* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.10.2026
Date of Decision: 28.10.2026
Date of Uploading:28.10.2026

\# **CNR No. DLHC010391752026**

\+ CM(M) 1850/2026 & CM APPL. 56460/2026

ANAND SARASWAT .....Petitioner
Through: Ms. Swati Surbhi, Adv.

versus

KAILASH SONI .....Respondent
Through: Mr. Vinay Kumar Dubey and Ms. Vaishnavi Prajapati, Advs.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. Through the present petition, the petitioner assails the order dated 11.08.2026 passed by the learned District Judge (Commercial Court-01), Saket Courts, New Delhi, in CS (COMM) 348/2025, whereby the respondent's application under Order XXXVIII Rule 5 read with Section 151 of the Code of Civil Procedure, 1908[1], was allowed and the petitioner was directed to furnish security of ₹15,00,000/- by way of a fixed deposit receipt (FDR) in the name of the Court.

2. The brief facts of the present case are as follows.

3. The respondent instituted the underlying suit seeking recovery of ₹17,47,110/- along with interest at the rate of 18% per annum,

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towards outstanding charges for the petitioner's stay at the guest house operated under the name and style of M/s Private Affairs. The respondent stated that the petitioner had failed to clear the outstanding dues. In his written statement, the petitioner disputed the claim and asserted that approximately ₹28,00,000/- had already been paid to the respondent and the firm owned by the respondent's son. The respondent thereafter filed a replication.

4. The respondent filed an application under Order XXXVIII Rule 5 CPC dated 18.10.2025, seeking security for the amount claimed in the suit. The respondent contended, *inter alia*, that the petitioner was likely to remove or dispose of his assets so as to obstruct or delay the execution of any decree that may be passed in the suit. The petitioner opposed the application by way of a reply dated 29.10.2025, disputing the alleged apprehension and contending that no specific material had been placed on record to establish any attempt to alienate or dispose of assets.

5. During the proceedings, the learned Trial Court, by order dated 18.04.2026, directed the petitioner to place his complete address on record by way of an affidavit within one week. The petitioner filed the affidavit on 23.04.2026.

6. The learned trial court *vide* the impugned order dated 11.08.2026 allowed the respondent's application under Order XXXVIII Rule 5 CPC and directed the petitioner to furnish security of ₹15,00,000/- by way of a fixed deposit receipt in the name of the Court within two weeks. The learned Trial Court noted that the

[1] Hereinafter 'CPC'

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petitioner had no movable or immovable assets within its territorial jurisdiction and that the respondent had made out a prima facie genuine claim. It further observed that the possibility of the petitioner creating an encumbrance to obstruct execution of a decree could not be ruled out. Aggrieved by the direction to furnish security, the petitioner has approached this Court.

7. The learned counsel for the petitioner has submitted that the impugned order has been passed without satisfying the statutory requirements of Order XXXVIII Rule 5 CPC. She has submitted that the power to direct security before judgment is exceptional and can be exercised only where material exists to show that the defendant is intending to dispose of or remove his assets with the object of obstructing or delaying execution of a decree. Reliance has been placed on ***Raman Tech. & Process Engg. Co. v. Solanki Traders***[2], wherein the Supreme Court cautioned that the provision cannot be invoked mechanically or merely to secure an otherwise unsecured claim.

8. She has submitted that the application dated 18.10.2025 rests on a general apprehension that the petitioner may remove or alienate his assets, without identifying any specific asset or conduct indicative of an intention to defeat execution. The supporting affidavit, she contends, does not disclose an independent factual basis for this apprehension, while the application also fails to provide the particulars and estimated value of the property sought to be attached, as contemplated under Order XXXVIII Rule 5(2) CPC. Relying on

[2] **(2008) 2 SCC 302**

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Premraj Mundra v. Md. Maneck Gazi[3], she has submitted that a mere possibility of obstruction cannot substitute for material establishing the requisite intention. The absence of assets within the territorial jurisdiction of the learned Trial Court, or the fact that the respondent's claim appeared prima facie genuine, could not by themselves justify the direction to furnish security.

9. Similarly, she has also submitted that the petitioner has proactively participated in the proceedings despite being a resident of Maharashtra. Thus, there was no credible reason for the learned trial court to demand security to ensure the continuation of proceedings.

10. She further submitted that the learned Trial Court erred in treating the respondent's claim as prima facie genuine without adequately considering the petitioner's rival claim to the alleged outstanding liability. She has submitted that the respondent's claim is founded on invoices and bills, the veracity of which is also disputed, and the accruing liability whereunder has been disputed by the petitioner, who asserts that payments aggregating approximately ₹28,00,000/- were made to the respondent, including a payment of ₹15,00,000/- to the firm of the respondent's son. She has also submitted that there are numerous bills with the same numbers which have been issued by the respondent for the same dates. Thus, considering that the bills which form the basis of the respondent's case are fraudulent and that the petitioner has paid more than the claimed amount, the learned trial court has erred in treating the respondent's case to be genuine and bona fide.

