IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO Nos. 173/2023 & 238/2025
Decided on: 20.3.2026
Decided on: 31.03.2026

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1. CMPMO No. 173/2023

Surender Kumar .....Petitioner

Versus

Pankaj Bansal & anr. ...Respondents

2. CMPMO No. 238/2025

Surender Kumar .....Petitioner

Versus

Pankaj Bansal & anr. ...Respondents

Coram:

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

Whether approved for reporting?[1] Yes

For the Petitioner(s): Mr. Aditya Thakur, Advocate.

For the Respondents: Mr. Vipin Pandit, Advocate.

Romesh Verma, Judge

Since common question of law and facts are involved in these petitions (CMPMO Nos. 173/2023 & 238/2025),

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

therefore, they were taken up together for hearing and are being disposed of by common judgment. However, to maintain clarity, facts of CMPMO No. 173/2023 are taken into consideration in detail at first.

CMPMO No. 173/2023

2 By medium of CMPMO No. 173/2023, the petitioner/defendant, has laid challenge to the order dated 24.2.2023, as passed by the learned Civil Judge, Court No. II, Solan, District Solan, whereby an application filed by the plaintiffs/respondents under the provisions of Order 38 Rule 5 read with Section 151 CPC, in Civil Suit No. 37/2018, has been allowed and the defendant/petitioner has been directed to furnish security to the amount of Rs.8,73,183/- on or before 25.3.2023, failing which the share of defendant/petitioner in his building, at ground floor, shop No. 3, situated at Mauja Jawahar Park Solan will be attached.

3 The plaintiffs/respondents filed a suit (Civil Suit No. 37/2018) against the defendant/petitioner for recovery of Rs. 8,73,183/- as arrears of rent and interest thereupon upto 28.2.2018 and further future interest @ 12% p.a. on arrears of rent till full and final payment. It was averred in the plaint that plaintiff No.2, Maya Bansal, is owner of a building known as Pooja Emporium. Plaintiff No.1 Pankaj Bansal, being attorney of

plaintiff No.2, inducted the defendant/petitioner as tenant in a shop, situated in Pooja Emporium building, as has been highlighted with pink colour in site plan, in the year 2000 at monthly rental of Rs.12,000/-, which was statutorily increased w.e.f. 28.6.2005 to Rs.13,200/-, w.e.f. 28.6.2010 to Rs.14,520/-, w.e.f. 28.6.2013 to Rs.15,972/- and thereafter w.e.f.28.6.2016 to Rs.17,569/-. It was submitted in the plaint that the defendant/ petitioner has purchased another shop at Circular Road Solan, Near Modgil Ashram and shifted his business to said shop in the month of July, 2012. The shop in question has been sub-let by the defendant/petitioner to Raj Rani without implied consent of the plaintiffs/respondents, qua which, rent petition has also been filed.

4 It was averred that the defendant/petitioner has not paid monthly rent for the last more than 6 years. Though rent was demanded from the defendant/petitioner, however he disclosed that he has shifted his business and intended to purchase the shop and for that negotiations were going on, thus, assurance was given to the plaintiffs/respondents that he would make the payment of rent very soon and promised to vacate the shop occupied by him as a tenant under the plaintiffs/respondents. Therefore, in these circumstances, the plaintiff filed suit against the defendant/petitioner, as aforesaid.

5 The defendant/ petitioner contested and resisted the plaint by raising preliminary objections qua maintainability, cause of action, suit being bad for want of better particulars, suppression of material facts, valuation etc. On merits, stand was taken by the defendant/respondent that he is not tenant of the plaintiffs/respondents and the story, as projected by the plaintiffs/respondents is incorrect. It was averred that the plaintiffs never let out any premises to him in their building known as Pooja Emporium. There is no relationship of landlord and tenant between the plaintiffs and defendant in any manner. Therefore, plea of the plaintiffs qua subletting of the premises to Ms. Raj Rani is wrong and baseless. It was averred that Raj Rani is mother of the defendant, but the defendant has nothing to do with the suit premises.

