IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 445 of 2026
Reserved on: 18.09.2026
Date of decision: 28.09.2026

Anil Kumar ...Petitioner.

Versus

State of H.P. & others ...Respondents.

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

Whether approved for reporting?[1]

For the petitioner: Ms. Devyani Sharma, Senior Advocate with Ms. Srishti Negi, Advocate.

For the respondents: Mr. Diwakar Dev Sharma, Additional Advocate General.

Romesh Verma, Judge

The instant petition arises out of the judgment dated 30.03.2026 passed by learned District Judge, Una, District Una, H.P., whereby the appeal filed by the plaintiff/petitioner was dismissed and the order dated 16.12.2024 passed by learned Civil Judge, Court No. II, Una, District Una, H.P. was affirmed, whereby the application filed by the plaintiff under Order 39 Rules 1 and 2 CPC was dismissed.

2. The facts as emerge in the present case are that the plaintiff/petitioner filed a suit for permanent prohibitory injunction against the respondents/defendants restraining defendants No.

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

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1 and 2, i.e., State of H.P. and Block Development Officer, from sanctioning and releasing the grant-in-aid for the proposed cremation ground in favour of defendant No. 3, and restraining defendant No. 3 personally or through its agents and servants from constructing the proposed cremation ground over the land bearing Khasra No. 6830.

3. As per the case set up by the plaintiff, he is an inhabitant, proprietor and right holder of Village Badhera, Tehsil Haroli, District Una, H.P. He is joint owner in possession of land bearing Khasra No. 6826, comprised in Khata No. 2112 min, Khatauni No. 2552 min, measuring 17 Kanals 14 Marlas(2), and land measuring 02 Kanals 19 Marlas, Khewat No. 2110 min, Khatauni No. 2550 min, Khasra No. 6848, as per Jamabandi for the year 2014-15, situated in Mohal Badhera, Tehsil Haroli, District Una, H.P.

4. As per the case of the plaintiff, civil litigation between the Gram Panchayat and one of the affected and interested persons, namely Amrit Lal, cropped up in the Civil Court in the form of Civil Suit No. 64 of 2003, titled *Amrit Lal versus Gram Panchayat*, decided on 09.04.2007, and Civil Appeal No. 49 of 2007 was decided on 31.01.2008 by the learned District Judge,

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Una. In the said litigation, the question involved was that the Gram Panchayat should be stopped from constructing a cremation ground near the abadi area. As per the case of the plaintiff, the then Pradhan of the Gram Panchayat compromised with the plaintiff Amrit Lal on 30.01.2008 and it was agreed upon that as and when alternative land is made available, the cremation ground will be established there. Pursuant thereto, one Sh. Manohar Singh, son of Sh. Hakam Singh, vide gift deed No. 1565 of 2014 dated 25.11.2014, gifted land measuring 1 Kanal bearing Khasra No. 7370 to the Panchayati Raj Department, Himachal Pradesh, through Gram Panchayat Lower Badhera for the construction of a 'Shamshan Ghat', which has been mutated in the revenue record vide mutation No. 8590 dated 20.12.2014.

5. The plaintiff alleged that Gram Panchayat Lower Badhera (Defendant No. 3) had constructed a 'Shamshan Ghat' over the land bearing Khasra No. 7370, for which the plaintiff and others had no objection since this 'Shamshan Ghat' is a proper, appropriate and adequate place for the cremation of dead bodies, being located outside the abadi area. The plaintiff is a family person and he has a huge family who are living in the

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abadi over the land of Khasra Nos. 6826 and 6848, which is adjoining to the land of Khasra No. 6830.

6. As per the plaintiff, the abadi of the plaintiff is situated over the land of Khasra Nos. 6826 and 6848 adjoining the land of Khasra No. 6830. Defendant No. 3 having its political allegiance to one political party, whereas the plaintiff and others having their allegiance to another political party, therefore, defendant No. 3 threatened to construct another 'Shamshan Ghat' over Khasra No. 6830 and passed a resolution and sent it to defendant Nos. 1 and 2 for approval, and defendant No. 1 is threatening to sanction the grant for the proposed construction of the 'Shamshan Ghat' over the land of Khasra No. 6830, which is adjoining to a thickly populated area.

