

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CMPMO No. : 7 of 2026**

**Reserved on : 17.03.2026**

**Decided on : 31.03.2026**

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M/s Escorts Kubota Ltd.

...Petitioner

Versus

Devinder Kumar

...Respondent

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*Coram*

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

*Whether approved for reporting?<sup>1</sup>*

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For the petitioner : Mr. Arvind Sharma, Advocate.

For the respondent : Mr. Ajay Sharma, Senior Advocate  
with Mr. Tarun Brakta, Advocate.

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**Virender Singh, Judge**

Petitioner, M/s Escorts Kubota Limited, has filed the present petition, under Article 227 of the Constitution of India, against the order dated 26.11.2025, passed by learned Civil Judge, Barsar (hereinafter referred to as the trial Court), in ***CMA Nos.623 & 624 of 2025*** in ***Civil Suit No.237 of 2015***, titled as ***Devinder Kumar versus M/s Escorts Construction Equipments Ltd.***

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<sup>1</sup> *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. By way of the order dated 26.11.2025, the learned trial Court has allowed the application for setting aside the *exparte* order passed against the petitioner M/s Escorts Kubota Limited, by putting the condition upon the petitioner to deposit rupees nine lacs with the learned trial court.

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 filing the present petition before this Court, may be summed up as under:-

4.1. Plaintiff-Devinder Kumar (respondent herein) has filed a suit for recovery of Rs.5,00,000/-, on account of damages accrued to him on account of deficiency of services and torts, along with interest @11% per annum till its realization, against the defendant (petitioner herein), before the learned trial Court.

4.2. When the notices, in the suit, could not be served, by way of ordinary process, then on 19.11.2019, an application, under Order 5 Rule 20 CPC, was allowed and the notices of the suit were ordered to be published against the defendant in the

newspaper 'Amar Ujala' for 28.12.2019. Thus, the notices were duly published and despite publication of the notices, the defendant has failed to put appearance. Consequently, the defendant was proceeded against *exparte*.

4.3. Thereafter, the defendant had moved an application under Order 9 rule 7 CPC, for recalling the order dated 24.05.2022, passed by the learned trial Court, by virtue of which, the defendant was ordered to be proceeded against *exparte*.

4.4. The application has been filed on the ground that the defendant has no office at Plot No.F-77/C, Road No.-I, D VKI, Area Jaipur (Rajasthan). According to the defendant, its registered office is at 15/5, Mathura Road, Faridabad-121003, Haryana and the name of the Company earlier was M/s Escorts Limited, which was now changed to Escort Kubota Limited.

4.5. The defendant came to know about the pendency of the suit only on 20.09.2025, when they had received a summons from the learned trial Court to produce the record.

Thereafter, they had moved the application. The said application has been contested by plaintiff-Devinder Kumar.

4.6. Since, the application, under Order 9 Rule 7 CPC, was moved, after the prescribed period of limitation, as such, the defendant has also filed application, under Section 5 of the Limitation for condonation of delay.

4.7. Both the applications were allowed by the learned trial Court, vide order dated 26.11.2025 and the *exparte* order dated 24.05.2022, was recalled, by putting the following conditions:-

- “1. *The defendant shall pay costs of ₹5,000/- to the plaintiff to compensate for the expenses incurred towards publication and examination of witnesses.*
2. *The defendant shall bear the process fee and diet money of any witness who may be required to be recalled for cross-examination. In case he fails to do so for any witness, it shall be presumed that defendant does not wish to cross-examine said witness and admits their testimony.*
3. *The defendant shall ensure the presence of plaintiff's witness No.7 (Dealing Head/Manager of the defendant Company) along with the relevant record, as and when directed by the Court.*
4. *The defendant company shall deposit a sum of ₹9,00,000/- (Rupees Nine Lakh only) with the Court as security for the possible decretal amount*

*and interest, if any, that may be adjudged in favour of the plaintiff.*

5. *Compliance of all the aforesaid conditions shall be made on or before the next date of hearing, which stands fixed for the filing of the written statement. Only one opportunity shall be afforded for the same.*
6. *Shamsher Singh, who has filed the present applications on behalf of the defendant company, is recognized as its authorized representative for the purposes of contesting this suit, subject to the filing of a formal authorization letter/resolution issued by the company on or before the next date of hearing.*
7. *In case of failure to comply with any of the above conditions, the defendant shall be liable to adverse orders, including forfeiture of the right to file the written statement or to participate further in the proceedings.”*

5. Feeling aggrieved from the said order, the present petition has been filed, mainly on the ground that the condition imposed by the learned trial Court, directing the defendant to deposit a sum of Rs.9,00,000/-, as a pre-condition, for setting aside the *exparte* order is arbitrary, unreasonable and without any legal justification, as such, the same is not permissible under the law.