6 Precisely, defence was taken by the defendant/petitioner that there is a building known as Pooja Emporium belonging to the plaintiffs on one side and the other side of this building, there is a building belonging to the government i.e. DRDA, wherein milk booth of Society is located. Both these buildings join together and as a result of which, a space has come up under the projections of these two buildings, total area of which space comes out to 6.50 sq. mts. in all. The entire space, which has been left by two side owners of the

building as set back area, is in the occupation and possession of Ms. Raj Rani, wife of Sh. Manohar Lal, ever since year 1999 onwards and the said space is known as 'Raj Dupatta Centre, as on date. The wooden door was also installed/fixed by Ms. Raj Rani on the entrance of the said space from the road side known as The Mall, Solan. She has also raised pucca platform in front of the said space. The possession of Raj Rani is actual, peaceful, physical and without any interference from the plaintiffs or DRDA authority or M.C. Solan ever since the year 1999 onwards. It was prayed that neither the plaintiffs nor the DRDA nor the government of H.P. nor M.C. Solan have any right, title or interest in and over the space in question in any manner whatsoever nor they ever objected to the possession of Raj Rani till date. It was further averred that the suit is to harass and humiliate the defendant unnecessarily. All the averments as made in the plaint were refuted and the defendant prayed for dismissal of the suit being baseless and without any substance.

7 After filing of the written statement, during the pendency of the suit, the plaintiffs/respondents filed an application under Order 38 Rule 5 of CPC with a prayer that the defendant/petitioner may be called upon to furnish bank guarantee in the sum of Rs. 15 lac and on his failure to do so, properties owned by the defendant/petitioner may be ordered to

be attached being at the disposal of the Court. It was averred in the application that the plaintiffs/respondents have filed a suit No. 37/ 2018 for recovery of an amount of Rs.8,73,183/- along with future interest. The defendant/respondent had been openly proclaiming that the amount to be recovered from him on account of arrears of rent would not be paid by him and he would drag the litigation to defeat the rights of the plaintiffs/respondents. It was submitted that the defendant/petitioner is owner of one flat, which is a part of building, situated on land comprised in Khasra No. 4359/41, 93/821, at Mauja Ser Solan and has mortgaged the same with Baghat Urban Cooperative Bank, Solan for an amount of RS.25,00,000/-. He is also owner of 3/4th share in the said flat, on account of death of his mother Raj Rani. It was further averred that the defendant/petitioner is also owner of portion in a building i.e. ground floor, shop No.3, situated at Mauja Jawahar Park, Solan and this shop has also been mortgaged with Baghat Urban Cooperative Bank, Solan.

8 The defendant/petitioner has been openely proclaiming that he would not pay the loan amount. Intention of the defendant/petitioner not to pay the amount of arrears of rent is clear from the public notice published in Punjab Kesari, daily Hindi newspaper on 18.11.2022 under the SARFESI Act

has been published qua one of the properties owned by the defendant/petitioner. The second property has also been mortgaged and non-payment of the mortgage amount to the same Bank clearly establishes the intention of the defendant/petitioner to defeat the judgment and decree that may be passed in favour of the plaintiffs/respondents or in alternate to obstruct or delay execution of decree to be passed against him.

9 The plaintiffs/respondents filed the said application on 22.11.2022. On the next date, i.e. 23.11.2022 an application under Section 151 CPC for early hearing was filed by the plaintiffs/respondents on the ground that the plaintiffs/respondents have reasonable apprehension that the defendant/petitioner may take steps within a week, which may cause loss and injury to them and would frustrate very purpose of filing of the suit. The said application for early hearing came up for consideration before the learned trial court on 23.11.2022, on which date, the same was allowed.

10 The defendant/petitioner filed a detailed reply to the application under Order 38 Rule 5 CPC on 18.1.2023 by refuting all the averments as made in the application. The averments as made in the written statement were reiterated and relationship of landlord and tenant between the parties was specifically denied.