7. As per the case of the plaintiff, since these acts amount to an invasion of the civil rights of the plaintiff and other inhabitants of the village, as the proposed 'Shamshan Ghat' is amidst the abadies of the vicinity and abuts the holdings/abadies of the plaintiff and other inhabitants, therefore, the same shall not be for the benefit of the plaintiff and other co-villagers. As such, the plaintiff filed a suit for permanent injunction restraining defendants No. 1 and 2 from sanctioning and releasing the

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grant-in-aid for the proposed 'Shamshan Ghat' in favour of defendant No. 3, and restraining defendant No. 3, personally and through its agents and servants, from constructing the proposed 'Shamshan Ghat' over the land of Khasra No. 6830, measuring 00-16 Marlas, comprised in Khewat No. 1074, Khatauni No. 1231, as per Jamabandi for the year 2004-05, situated in Mohal Badhera, Tehsil Haroli, District Una, H.P.

8. The suit was resisted by defendant No. 3 by filing a written statement in which preliminary objections with regard to cause of action, maintainability, locus standi, suppression of material facts/not approaching the Court with clean hands, estoppel, and the suit being barred by Section 11 of the CPC etc. were raised. On merits, all the averments made in the plaint were refuted and denied.

9. Though the institution of Civil Suit No. 64 of 2003, titled *Amrit Lal vs. Gram Panchayat*, and the appeal filed against the said judgment were not denied, as a matter of record and it was submitted in the written statement that the cremation ground is already existing in Khasra No. 6830 and it is used for cremation of dead bodies since long by the inhabitants of the locality of the village. Previously there was no abadi near the cremation

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ground bearing Khasra No. 6830 and the abadies were constructed by the villagers later on, which are also far away from Khasra No. 6830. Since the similar controversy stands decided in Civil Suit No. 64 of 2003 decided on 09.04.2007, the suit is barred under Section 11 CPC.

10. In defence, it was stated by defendant No. 3 that the aforesaid land bearing Khasra No. 7370 is about 3 kilometres away from Khasra No. 6830, and the said Khasra No. 7370 is jointly owned and possessed by co-sharers along with the Gram Panchayat, situated near the boundary of village Saloh. Village Badhera is a big village in length and width and there are other cremation grounds ('Shamshan Ghat's) including this 'Shamshan Ghat' being used and existing in Khasra No. 6830. The cremation ground which is existing over Khasra No. 7370 has been constructed in an abadi which is about 3 kilometres away from 'Shamshan Ghat' existing in Khasra No. 6830, and the said 'Shamshan Ghat' in Khasra No. 7370 is not approachable to the inhabitants of the locality and people residing in the area of Khasra No. 6830. As per the defendant, no new cremation ground is being constructed in Khasra No. 6830, but an improvement has to be made to the old existing 'Shamshan

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Ghat' by constructing a boundary wall, cremation sheds, sitting benches etc., and providing water facilities to the general public at large as well as for the safety and security of the people and agricultural land of the adjoining field owners. It is submitted that the cremation ground ('Shamshan Ghat') is lying open and the dead bodies are cremated and funeral rites are performed in the open space, due to which there remains an apprehension of fire spreading and causing damage to the crops, and to make development of the area, the Government has sanctioned an amount of Rs. 14,45,000/- for the improvement of 'Shamshan Ghat' for raising a boundary wall, cremation sheds, providing water facility, sitting benches etc., for the safety and facility of the general public. Dead bodies have been cremated there for the last 25-30 years, and even during COVID-19 dead bodies were cremated there, and there is no other cremation ground near the locality for cremation of dead bodies. Therefore, it was prayed that the suit filed by the plaintiff being without any merit deserves to be dismissed.

11. Along with the suit, the plaintiff/petitioner filed an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC with the prayer that defendants/respondents be

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restrained from releasing the grant-in-aid for the proposed 'Shamshan Ghat' in favour of defendant No. 3, and defendant No. 3 be restrained personally or through its agents & servants from constructing the proposed 'Shamshan Ghat' over the land comprised in Khasra No. 6830.

12. The application was duly resisted by the defendants and it was prayed that the application being without any merit deserves to be dismissed.

13. The learned Civil Judge, Court No. 2, Una, District Una, H.P., vide its order dated 16.12.2024 dismissed the application filed by the plaintiff/petitioner.

14. Feeling aggrieved, plaintiff approached the learned District Judge, Una, District Una, H.P., by invoking the provisions under Order 43 Rule 1 of the CPC on 06.01.2025. The learned First Appellate Court vide its judgment dated 30.03.2026 dismissed the appeal preferred by the plaintiff/petitioner.

