	:	Mr. Anuj Gupta and Mr. Rohit Sharma, Advocates.

Virender Singh, Judge

The above titled CMPMOs, are decided by a common judgment, as both these CMPMOs have been filed by the parties to the present lis, against the order dated

2026:HHC:30070

14.05.2025, passed by the Court of learned Senior Civil Judge, Shimla, H.P. (hereinafter referred to as the trial Court), in CMA No.483 of 2025 in Civil Suit No.36 of 2025, titled as Narip Bajwa versus Sanjeev Maria.

2. Vide order dated 14.05.2025, learned trial Court has allowed the application, under Order 37(3), read with Section 151 of CPC, by giving the leave to the defendant to defend, subject to furnishing sufficient security to the extent of claim of the plaintiff, as made in the civil suit, within a period of 15 days.

3. For the sake of convenience, the parties to the present *lis,* are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

4. Brief facts, leading to the filing of the present petitions, before this Court, may be summed up, as under:-

4.1. Plaintiff-Narip Bajwa has filed a civil suit, under Order 37 of the Code of Civil Procedure, for recovery of a sum of Rs.52,00,000/-, along with pendente-lite and future interest @12% per annum, against the defendant, on the ground, that the plaintiff is Vice President of Sree Cements, which is a private limited company and is posted at Jaipur Rajasthan.

2026:HHC:30070

4.2. According to him, he is born and brought up at Shimla and after completing his education, he had to move out to earn his livelihood, whereas, defendant is resident of Shimla. On 09.08.2023, the parties to the lis had entered into an agreement for sale, under which, the defendant had agreed to sell the land measuring 00-02-30 hectares, comprised in Khewat Khatauni No.79/88, Khasra No.684/72 and along with three and half storeyed building, including attic consisting of two bed rooms, drawing dining, two toilets, kitchen with terrace on the ground floor; two bed rooms, drawing dining, two toilets, kitchen and balcony, on the first floor; two bed room, drawing dining, two toilets, kitchen and balcony on the second floor and one bed room, drawing room, one toilet, glass house and terrace, on the attic floor, constructed over the land 189/14450 share, measuring 0-01-89 hectares, out of land comprised in Khata Khatauni No.96/155 to 158, kite 25, total measuring 1-44-50 hectares situated at Mauja/Mohal Dhagog, Tehsil Shimla (Rural), H.P. (hereinafter referred to as the suit land) for a sale consideration of Rs. 4,00,00,000/- (Four Crores), out of which Rs.52,00,000/- was paid to the defendant at the

2026:HHC:30070

time of execution of the agreement and remaining amount for the sale consideration was agreed to be paid at the time of registration of the sale deed.

4.3. It is the further case of the plaintiff that he is a non-agriculturist of the State of Himachal Pradesh, as such, he could not have purchased the property subject matter of the agreement, without permission of the State Government and accordingly, under Clause-9 of the agreement, it has been provided that the defendant shall fully co-operate with the plaintiff, in obtaining such permission and in order to obtain the said permission, he will execute, provide, submit and sign all the necessary papers.

4.4. In order to obtain the permission, under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972, plaintiff, besides other documents, was required to submit NOC's of the co-sharers of the property agreed to be sold, the existing plans of the built up structures and other documents. It is his further case that more than one year and five months have elapsed, but, the defendant has not done anything in the matter and even, stopped responding to the calls of the plaintiff. Unfortunately, during the said

2026:HHC:30070

period, father of the plaintiff has expired and on account of those reasons, the plaintiff has terminated the agreement dated 09.08.2023, while exercising his right, under Clause-6 of the same, and thereafter, he had issued the notice of termination to the defendant, which has duly been received by the defendant.

4.5. As a result of termination of the agreement, according to the plaintiff, defendant is under a legal obligation to return and refund the amount of Rs.52,00,000/-, which, he had received, as part payment of the sale consideration. In this regard, plaintiff has relied upon Clause-6 of the agreement. According to the plaintiff, Clause-6 although, is improperly worded, however, the term “scale deed” in the said term is related to the agreement only and which fact, is evident from the fact that the said clause speaks about the return of the advance money only.

4.6. Despite service of notice, defendant has not refunded the amount of Rs.52,00,000/- to the plaintiff and he has proclaimed that he will not refund this amount, without the order from the Court of law. As such, the amount of Rs.52,00,000/- has been sought to be recovered

2026:HHC:30070

along with the interest @12% per annum, from the date of institution of the civil suit.