It was averred in the reply that defendant/petitioner is going to settle dispute with the Bank, on the basis of which public notice has been published. It was averred that the mother of the defendant/petitioner died on 6.2.2022 due to prolonged illness and he had to invest most part of his earning on her treatment, thus he could not repay the loan amount owing to which proceedings under the SARFAESI Act were initiated against the defendant/petitioner and now the dispute is likely to be settled by him with the Bank very shorty. It was further averred that the defendant/petitioner has established business at Solan city and there is no occasion for him to leave the settled business and flee from the jurisdiction of the Courts at Solan.

11 The plaintiffs/respondents filed rejoinder to the reply as filed by the defendant/petitioner to the application for attachment of the property, reiterating therein contents of the application and denying the stand of the defendant/petitioner in toto.

12 The learned trial court vide order dated 24.2.2023 allowed the application filed by the plaintiffs/respondents under Order 38 Rule 5 CPC, whereby the defendant/petitioner was directed to furnish security to the amount of Rs.8,73,183/- on or before 25.3.2023, failing which the share of

defendant/petitioner in his building at ground floor, shop No.3 situated at Mauja Jawhar Park, Solan, will be attached.

CMPMO No. 238/2025

13 Now as regards facts of CMPMO No. 238/2025, this petition arises out of order dated 2.12.2024, as passed by the learned Civil Judge, Court No. I, Solan, District Solan, whereby an application filed by the plaintiffs/respondents under the provisions of Order 38 Rule 5 read with Section 151 CPC in Civil Suit No. 62/2021, has been allowed and the defendant/petitioner has been directed to furnish security to the amount of Rs.8,00,000/- on or before 20.2.2025, failing which the share of defendant/petitioner in his building at ground floor shop No. 3, situated at Mauja Jawahar Park Solan will be attached.

14 It would be noticed that the plaintiffs/respondents filed a suit (Civil Suit No. 62/2021) against the defendant/petitioner for recovery of Rs. 7, 88, 322/- as arrears of rent and interest thereupon w.e.f. 1.3.2018 to 28.2.2021 and further future interest @ 12% p.a. on arrears of rent till full and final payment with regard to the same property as involved in Civil Suit No. 37/2018 i.e. a shop, situated in Pooja Emporium building, wherein, apart from taking averments as contained in Civil Suit No. 37/2018 and having been discussed at length

while dealing with facts of CMPMO No. 173/2023, it was averred that the defendant/petitioner has not stood by his promise to vacate the suit premises and even did not pay rent for last 9 years prior to the period of 28.2.2018 qua which earlier suit is pending in the competent court of law and after filing earlier civil suit for recovery, again period of approximately 3 years is going to pass, therefore, the defendant/petitioner in addition to amount as claimed in C.S. No. 37/2018, is liable to pay the following amount:-

i) Arrears of rent w.e.f. 1.3.2018 to 28.6.2019 i.e. 16 months @ Rs.17,569/- p.m. = Rs.2,81,104/-.
ii) Interest on above mentioned amount @ 12% upto June, 2019 i.e. Rs. 23,893/-.
iii) Interest w.e.f July, 2019 to 28.2.2021 on arrears of Rs. 2,81,104/- i.e. Rs. 56,220/-.
iv) Arrears of rent w.e.f. 28.6.2019 to 28.2.2021 i.e. 20 months @ Rs.19,326/- i.e. Rs.3,86, 250/-.
v) Interest on the above mentioned amount for 20 months as per Urban Rent Control Act = Rs.40,585/-
Total amount = Rs. 7,88,322/-

15 The defendant/ petitioner while contesting Civil Suit No. 62/2021 reiterated the same and similar averments as were taken in Civil Suit No.37/2018 and denied the case of the plaintiffs/respondents in toto. Thereafter, the plaintiffs/respondents filed an application under Order 38 Rule 5

of CPC with a prayer that the defendant/petitioner may be called upon to furnish bank guarantee in the sum of Rs. 15 lac and on his failure to do so, properties owned by the defendant/petitioner may be ordered to be attached being at the disposal of the Court, which application came to be allowed vide order dated 2.12.2024, directing defendant/petitioner to furnish security to the amount of Rs.8,00,000/- on or before 20.2.2025, failing which the share of defendant/petitioner in his building at ground floor shop No. 3, situated at Mauja Jawahar Park Solan will be attached.