15. Feeling dissatisfied, plaintiff/petitioner has approached this Court by instituting the present petition invoking the provisions under Article 227 of the Constitution of India.

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16. It is contended by Ms. Devyani Sharma, learned Senior Counsel, assisted by Ms. Srishti Negi, Advocate for the petitioner, that the impugned judgment and order passed by the learned Courts below are erroneous and liable to be quashed and set aside. She submits that the learned Courts below have not appreciated the point in controversy in hand and have wrongly rejected the application filed by the plaintiff for grant of interim injunction. She further submits that after accepting the present petition, the application filed by the petitioner/plaintiff under the provisions of Order 39 Rules 1 & 2 CPC is liable to be allowed.

17. On the other hand, Mr. Diwakar Dev Sharma, learned Additional Advocate General for the respondent/State, has defended the impugned judgment and order passed by the learned Courts below. He submits that the Courts below have concurrently and rightly passed the impugned judgment and order, and there is no scope for interference in the same. He further submits that this Court, while exercising its power under Article 227 of the Constitution of India, will not interfere in the well-reasoned findings returned by the Courts below.

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18. I have heard the learned counsel for the parties and perused the record carefully.

19. The plaintiff/petitioner has primarily approached the learned trial Court for grant of permanent prohibitory injunction restraining defendants No. 1 and 2, that is the State of H.P. and the Block Development Officer, from sanctioning and releasing the grant-in-aid for the proposed cremation ground in favour of defendant No. 3, and restraining them personally or through its agents and servants from constructing the proposed cremation ground over the land of Khasra No. 6830, measuring 00-16 Marlas, comprised in Khewat No. 1074, Khatauni No. 1231, as per Jamabandi for the year 2004-05, situated in Mohal Badhera, Tehsil Haroli, District Una, H.P.

20. As per the case of plaintiff, as an abadi is situated near Khasra No. 6830, the defendants cannot be permitted to raise construction of a 'Shamshan Ghat' and in case the same is allowed and permitted to be constructed near the abadi, toxins will be released into the air. The plaintiff has alleged that the environmental effects include the emission of millions of tons of carbon dioxide pollution into the air, and as such with the proposed construction of the 'Shamshan Ghat' there would be

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extreme pollution in the vicinity leading to bad health issues and hazards, and children as well as ladies would get depressed under fear of ghosts.

21. As per the case of the defendant, the cremation ground ('Shamshan Ghat') is lying open and dead bodies are cremated and funeral rites are performed in the open space, due to which there remains an apprehension of fire spreading and causing damage to the crops and to undertake the development of the area, the Government has sanctioned an amount of Rs. 14,45,000/- for the improvement of 'Shamshan Ghat' by raising a boundary wall, cremation sheds, providing water facility, sitting benches etc., for the safety and facility of the general public.

22. As per the defendant, no new cremation ground is being built in Khasra No. 6830, but only improvements has to be made to the old existing 'Shamshan Ghat' by constructing a boundary wall, cremation sheds, sitting benches etc., and providing water facilities to the general public.

23. As far as the averments of the plaintiff are concerned, it has been stated in the plaint that the abadi of Sada Ram is about 30 metres, the abadi of Shadi Lal is about 50 metres, the abadi of Jasvinder Singh is about 60 metres, and the abadi of

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Balwinder and Ajay Kumar is 100 metres away from the proposed 'Shamshan Ghat'. However, none of the aforesaid persons has joined as party to the present proceedings, and the petitioner cannot be permitted to raise grouse on behalf of the said persons.

24. In the present proceedings, as a matter of fact, with respect to the same dispute one Sh. Amrit Lal had filed Civil Suit No. 64 of 2003, titled *Amrit Lal versus Gram Panchayat*, decided on 09.04.2007. The plaintiff in the said suit was one of the co-owners along with the present plaintiff. Thereafter, the appeal preferred came to be disposed of by learned District Judge on 31.01.2008. In the said civil suit, the dispute which was raised was the same. The presumption raised by the present defendants that the cremation ground has been in existence for the last 20-25 years seems to be probable and correct. Though as per the case of the plaintiff, in pursuance to the compromise effected, a gift deed dated 25.11.2014 was executed with respect to Khasra No. 7370 in favour of the Panchayati Raj Department for the construction of a cremation ground. It has been stated by the learned counsel for the respondents that Khasra No. 7370 is at a distance of more than 3 km from Khasra

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No. 6830 and is not convenient for the villagers of Mohal Badhera, Tehsil Haroli, District Una, H.P. Village Badhera is a big village and Khasra No. 7370 is jointly owned and possessed by co-sharers along with the Gram Panchayat situated near the boundary of the village. Therefore, it cannot be held that all the inhabitants of Village Badhera can conveniently use the cremation ground in Khasra No. 7370.