[3] **AIR 1951 Cal 156**

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11. Lastly, she has also submitted that the learned trial court has erred in relying upon the purportedly vague and evasive denials in the petitioner's written statement. The petitioner's explanation for not having receipts for each payment is that the transactions took place in the context of a longstanding relationship of trust between the parties. She has contended that these are not merely general denials of the claim, but disputes going to the existence and extent of the alleged outstanding liability, which require examination of the relevant evidence. In these circumstances, the learned Trial Court could not have treated the possibility of a decree in the respondent's favour as sufficient, in itself, to direct the petitioner to furnish security.

12. *Per contra*, the learned counsel for the respondent has submitted that the respondent had established a bona fide claim for recovery of ₹17,47,110/- towards outstanding guest-house charges and that the circumstances of the case gave rise to a reasonable apprehension that execution of a decree in his favour may be frustrated. He has submitted that the petitioner was a resident of Palghar, Maharashtra, beyond the territorial jurisdiction of the learned Trial Court, and that this circumstance, when considered alongside his conduct, heightened the apprehension that he may place himself beyond the reach of the Court. He has further submitted that the petitioner had left the respondent's guest house without settling the outstanding charges, thereby giving rise to the present dispute. According to him, these circumstances, taken cumulatively, warranted a direction requiring the petitioner to furnish security to safeguard the eventual execution of the decree.

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13. The learned counsel has submitted that the respondent's claim was supported by room bills and WhatsApp conversations exchanged between the parties. He has contended that the petitioner's written statement contained evasive denials, contrary to the requirements of Order VIII Rules 3 to 5 of the CPC, and did not specifically traverse the respondent's assertions regarding the petitioner's stay, its duration, or the premises at which the services were availed. He has submitted that the petitioner had not disputed the factum of his stay at the respondent's property during the relevant period and that the documentary material in the form of WhatsApp chats and the hotel bills, read with the pleadings, prima facie substantiated the respondent's claim for recovery.

14. He has accordingly submitted that the respondent had placed sufficient material before the learned Trial Court to establish both the prima facie merits of the claim and the need to secure its eventual realisation. He has contended that the respondent's documentary evidence supported the claim for outstanding charges, while the petitioner's residence outside the territorial jurisdiction of the learned Trial Court, coupled with his conduct in leaving the guest house without settling the dues, gave rise to a reasonable apprehension that execution of a decree may be obstructed. He has submitted that the direction to furnish security of ₹15,00,000/- was intended to preserve the efficacy of the proceedings and did not determine the petitioner's liability in the suit. The learned counsel has, therefore, submitted that no interference with the impugned order was warranted in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

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15. He has also relied on the judgment of the Hon'ble Supreme Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi & Ors.***[4] to submit that in cases of a suit for money, the trial court may direct the defendant to disclose his assets on oath and thereafter furnish security.

16. Heard. Perused the records.

17. The question which arises for consideration is whether the respondent, while seeking a direction for furnishing security under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, placed any material before the learned Trial Court to show that the petitioner was about to dispose of or remove his property with the intent to obstruct or delay the execution of a decree that may be passed against him. It is trite law that for an application under Order XXXVIII Rule 5, the plaintiff is required to demonstrate, through specific facts and circumstances, the defendant's intent to defeat the execution of a possible decree.

18. In ***Raman Tech. & Process Engg. Co. v. Solanki Traders (supra)***, the Hon'ble Supreme Court noted that the power under Order XXXVIII Rule 5 CPC is drastic and extraordinary and must be exercised sparingly, in strict conformity with the conditions prescribed therein. A prima facie case in favour of the plaintiff, howsoever bona fide, does not by itself warrant an order directing the defendant to furnish security. The plaintiff must place material demonstrating that the defendant is about to dispose of or remove his property with the intent to obstruct or delay the execution of a decree that may be passed. The Division Bench of this Court in ***KCV Airways Ltd. v. Wg.***

[4] **(2021) 6 SCC 418**

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Cdr. R.K. Blaggana[5], likewise emphasised the necessity of establishing the statutory conditions before such a direction can be issued. The underlying principle emerging from these decisions is that the Court must be satisfied, on the basis of pleaded and substantiated facts, both as to the defendant's proposed conduct concerning his property and the intent accompanying such conduct. A mere apprehension that a decree may remain unsatisfied, or the existence of a bona fide claim, cannot substitute for this statutory requirement.