16 Feeling aggrieved by the impugned orders, as passed by the learned courts below on 24.2.2023 and 2.12.2024, the defendant/petitioner has approached this Court by filing instant petitions.

17 It is contended by Mr. Aditya Thakur, learned counsel appearing for the defendant/petitioner that the impugned orders as passed by the learned courts below are erroneous and not sustainable in the eyes of law. He has further submitted that the courts below have not appreciated the true import of Order 38 Rule 5 CPC and have wrongly directed the defendant/petitioner to furnish securities in both the cases. It is contended that provisions of Order 38 Rule 5 CPD have not

been followed by the court below and the impugned orders have been passed in a routine manner.

18 On the other hand, Mr. Vipin Pandit, learned counsel appearing for the plaintiffs/respondents has defended the impugned orders. He has submitted that the courts below have rightly passed the impugned orders after appreciating the entire factual matrix of the case and taking into consideration the legal provisions of Order 38 Rule 5 CPC. He has further submitted that the impugned orders are not required to be disturbed or interfered with in view of the judgments passed by the Hon'ble Supreme Court in various cases dealing with the same issue.

19 I have heard the learned counsel for the parties and have also gone through the case file.

20 Admittedly, the plaintiffs/respondents in both the cases have filed suits for recovery of arrears of rent from the defendant/petitioner. In CMPMO No. 173/2023, the plaintiffs/respondents have claimed recovery of Rs.8,73,183/- and interest accrued thereupon upto 28.2.2018 along with further future interest @ 12% per annum till full and final payment, whereas in CMPMO No. 238/2025, they have claimed recovery of Rs.7,88,322/- and interest accrued thereupon upto

w.e.f. 1.3.2018 to 28.2.2021 along with further future interest @ 12% per annum till full and final payment.

21 The defence of the defendant/petitioner in both the cases is that there is no relationship of landlord and tenant inter se the parties to the lis.

22 Mr. Vipin Pandit, Advocate, in order to make out a case for grant of relief under the provisions of Order 38 Rule 5 CPC has taken this Court to the copy of the agreement, which has been filed with the reply to the instant petition as Annexure R-1, at page 120 of the paper book of CMPMO No. 173/2023. It has been spelt out in the agreement that the agreement is made on 29.6.2000 between Surender Kumar, son of Manohar Lal, as tenant and Pankaj Bansal, son late Sh. C. K. Poddar, as landlord. It has been incorporated in the agreement that plaintiff/respondent No.1 Pankaj Bansal has rented out one shop in Pooja Emporium building i.e. a shop, situated between DRDA shop, Pooja Emporium Shop on front, the Mall and on back side building of Usha Aggarwal, at monthly rental of Rs.12,000/-. It has also been spelt out that possession of the shop has been handed over to the tenant and that the tenant undertakes to make payment of rent regularly, not to cause any damage to the premises or to sublet the same to anyone else.

Perusal of the agreement further reveals that the agreement has been signed by the parties and the witnesses thereto.

23 Mr. Vipan Pandit, Advocate, submits that this agreement prima facie show the jural relationship between the parties as landlord and tenant. It is contended by him that story as projected by the defendant/petitioner that neither he is tenant under the plaintiffs/respondents nor he has got any concern to the premises in question or that he is not liable to pay rent stands falsified on the strength of the aforesaid agreement. The agreement is specific, unambiguous and clear and it prima facie shows that the plaintiffs/respondents have rented out a shop in question to the defendant/petitioner.

24 It would be apposite here to reproduce provisions of Order 38 Rule 5 CPC, which read as under:-

> *"5. Where defendant may be called upon to furnish security for production of property.—*
>
> *(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—*
> *(a) is about to dispose of the whole or any part of his property, or*
> *(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a*

time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

[(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void."