6. According to the defendant, the learned trial Court has fallen into error by imposing the condition to deposit a

sum of Rs.9,00,000/-, as a pre-condition, to recall the order, by virtue of which, the defendant was proceeded against *ex parte*.

7. The findings have further been assailed on the ground that while deciding the application, under Order 9 Rule 7 CPC, learned trial Court has passed the order qua deposit of Rs.9,00,000/-, which could only be passed, under the provisions of order 38 Rule 5 CPC, that too, on fulfillment of the statutory provisions.

8. On the basis of the above facts, Shri Arvind Sharma, Advocate, appearing for the petitioner-defendant has prayed that the said condition may kindly be set aside and the defendant may kindly be permitted to join the proceedings.

9. The prayer, so made, in the petition, has been opposed by Mr. Ajay Sharma, learned Senior Advocate assisted by Mr. Tarun Brakta, Advocate, on the ground that despite publication of the notice, when, the defendant had failed to put appearance, the defendant was ordered to be proceeded against *ex parte*. The present petition, according to the learned Senior Counsel, is nothing, but, tactics to delay the proceedings, as reasonable order directing the defendant to

deposit Rs.9,00,000/- has been passed by specifically mentioning that this amount would be as security for the possible decree, which may be passed against the defendant. As such, it has been prayed that the order passed by the learned trial Court on 26.11.2025, does not require any interference by this Court, that too, under Article 227 of the Constitution of India.

10. The factual position, in the present case, is not in dispute. Defendant, despite publication of notice, in the newspaper, has not bothered to put appearance, as such, the defendant was proceeded against *ex parte*. Subsequently, the defendant had filed application, under Order 9 Rule 7 CPC, which was allowed vide order, dated 26.11.2025, under challenge, before this Court.

11. In the application, under Order 9 Rule 7 CPC, a stand has been taken that the defendant was not aware about the pendency of the suit, nor, was aware about the fact that the defendant was proceeded against *ex parte*, vide order dated 24.05.2022.

12. While deciding the said application, the learned trial Court had also imposed the cost of Rs.5,000/- and in addition to this, Rs.9,00,000/- were ordered to be deposited. The learned trial Court was within its jurisdiction to impose a cost, for recalling the *ex parte* order, to permit the defendant to join the proceedings.

13. This Court is of the view that the learned trial Court has considered the entire facts and circumstances, as to how, the case remained on board for about four years for service of defendant, and when proceeded against *ex parte*, thereafter, the application, under Order 9 Rule 7 CPC has been filed. The learned trial Court, in para 52 of the order, has given the reasoning for directing the deposit of a sum of Rs.9,00,000/-.

14. Learned counsel appearing for the defendant could not satisfy the judicial conscience of this Court, as to how the order passed by the learned trial Court to deposit a sum of Rs.9,00,000/-, can be said to be without any jurisdiction, as, while deciding the application, under Order 9 Rule 7 CPC, the learned trial Court is at liberty to impose conditions, however,

considering the fact that the suit was filed for recovery of Rs.5,00,000/- only, as such, the condition to deposit a sum of Rs.9,00,000/- as security, is liable to be modified, by directing the defendant to deposit a sum of Rs.5,00,000/-. Ordered accordingly.

15. The learned trial Court is directed to invest the said amount, in the shape of FDR and the same shall not be disbursed to anyone till the final disposal of the suit.

16. With these observations, the present petition is disposed of. Pending miscellaneous application(s), if any, shall also stand disposed of.

**March 31, 2026***(ps)*

**( Virender Singh )**  
**Judge**