2026:HHC:47872

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 889 of 2019

Decided on: 30.10.2026

Ashwani Gautam

... Petitioner

Versus

Apka Faisla Pvt.Ltd. & ors.

...Respondents

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Petitioner: Mr. Suneet Goel, Senior Advocate, assisted by Mr. Vishwas Kaushal, Advocate.

For the Respondents : Mr. Jeevesh Sharma, Advocate, for respondent No. 2.

Ms. Vijay Shree Gautam, Advocate, for respondents No. 3(a), 3(c) to 3(f).

None for respondents No. 1, 3(b), 4(a) and 4(b).

Virender Singh, Judge (oral)

Petitioner Ashwani Gautam has filed the present petition, under Article 227 of the Constitution of India, against the order dated 21.11.2019, passed by the Court of learned Senior Civil Judge, Nahan, District Sirmour,

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H.P. (hereinafter referred to as 'the trial Court'), in case No. 35/1 of 2011, titled as, 'Ashwani Gautam & anr. versus Apka Faisla Pvt. Ltd. & others'.

2. By way of order dated 21.11.2019, the learned trial Court has allowed the applications, filed by the respondents, under Order 8 Rule 1A(3) CPC, and documents were ordered to be taken on record.

3. For the sake of convenience, parties to the lis are referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. Necessary facts, as borne out from the documents, annexed with the petition, may be summed up, as under:

Plaintiffs Ashwani Gautam and another have filed the suit for damages of Rs. 10,00,000/-, on account of defamation, mental and physical torture of the plaintiffs, committed by the defendants.

5. The suit was contested by the defendants.

6. During the pendency of the said suit, two applications, under Order 8 Rule 1A (3) CPC have been

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moved. One application was moved by defendant No. 3 and other was moved by defendants No. 1 and 2.

7. By way of application, which has been moved by defendant No. 3, he has sought indulgence of the learned trial Court to permit him to produce the documents, i.e. certified copy of Jamabandi, for the year 1995-96 and certified copy of mutation No. 144, dated 3.12.1997.

8. Said indulgence has been sought to permit defendant No. 3 to produce the above documents on the ground that he is senior citizen of 82 years, and the documents, sought to be tendered, are material for effective adjudication of the controversy, whereas, another application has been moved by defendants No. 1 and 2, with a prayer to permit them to produce the documents, as mentioned in the application. Relevant portion of the said application is being reproduced as under:

> *"a)Certified copy of lamabandi for the year 1988-89 of mauja Rajinder Nagar.*
> *b) Certified copy of mutation no. 151 pertaining to mauja Rajinder Nagar.*

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c) Certified copy of mutation no. 144 pertaining to mauja Rajinder Nagar.

d) Certified copy of sale deed bearing no. 291/98 dated 7/10/1998 executed in favor of Arun Kumar by Praveen gautam and registered in the office of Sub Registrar Nahan.

e) Certified copy of Judgment having civil suit no. 218/1 of 2001, titled as Trinetra Kumar versus Sanjeev Gautam decided on 31/07/2004

f) Copy of Sale deed bearing no. 43 dated 10/02/1998

g) Photograph of the spot."

9. Both these applications have been contested by the plaintiffs by controverting the intention of the defendants to produce the documents, at the belated stage.

10. The learned trial Court, after hearing learned counsel for the parties, has allowed the applications, vide order dated 21.11.2019. The said order has now been assailed by the plaintiffs, by way of present petition. The provisions of Order 8 Rule 1A CPC are reproduced as under:

"Order 8....

R.1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.*(1) Where the defendant bases his defence upon a document or relies upon any document in his possession*

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or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.

11. By way of aforesaid applications, defendants sought indulgence of the learned trial Court to permit them to produce the documents. If the true import of procedural law is seen in view of decision of Hon'ble Supreme Court in Civil Appeal No. 4096 of 2022, titled as **Levaku Pedda Reddamma & ors. Versus Gottumukkala Venkata Subbamma & anr.,** then, it can be said that by allowing the application, vide order impugned herein, the learned trial Court has not

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exceeded its jurisdiction. Relevant portion of the judgment is reproduced, as under:

> *"We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice."*

12. Similar view has again been taken by the Hon'ble Supreme Court in a case titled as, **Sugandhi (dead) vs. P. Rajkumar,** reported in 2020 (10) SCC 706. Relevant paragraphs 7 to 9 of the judgment are reproduced, as under:

> *"7. Rule 1A of Order 8 of C.P.C. provides the procedure for production of documents by the defendant which is as under:*
>
> *"1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.— (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for setoff or counterclaim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.*

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(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document—(a) produced for the crossexamination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory." Subrule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement, such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Subrule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the court.

Rule (1) of Order 13 of C.P.C. again makes it mandatory for the parties to produce their original documents before settlement of issues.

8. Subrule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court.

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The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under subrule (3).”

(self emphasis supplied)

13. Judging the facts and circumstance of the present case, in view of aforesaid judgments of Hon’ble Supreme Court, this Court cannot interfere with the order, so passed, by the learned trial Court, as the learned Senior counsel, appearing for the petitioner could not point out any “jurisdictional error”, committed by learned trial Court.

14. In view of above, this Court is of the considered opinion that there is no occasion for this Court to

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interfere with the findings recorded by the learned trial Court. Consequently, the petition is dismissed. The pending application(s), if any, are also disposed of.

(Virender Singh)
Judge

30.10.2026
Kalpana

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