25 The aforesaid provisions envisage that if the Court is satisfied that the defendant with an intent to obstruct or delay execution of the any decree that may be passed against him – is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court can direct the defendant either to furnish security, in such sum as may be specified by the order, to produce and place at the disposal of the Court or to appear and show cause why he should not furnish security. Further it has been stipulated that the plaintiff

shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

26 The Hon'ble Supreme Court in ***Raman Tech and Process Engg Co. vs. Solanki Traders, SC C 2008 (2) 302*** has held that the object of order 38 rule 5 CPC is to prevent any defendant from defeating the realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The Scheme of Order 38 and the use of the words 'to obstruct or delay the execution of any decree that may be passed against him' in Rule 5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. The court should be satisfied that the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5 CPC. It is well-settled proposition of law that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is

attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.

27 The Hon'ble Supreme Court in ***M/s Radha Krishan Industries vs. State of Himachal Pradesh, AIR 2021 SC 2114*** has held as follows:

> *"30. The decision of this Court in Raman Tech Process Engg Co and Anr v Solanki Traders was concerned with the power of a civil court under Order 38 Rule 5 of the CPC to order an attachment before judgment. In that case, proceedings had been instituted by the respondent, for the recovery of moneys due for the supply of material to the appellant. The plaintiff moved an application under Order 38 Rule 5, for a direction to the defendants to furnish security for the suit claim and if they failed to do so, for attachment before judgment. This Court described the power of attachment before judgment in the following terms:*
>
> > *"5. The power under Order 38, Rule 5 Civil Procedure Code is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38, Rule 5 not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged.*

Instances are not wanting where bloated and doubtful claims are realized by unscrupulous plaintiffs, by obtaining orders of attachment before judgment and forcing the defendants for out of court settlements, under threat of attachment.

6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bona fide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38, Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment [internal citation omitted]."

28 In the present case, learned counsel for the plaintiffs/respondents have taken this Court to the pleadings and the documents, which clearly reveal that the plaintiffs/respondents have got prima facie case in their favour and the averments as made in the plaint reveal that they are owners of the suit property and the same was rented out to the defendant/petitioner on monthly rental of Rs.12,000/-. It has been mentioned in the plaint that the defendant/ petitioner has purchased another shop in the month of July, 2012 at Circular Road Solan, Near Modgil Ashram and when the defendant was asked to pay outstanding arrears of rent, he assured the

plaintiffs/respondents to repay the said amount very shortly, however nothing was done by him as per the promise made by him. The averments as made in the plaint coupled with copy of the agreement makes out prima facie case in favour of the plaintiffs/respondents for grant of relief as sought for in application under Order 38 Rule 5 CPC.

29 The defendant/petitioner in the written statements as well as reply to the applications filed by the plaintiffs/respondents under Order 38 Rule 5 CPC has tried to project that the plaintiffs/respondents are strangers and the suits have been filed by them to harass him. It is the case of the defendant/petitioner that neither there is any relationship of landlord and tenant between the parties nor he is to pay any kind of arrears of rent towards the plaintiffs. However, the agreement placed on record falsifies defence of the defendant/petitioner for the determination of the application under Order 38 Rule 5 CPC. Apart from that, the plaintiffs have been able to make out the case that the defendant/petitioner is attempting to remove or dispose his assets with an intention to defeat the decree that may be passed in their favour and against him.

30 The plaintiffs/respondents filed applications under Order 38 Rule 5 CPC on 22.11.2022 and immediately, on the

next date i.e. 23.11.2022, an application for early hearing was filed by them on the ground that in case the same is not allowed, very purpose of filing of the suit(s) would be frustrated.

31 The said application was allowed by the learned trial court vide order dated 23.11.2022. The defendant/petitioner filed reply to the application under Order 38 Rule 5 CPC on 18.1.2023.

