



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**OMP No. 1379 of 2025 in
Civil Suit No.5 of 2023**

Reserved on: 26.02.2026

Decided on 28.02.2026

M/s Randhawa Constructions Private Ltd. & another
....Non-Applicants/Plaintiffs

Versus

M/s Ropeways and Rapid Transport
System Development Corporation HP Ltd.
(RTDC) and others
....Applicants/Defendants

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

Whether approved for reporting?¹

For the non-applicants/plaintiffs: Mr. Ajay Kumar, Senior Advocate with
Mr. Rohit, Advocate.

For the applicant/defendants: Mr. R.K. Gautam, Senior Advocate with
Mr. Sahil Dixit, Advocate, for applicant/
defendant No.1.
Mr. Manoj Chauhan, Additional Advocate
General with Mr. Ankush Thakur and
Mr. Balwinder Singh Ballu, Deputy
Advocates General, for non- applicant/
defendant No.2.

Sushil Kukreja, Judge

The present application has been filed by applicant/
defendant No.1 under Section 151 of the Code of Civil Procedure (CPC)

¹ Whether reporters of Local Papers may be allowed to see the judgment?



with a prayer to treat the following proposed issues as preliminary issues:-

- “(i) Whether the suit is not maintainable as no proper court fee has been affixed with the plaint?...OPD*
- (ii) Whether the suit is not maintainable as the same has not been filed in compliance of the mandatory provisions of The Commercial Courts Act, 2015? ...OPD*
- (iii) Whether the suit is time barred?...OPD”*

2. Brief facts of the case are that the non-applicants/plaintiffs filed a suit for refund and recovery of the bid security amount of Rs.1,32,00,000/- alongwith interest and legal cost in terms to clause 2.26 of the tender document. As per the plaintiffs, they came to know about the tender called by applicant/defendant No.1 for development of the rope-way between Narkanda and Hatu Peak in District Shimla on Public Private Partnership (PPP). It was a Request For Proposal (RFP) floated in the form of a tender on 14.10.2019, in which, the last date was 10.02.2020. The plaintiffs, who were business consortium, jointly applied for participation in the aforesaid project and they were the only bidder for the said project in 2019 and requested for pre-bid meeting with the defendants on 25.11.2019. Subsequently, the plaintiffs sent a draft of the Force Majeure Clause extract to be incorporated and again raised serious objections to the Force Majeure Clause contained in the RFP as not being feasible, viable and acceptable to the plaintiffs, vide email dated 10.02.2020. After holding a meeting on 04.05.2020, Technical



Officer of defendant No.1 found that the technical bid of the plaintiffs was responsive, therefore, informed them to take part in the financial bid on 29.06.2020. Defendant No.1 accepted that the plaintiffs' issues remained un-resolved, due to which that tender could not be finalized even after opening of the Final Bid on 29.06.2020. The letter dated 29.06.2020 communicated the fact that the decision making process of the tender was going to take more time and, therefore, requested the plaintiffs to extend the validity of the bank guarantee to 08.12.2020, which was accepted by the plaintiffs and it was accordingly extended till 08.12.2020. Even if presuming it was from 29.06.2020, it was still given after more than 5 months when the RFP stated the validity of Bid time to be 3 months as per clause 2.25. It was further averred that till the time of the award neither the bid was accepted, nor rejected and no decision had ever been communicated on the objections within the stipulated time-frame. Despite the pendency of consideration on the objections raised by the plaintiffs and after depositing the Earnest Money Deposit, defendant No.1 has in utmost wrongful/ unjustified/ arbitrary/ unconstitutional manner demanded from the plaintiffs to submit fresh Bank Guarantee. Therefore, on the basis of the aforesaid pleadings, the plaintiffs filed the instant suit for refund of Rs.1,32,00,000/- alongwith interest at the rate of 18% per annum from the date of filing of the suit till the date of payment.



3. Applicant/defendant No.1 filed written statement to the plaint, wherein preliminary objections qua maintainability of the suit, estoppel, no proper Court fee affixed, limitation, non-joinder of necessary parties, cause of action etc. were raised. On merits, it was averred that the plaintiffs have no right to withdraw the Bid Security later than 60 days from the date of bid, hence, the plaint deserves to be rejected. It was further averred that once the offer/proposal was finally accepted by the plaintiffs, vide letter dated 23.05.2020, they were legally bound to fulfill all the terms and conditions mentioned in the REP. Hence, the prayer for dismissal of the suit has been made.

4. The non-applicants/plaintiffs filed replication to the written statement filed by applicant/defendant No.1, wherein the averments made in the plaint were re-asserted and reaffirmed.

5. During pendency of the suit, the present application has been filed on behalf of applicant/defendant No.1, with a prayer to treat the following proposed issues as preliminary issues:-

- “(i) Whether the suit is not maintainable as no proper court fee has been affixed with the plaint?...OPD
- (ii) Whether the suit is not maintainable as the same has not been filed in compliance of the mandatory provisions of The Commercial Courts Act, 2015? ...OPD
- (iii) Whether the suit is time barred? ...OPD”



6. Reply to the application has been filed on behalf of the non-applicants/ plaintiffs, wherein the averments made in the application have been denied. It has been averred in the reply that the proposed issues are mixed issues of law and facts and they cannot be treated as preliminary issues.