19. Tested against this standard, the respondent's application dated 18.10.2025 is bereft of material particulars demonstrating any attempt by the petitioner to dispose of or remove his property with the intent to obstruct or delay execution. The application proceeds on a presumption that the petitioner being a resident of Maharashtra would vitiate the decree, however, it does not set out any specific acts of alienation, proposed transfer, removal of assets, or other conduct from which such an intention could reasonably be inferred. Nor does it disclose cogent reasons necessitating an order for attachment before judgment.Mere apprehension of disposal along with the defendant's primary resident being out of Delhi does not constitute to be valid grounds for direction of security.

20. The deficiency in the respondent's application is not cured by the reasoning adopted in the impugned order dated 11.08.2026. The learned Trial Court relied upon the petitioner's allegedly evasive denials in the written statement and his residence at Palghar, Maharashtra, beyond its territorial jurisdiction. Neither circumstance, in the absence of further material, establishes that the petitioner was

[5] **(1997) SCC Online Del 453**

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attempting to deal with his property in a manner intended to obstruct or delay execution.

21. The adequacy of the petitioner's pleadings may be examined in determining the respondent's claim; it cannot, by itself, establish an intention to defeat a decree. Furthermore, the petitioner's ordinary place of residence outside the territorial jurisdiction of the learned Trial Court cannot be treated as an independent ground for directing security. Residence beyond the jurisdiction of the Court does not, in itself, indicate an intention to evade execution, much less an attempt to dispose of or remove assets. In the absence of any extraneous material demonstrating such an attempt, the inference drawn by the learned Trial Court rests on the petitioner's place of residence rather than on conduct satisfying the statutory threshold. Such an inference cannot sustain an order under Order XXXVIII Rule 5 CPC.

22. Further, the conduct of the petitioner, who is a resident of Maharashtra, in proactively participating in the proceedings contradicts the assumption of the learned trial court that he will frustrate the proceedings and thereby attempt to vitiate the decree. The proactive participation by the petitioner makes it apparent that he is interested in pursuing the proceedings, and thus, the assumption of the learned trial court that the petitioner will evade the proceedings cannot be sustained.

23. The exceptional nature of the power under Order XXXVIII Rule 5 CPC requires the Court to apply a correspondingly strict standard before directing a defendant to furnish security. The legislative intent behind Order XXXVIII Rule 5 is to ensure that a

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defendant doesn't dispose of the property, thereby vitiating the decree. Thus, the intent of the defendant and any consequent overt act to dispose the property becomes a paramount consideration. The Court must examine the defendant's overt acts and determine whether the material establishes, first, an attempt or an imminent attempt to dispose of or remove property and, secondly, the specific intent to obstruct or delay the execution of a decree. These are distinct but connected requirements: the conduct relied upon must be identified, and the intent contemplated by the Rule must reasonably arise from the material placed on record. In the absence of such material, the power cannot be exercised merely as a precaution against the possibility that a decree may go unsatisfied.

24. The petitioner's purported departure from the guest house without settling the outstanding dues cannot, by itself, be construed as indicative of any mala fide intent to obstruct or delay execution of a decree. Such conduct, even if established, cannot be extrapolated to impute to the petitioner an intention to defeat the process of execution, absent any material demonstrating that he was attempting to dispose of or remove his assets with such intent.

25. The respondent has relied on ***Rahul S. Shah (supra)***, to submit that the petitioner ought to be directed to disclose his assets and furnish security. However, the same is inapplicable to the facts of the present case as there are no demonstrable circumstances warranting such a direction. The petitioner, despite residing in Maharashtra, has participated in the proceedings before the learned Trial Court, and his place of residence, absent any further material, cannot by itself give rise to an apprehension that he would evade the process of the Court

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or frustrate execution of a decree. A direction to furnish security cannot be issued as a matter of course, but must be exercised with circumspection and only where the circumstances so warrant.

26. In view of the above, this Court is of the considered opinion that the respondent failed to place before the learned Trial Court material establishing the petitioner's intent to obstruct or delay execution of a decree. The impugned order rests on the prima facie nature of the respondent's claim, the alleged evasive denials in the written statement, and the petitioner's residence outside the territorial jurisdiction of the learned Trial Court. These considerations do not satisfy the requirements of Order XXXVIII Rule 5 CPC. The direction requiring the petitioner to furnish security of ₹15,00,000/- is, accordingly, unsustainable.

27. The petition is allowed and the impugned order dated 11.08.2026 is set aside. It is clarified that the observations made herein are confined to the respondent's application under Order XXXVIII Rule 5 CPC and shall not prejudice the adjudication of the parties' respective claims and defences in the pending suit.

AJAY DIGPAUL, J.

OCTOBER 28, 2026/*AS/sg*

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