32 Learned counsel for the plaintiffs/respondents has argued that as per the averments made in the applications filed under Order 38 Rule 5 CPC, the defendant is owner of one flat, being a part of building, situated on land comprised in Khasra No. 4359/41, 93/821, at Mauja Ser Solan and has mortgaged the same with Baghat Urban Cooperative Bank, Solan for an amount of Rs.25,00,000/-. The defendant is also owner of 3/4th share in the said flat, on account of death of his mother Raj Rani. He is also owner of portion in a building i.e. ground floor shop No.3, situated at Mauja Jawahar Park, Solan and this shop has also been mortgaged with Baghat Urban Cooperative Bank, Solan. The plaintiffs/respondents have averred that a public notice was issued on 18.11.2022 in Punjab Kesari, daily Hindi newspaper under the SARFAESI Act qua one of the properties owned by the defendant/petitioner, which clearly establishes intention of the defendant/petitioner to defeat the decree that

may be passed in favour of the plaintiffs/respondents or in alternate to obstruct or delay execution of decree to be passed against him.

33 In the reply to the applications, though specifically said averments have not been denied by the defendant/petitioner, however stand has been taken that he is shortly going to settle dispute with the Bank, on the basis of which public notice has been published.

34 Most important document, which has been placed on record by the plaintiffs/respondents to make out a case for passing an order and allowing applications under Order 38 Rule 5 CPC is copy of the sale deed, dated 10.2.2023 (Annexure R-7) executed by the defendant/petitioner qua his share along with his father, Manohar Lal.

35 The plaintiffs/respondents filed application under Order 38 Rule 5 CPC on 22.11.2022 in both suits and during the pendency of the said applications, and before passing of the impugned orders, the defendant/petitioner sold his share in Flat No.102, owned by him along with father on 10.2.2023. It shows that intention of the defendant/petitioner clearly and unambiguously is to defeat the decree that may be passed against him.

36 Perusal of the said sale deed reveals that cheque bearing No.633194 amounting to Rs. 24 lacs was paid on 27.12.2022 i.e. immediately after filing of the applications for attachment of the properties. The demand draft amounting to Rs.13 lac was paid on 10.2.2023 to the defendant that is before passing of the impugned orders and during the pendency of the applications. This document proves the case of the plaintiffs/respondents and falsifies the defence as made by the defendant in reply to the applications filed under Order 38 Rule 5 CPC.

37 Though, learned counsel for the petitioner has vehemently argued that there is nothing on record to show that his client is removing or disposing of his assets before passing the decree, however copy of the sale deed clinches entire controversy which shows intention of the defendant/petitioner to be clear and unambiguous. The plaintiffs have been able to establish prima facie case that the defendant in order to frustrate the decree that may be passed has disposed of his assets.

38 The learned Courts below have rightly passed the impugned orders, whereby the defendant has been directed to furnish security to the amount of Rs.8,73,183/- in CMPMO No. 173/2023 and Rs.8,00,000/- in CMPMO No. 238/2025. The

Court below have legally appreciated the controversy in question and have rightly passed the impugned order and this Court find no illegality or infirmity in the same.

39 The petitioner has approached this Court by invoking jurisdiction under Article 227 of the Constitution of India and the Hon'ble Supreme Court has categorically held that the High Court will not act as court of appeal while exercising power under Article 227 of the Constitution of India while adjudicating the claim and order which has been passed by the court below.

40 In ***Garment Craft vs. Prakash Chand Goel, 2022 (4) SCC 181***, the Hon'ble Supreme Court has held as under:

> *"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to re-appreciate, 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. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power*

under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. has observed:-

> *6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. 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. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable*

> *person can possibly come to such a conclusion, which the court or tribunal has come to."*

41 It has been held that the power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It has been held that 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.

42 This Court is of the considered opinion that there is no merit in the petitions and the impugned orders as passed by the courts below are legal, valid and sustainable.

43 In view of aforesaid discussions and for the reasons stated hereinabove, the instant petitions being devoid of any merit are dismissed, so also the pending application (s), if any, leaving the parties to bear their own costs.

44 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 cases and the same shall be

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

(Romesh Verma)
Judge

31.03.2026
(pankaj)