25. In order to rebut the case of the plaintiff, respondents have filed a copy of the Jamabandi for the year 2004-2005, which reflects that Khasra No. 6830 is owned by the Panchayat. The respondents have also placed on record a copy of the Khasra Girdawari/Jamabandi for the year 2014-15, wherein the nature of the suit land is recorded as *"Gair Mumkin 'Shamshan Ghat'"*.

26. A presumption of truth is attached to the entries in the revenue record unless the same are rebutted. From the perusal thereof, it can safely be gathered and inferred that there is an old existing cremation ground, and the said fact is corroborated by the entry of *"Gair Mumkin 'Shamshan Ghat'"* in the revenue record of 2014-15. Not only this, the Gram Panchayat has already passed a resolution duly signed by its members and

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residents, whereby it has been agreed upon that the Panchayat shall construct a cremation shed and develop the 'Shamshan Ghat'. Therefore, this Court is of the considered opinion that a majority of the persons of the Gram Sabha are in favour of carrying out developmental activities by raising construction over the already existing cremation ground.

27. It has also been contended by the learned Additional Advocate General for the State that the resolution has been signed by 170 persons in the Gram Sabha for the construction of a cremation shed on the cremation ground, and the State has sanctioned a sum of Rs. 14,45,000/- for the same. The photographs placed on record demonstrate that 'Shamshan Ghat' is already existing over the suit land and only improvements are required to be made to the old existing cremation ground by constructing a boundary wall, cremation sheds, sitting benches etc., and providing water facilities to the general public at large as well as for the safety and security of the people and agricultural land of adjoining field owners out of the funds sanctioned by the State. The plea raised by the plaintiff that the defendants are trying to construct a new 'Shamshan Ghat' is incorrect, and in the considered opinion of

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this Court, the plaintiff has not come to the Court with clean hands and has suppressed material facts.

28. In order to obtain an ad interim injunction, the plaintiff is required to satisfy triplicate test of prima facie case, balance of convenience, and irreparable loss and injury. In the present case, on the strength of the Jamabandi for the year 2014-15 along with the Khasra Girdawari showing the nature of the land as *"Gair Mumkin 'Shamshan Ghat'"*, it is evident that there is already existing a 'Shamshan Ghat' over the suit land and developmental activities are intended to be undertaken by the Gram Panchayat with the aid of Government funds approved by the State of H.P.

29. The plaintiff has failed to show a prima facie case in his favour, rather, it is defendant No. 3, who has got strong prima facie case. The balance of convenience also lies in favour of the respondents, as the resolution passed by the Gram Panchayat is signed by more than 170 persons and none of the other villagers has joined in the present proceedings. Most importantly, the Government has already sanctioned a sum of Rs. 14,45,000/- for developmental activities on the already existing 'Shamshan Ghat'. Therefore, it is the defendants who

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shall suffer irreparable loss in case defendants No. 1 and 2 are restrained from releasing the said sanctioned fund for the construction of a pucca 'Shamshan Ghat' on the suit land.

30. The learned Courts below have concurrently come to the conclusion that the plaintiff has failed to make out a prima facie case in his favour. The respondents/defendants have placed on record the photographs of the cremation ground, whereby it can be presumed that during the corona period, dead bodies have been cremated. The copy of jamabandi for the year 2014-15 pertaining to Khasra No. 6830 indicates that the Panchayat is the owner of the suit land. The khasra girdawari, which has been placed on record, reveals that the nature of the land has been shown as 'Gair Mumkin 'Shamshan Ghat''.