7. Learned Senior Counsel for applicant/defendant No.1 vehemently contended that since the proposed issues are related to the very maintainability of the suit, therefore, on the basis of the pleadings of the parties, these issues are required to be treated as preliminary issues.

8. On the other hand, learned Senior Counsel for the non-applicants/plaintiffs contended that all the issues are required to be heard and decided together and the proposed issues being the mixed issues of law and facts, they cannot be treated as preliminary issues.

9. I have heard Mr. R.K. Gautam, learned Senior Counsel for the applicant/defendant No.1 as well as Mr. Ajay Kumar, learned Senior counsel for the the non-applicants/plaintiffs and Mr. Manoj Chauhan, learned Additional Advocate General, for non-applicant/defendant No.2 and have carefully gone through the material available on record.

10. At this stage, it would be relevant to reproduce Order XIV, Rule 2 of CPC, which reads as under:-

“ 1. -----
2. **Court to pronounce judgment on all issues.—**
(1) *Notwithstanding that a case may be disposed of on a*



preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

11. The bare perusal of Order XIV, Rule 2 of CPC suggests that when issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to the jurisdiction of the court or a bar to the suit created by any law for the time being in force

12. In ***Prithvi Raj Jhingta & anr. Vs. Gopal Singh & anr., AIR 2007 Himachal Pradesh 11***, it has been held in para-9 of the judgment by the Full Bench of this Court that except in situations perceived or warranted under Sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under Sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law



first, without taking up simultaneously other issues for decision. Relevant portion of the said judgment is reproduced as under:-

“9. Based upon the aforesaid reasons therefore, and in the light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under Sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under Sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a Court because Sub-rule (1) does not permit the Court to adopt any such principle of severability and to dispose of a suit only on preliminary issues, or what can be termed as issues of law. Sub-rule (1) clearly mandates that in a situation contemplated under it, where all the issues have been framed together and have also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the Court covering all the issues framed in the suit.”

13. In **Sathyanath and another Vs. Sarojamani, (2022) 7 SCC 644**, the Hon’ble Supreme Court held that if the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. Paras 21 & 23 of the judgment read as under:-

“21. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended



Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

22.

23. *The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in Ramesh B. Desai that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the "jurisdiction of the Court" and (b) which deal with the "bar to the suit created by any law for the time being in force." The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided."*

14. Perusal of the aforesaid judgments reveals that though provision contained under Order XIV, Rule 2 (2) CPC, permits a court to try issues of law, if any, at the first instance, but when such an issue is a mixed question of law and facts, same cannot be decided as a 'preliminary issue'. It has further been categorically held in the aforesaid judgment, that to avoid possibility of remand by the appellate or revisional jurisdiction, trial Court is under obligation to decide all issues together, especially when no specific preliminary issue was ever raised with regard to limitation and jurisdiction. Where no evidence is required, on the basis



of reading of plaint or applicable law, Court can ascertain its jurisdiction or of maintainability of suit, it can try such issue as a 'preliminary issue' and decide the same at the first instance by postponing settlement or decision qua other issues.

15. In ***Sukhbiri Devi & others Vs. Union of India & others***, , **2022 SCC Online 1322**, it has been held that in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2(2)(b), CPC, but where the issue of limitation is not a pure question of law, it can not be decided as a preliminary issue. Relevant portion of the judgment reads as under:-

“16.. Now, we will consider the first question: ‘whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2, CPC’. It is no longer res integra. In the decision in Mongin Realty and Build Well Private Limited Vs. Manik Sethi, even while holding that the course of action followed by the learned Trial Judge of directing the parties to address arguments on the issue of limitation as irregular since it being a case where adduction of evidence was required, a two-Judge Bench of this Court referred to a three-Judge Bench decision of this Court in Nusli Neville Wadia Vs. Ivory Properties that the issue therein was whether the issue of limitation could be determined as a preliminary issue under Order XIV, Rule 2, CPC. After taking note of the fact that going by the decision in Nusli Neville Wadia’s case, in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2(2)(b),CPC, the two- Judge Bench held that in the case before their Lordships the question of limitation could not have been decided as a preliminary issue under Order XIV, Rule 2 of CPC as determination of the issue of limitation in that case was not a pure question of law. In the said contextual situation it is worthy and appropriate to refer to paragraphs 51, in



so far as it 8 [(2020) 6 SCC 557] is relevant, and 52 of the decision in Nusli Neville Wadia's case⁸ and they read thus:-

"51.[...] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and is the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

52. [...] In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed and the question of law is dependent upon the outcome of the investigation of the facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976."

(Emphasis added)

16. Thus, perusal of the aforesaid judgment reveals that once facts are disputed about limitation, the determination of the question of limitation cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the



disputed facts In the instant case also after going through the pleadings of the parties, in my opinion, the proposed issues, as mentioned in para-2 of the application, are mixed issues of law and facts and they cannot be decided only on the basis of pleadings adduced on record by respective parties as the evidence is required to be led in order to decide these issues as such they can not be treated as preliminary issues. Consequently, the instant application, being devoid of any merit, deserves to be dismissed and the same is dismissed accordingly.

17. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and is only confined to disposal of this application.

February 28, 2026
(*V.Himalvi*)

(Sushil Kukreja)
Judge