5. On the basis of the above facts, a prayer has been made to decree the suit.

6. In the said civil suit, notice was served upon the defendant, who has put appearance through his counsel and has moved the application, seeking leave to defend the suit, which has been contested by the plaintiff. The said application has been decided by the learned trial Court on 14.05.2025, by granting the relief to defend, subject to furnishing the security, equivalent to the amount, sought to be recovered.

6.1. The said order has been assailed, by plaintiff-Narip Bajwa, before this Court, by filing CMPMO No.355 of 2025, mainly, on the ground, that while, deciding the application, by virtue of which, the defendant has sought the leave to defend, the learned trial Court has not considered the requirements, as envisaged under Order 37 (3), as, it is sine qua non for granting the relief that the defendant would setup a plausible defence in his favour.

6.2. According to plaintiff-Narip Bajwa, the defence, so raised should either be borne out, from the contract

2026:HHC:30070

between the parties or under some statutory rights. Whereas, in the present case, the learned trial Court has put reliance, upon Clause-11 of the agreement, which is totally misconceived, as said clause could only come into force, had either of the parties, defaulted in compliance of the terms of the agreement, whereas, such case has not even been setup by either of the parties to the lis. The case, as setup by the plaintiff, is stated to be consequence of termination of the agreement, which has exclusively been provided in the agreement in question.

6.3. It is the further case of the plaintiff that the learned trial Court has not properly considered the nature of the claim setup by the plaintiff and despite the fact that the defendant could not set up substantial defence, his application has been allowed.

6.4. Reasserting the fact that the defendant has no defence to deny the right claimed by the plaintiff, the order under challenge has further been assailed, on the ground that the learned trial Court has not properly considered the admitted fact that the present suit requires no evidence, as the execution of the agreement and receipt of payment of Rs.52,00,000/- has been admitted by the defendant. Once

2026:HHC:30070

the defendant has admitted the receipt of the amount, then, he could not escape from the liability to refund the amount upon cancellation/termination of the agreement, that too, on the basis of the averments, as contained, in the application, which are stated to be contrary to the conditions of the agreement.

6.5. On the basis of the above facts, Mr. Anuj Gupta and Mr. Rohit Sharma, Advocates, appearing for the petitioner/plaintiff, who has filed CMPMO No.355 of 2025, has prayed that the order under challenge may kindly be set-aside and application, seeking leave to defend may kindly be dismissed.

7. On the other hand, defendant-Sanjeev Maria has filed the CMPMO No.255 of 2025, assailing the order by virtue of which, the learned trial Court has given the conditional leave to defend, by furnishing sufficient security to the extent of claim set up by the plaintiff to the satisfaction of the learned trial Court, within a period of 15 days.

7.1. According to defendant-Sanjeev Maria, the learned trial Court, on one hand, has held that the defendant has got a substantial defence to raise and on the

2026:HHC:30070

other hand, the leave to defend has been given conditionally. According to him, the same should have been accorded in his favour unconditionally, as he has made out a plausible defence in his favour.

7.2. On the basis of the above facts, Mr. P.S. Goverdhan, Senior Advocate, assisted by Rakesh Thakur, Advocate, appearing for defendant-Sanjeev Maria, who has filed CMPMO No.255 of 2025, has prayed that the order to extent, by virtue of which, the condition of furnishing security has been imposed, by the learned trial Court, may kindly be set-aside.

8. The order has been assailed by both the parties, i.e. plaintiff and defendant.

9. The Hon'ble Supreme Court in case titled as **IDBI Trusteeship Services Limited versus Hubtown Limited,** reported in **(2017) 1 Supreme Court Cases 568,** has enunciated the principles governing leave to defend. Relevant paragraphs-16 to 17.6 of the judgment, are reproduced as under:-

> *"16. It is thus clear that Order 37 has suffered a change in 1976, and that change has made a difference in the law laid down. First and foremost, it is important to remember that Milkhiram's case is a direct authority on the amended Order 37 provision, as the amended provision in Order*

2026:HHC:30070

37 Rule 3, is the same as the Bombay amendment which this Court was considering in the aforesaid judgment. We must hasten to add that the two provisos to sub-rule (3) were not, however, there in the Bombay amendment. These are new, and the effect to be given to them is something that we will have to decide. The position in law now is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case. But Justice, like Equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies. The discretion that a Judge exercises under Order 37 to refuse leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to Joseph's multi-coloured coat–a large number of baffling alternatives present themselves. The life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; but at the same time informed by guidelines or principles that we propose to lay down to obviate exercise of judicial discretion in an arbitrary manner. At one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence. At the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case.

17. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of Order 37, Rule 3 and the binding decision of four judges in Milkhiram's case, as follows:

> 17.1. <u>If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit</u>;

2026:HHC:30070

17.2. if the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

17.4. If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

(Self emphasis supplied)

2026:HHC:30070

10. This view has further been clarified and harmonized, by the Hon'ble Supreme Court, in case titled as **B.L. Kashyap and Sons Limited versus JMS Steels and Power Corporation, and another,** reported in **(2022) 3 Supreme Court Cases 294.** Relevant paragraphs 33 to 33.3, of the judgment, are reproduced, as under:-

> *"33. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers' case shall stand superseded in the wake of amendment of Rule 3 of Order 37 but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.*
>
> *33.1. As noticed, if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.*

2026:HHC:30070

33.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

33.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious."

(Self emphasis supplied)

11. Being guided by the above decisions, now, this Court would proceed further to determine the fact whether the order passed by the learned trial Court, granting the

2026:HHC:30070

conditional leave can be interfered with by this Court, that too, under Article 227 of the Constitution of India, where, the scope of interference is limited, as held by Hon'ble Supreme Court in case "**K. Valarmathi & Ors. Versus Kumaresan, 2025 INSC 606**". Relevant para 9 of the judgment, is reproduced, as under:

> *"Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise of supervisory jurisdiction under Article 227."*

12. Even otherwise, in a recent decision in case "**Nandi Infrastructure Corridor Enterprises Ltd. & Anr. Versus B. Gurappa Naidu & Ors., 2026 INSC 434**", the scope of interference has again been explained by Hon'ble Supreme Court. Relevant paragraph 35 of the judgment, is reproduced, as under:-

> *"35. In short, the principles laid down in the above matters is as follows:*
> *a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.*
> *b) It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record.*
> *c) The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate,*

2026:HHC:30070

> *reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal."*
>
> *(Self emphasis supplied)*

13. As per the stand taken by the parties, the execution of the agreement between the parties is not disputed, as, in the application, under Section 37(3) read with Section 151 of CPC, the defendant has relied upon Condition No.11 of the agreement to sell, according to which, it has been agreed upon between the parties, that in case, any of the parties to the agreement backs out from the terms and conditions of the agreement, then, the other party shall be entitled to enforce the agreement, by specific performance of the agreement. The receipt of Rs.52,00,000/- has also been admitted. Thereafter, as per the stand taken by the defendant, the plaintiff has to obtain permission under Section 118 of the H.P. Tenancy and Land Reforms Act.

14. According to the defendant, nothing is there in the suit to demonstrate that the plaintiff has made efforts to obtain the requisite permission, under Section 118 of the H.P. Tenancy and Land Reforms Act. He has simply

2026:HHC:30070

transferred the onus upon the defendant, by saying that he has not done anything and when, he had stopped attending his calls, then, the plaintiff has terminated the agreement.

15. At the cost of repetition, in para-5 of the plaint, it has been pleaded that in order to obtain the permission under Section 118 of the H.P. Tenancy and Land Reforms Act, the plaintiff was required to submit NOC of the co-shares of the property, existing plan of the built up structure, ancillary documents, which were required to be obtained, by the defendant and thereafter, the same were required to be handed over to the plaintiff. However, according to him, defendant has done nothing, even after a lapse of more than one year.

16. It is not the case of the plaintiff that he has requested the defendant, in writing to do the needful, as per the agreement, which has been executed between the parties. The plaintiff, in the present case, has straightaway moved to terminate the agreement, while exercising the right, under Clause-6 of the same, by issuing the notice. When, the plaintiff himself has not done anything to obtain the permission under Section 118 of the H.P. Tenancy and

2026:HHC:30070

Land Reforms Act, by requesting the plaintiff to supply the requisite documents, then, defendant is able to make out a plausible defence in his favour.

17. If, these facts, as taken by the defendant in the application, are to be taken together, then, the present case falls within the ambit of the principle, as enumerated in para-17.3 and 17.6 of Milkhi Ram's case, (supra), which has been relied upon in **IDBI Trusteeship Services Limited versus Hubtown Limited,** reported in **(2017) 1 Supreme Court Cases 568.**

18. Hence, there is no occasion for this Court to interfere with the findings of the learned trial Court. Consequently, both the petitions are dismissed.

19. Pending application(s), if any, are also ordered to be disposed of, accordingly.

20. Record be sent back.

(Virender Singh)
Judge

July 21, 2026
(Subhash Sharma)