31. The Executive Engineer (R.D.D.), Zonal Office, Dharamshala, District Kangra, vide its sanction letter dated 05.08.2021, had sanctioned a sum of ₹14,45,000/- for the construction of Moksh Dham, Ward No. 2, Gram Panchayat Lower Badehra, Development Block Haroli, District Una, H.P. Noticeably, as per resolution dated 14.03.2021 as passed by the Gram Panchayat, wherein Agenda No. 9 was fixed for the construction of the cremation ground over Khasra No. 6830. The

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said resolution has been signed by more than 170 persons and it has been discussed by the Gram Panchayat, whereby it has been stated that Khasra No. 6830 is being used for the last more than 30 to 35 years in the form of cremation ground, and the majority of the inhabitants are using the said 'Shamshan Ghat'. In the said meeting, it was resolved that since the said land is being used as a cremation ground, therefore, it is required to be improved/developed, and it was resolved unanimously that the said development/improvement is required in the interest of the general public.

32. The said facts clearly prove and establish that Khasra No. 6830 has been used as 'Shamshan Ghat' for a long period, and the plaintiff, in order to grind his own axe, has instituted the present suit to deprive the general public from the use of the cremation ground, for which administrative sanction has been granted by the authorities by providing a sum of ₹14,45,000/-.

33. The record reveals that the majority of the persons of the Gram Panchayat are in favour of the construction of the cremation ground. However, on account of personal interest, the plaintiff is trying to stall the same on one pretext or the other.

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34. The conduct of the plaintiff/petitioner does not entitle him to get the equitable and discretionary relief of injunction. The Courts below have concurrently disbelieved the version of the plaintiff, as he could not pass the triplicate test of prima facie case, balance of convenience, and irreparable loss. This Court has not been persuaded by the petitioner to interfere with the legal orders passed by the Courts below. Therefore, no interference is required with the same.

35. Relying upon the Jamabandi for the year 2014-15, the copy of Khasra Girdawari, the resolution of the Gram Panchayat signed by 170 persons, and on the basis of funds sanctioned by the State of H.P. to the tune of Rs. 14,45,000/-, the Courts below have rightly adjudicated the point in controversy.

36. This Court does not see any infirmity or illegality in the impugned order passed by the learned Courts below. The two Courts have passed a well-reasoned order, and while invoking the provisions of Article 227 of the Constitution of India, this Court will not act as an Appellate Court.

37. The Hon'ble Apex Court has repeatedly held that the scope of interference in a petition filed under Article 227 of the

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Constitution of India is very limited. The Hon'ble Apex in ***Civil Appeal No(s).13801 of 2025,*** titled as ***Shri Digant vs M/s P.D.T. Trading Co. & others,*** has discussed the scope of interference while exercising the power under Article 227 of Constitution of India. The relevant paragraphs thereof read as under:-

> *"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a threeJudge Bench of this Court in Radhey Shyam & another v. Chhabi Nath & Ors. 1 This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."*
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> *23. In the case on hand, the appellate court had considered whether the proceeding in detail the issue as to court was justified in trial with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration surrounding circumstances, the appellate court held that the trial court had committed no wrong proceeding with the matter court representing with noticed the the that defendants matter. The appellate Court noticed tht the advocate representing the defndants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them therefore, they could not engage another counsel Besides that, the record also indicated that the intention of the defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled.*

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> *Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification procedure went consider the procedure prescribed for withdrawal Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate Court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our view, appellate court's order was not amenable to interference in exercise of jurisdiction under Article 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with well reasoned order of the appellate Court."*

38. The Hon'ble Apex Court in ***M/S GARMENT CRAFT Vs. PRAKASH CHAND GOEL, (2022) 4 SCC 181,*** has held that High Court while exercising Supervisory Jurisdiction will not act as a Court of First Appeal to reappreciate, reweigh the evidence on facts upon which the determination under challenge is based. The Hon'ble Supreme Court has held as follows:-

> *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 reappreciate, 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.1 The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse,1Celina Coelho*

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Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 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.2 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."

19. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex-parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported

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> *by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex-parte decree and therefore the submission that the appellant came to know of the ex-parte decree only on release from jail on 6th May 2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt 30 that the application for setting aside the exparte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."*

39. In the considered opinion of this Court, the impugned judgment/order does not call for any interference. Therefore, in view of the observations made here-in-above, the present petition, being devoid of any merit, deserves to be dismissed.

40. Needless to say, the observations made here-in-above are meant only for the adjudication of the present petition and shall not be construed as a reflection on the merits of the main case.

All the pending miscellaneous application(s) if any, shall also stand disposed of.

(Romesh Verma)
Judge

September 28, 2026
(Nisha)

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