

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No.287 of 2022****Decided on: 14.10.2025**

Mahindra and Mahindra Finance
Services Limited & another

... Petitioners

Versus

Smt. Basanti Devi

... Respondent

Coram**Hon'ble Mr. Justice Ajay Mohan Goel, Judge.****Whether approved for reporting?¹Yes**

For the petitioners : Mr. Deepak Gupta, Advocate.

For the respondent : Mr. Kul Bhushan Khajuria, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have assailed order dated 28.09.2020, passed by the Court of learned Civil Judge, Tissa, H.P. in the application filed by the respondent herein Under Order 21, Rule 31 of the Civil Procedure Code.

2. Learned Counsel for the petitioners has submitted that while deciding the application in terms of the impugned order, learned Court below took into consideration the evidence which was led by the respondent herein in another miscellaneous application filed under Order 21, Rule 32 of the Civil Procedure Code in flagrant violation of the judgment passed by this Court in CMPMO No.45 of 2017, titled Mahindra and Mahindra Financial Services Ltd. And

¹ Whether reporters of the local papers may be allowed to see the judgment?

others Versus Basanti Devi, decided on 23.05.2017, in which this Court had clearly held that the evidence led by the respondent/ applicant in the application filed under Order 21, Rule 32 of the Civil Procedure could not be taken into consideration while deciding the application filed under Order 21, Rule 31 of the Civil Procedure Code. He thus, submits that as perversity is writ large in the impugned order, the present petition allowed.

3. Though, learned Counsel for the respondent tried to defend the impugned order, however, he also did not argue to the contrary that this Court indeed in CMPMO No.45 of 2017, had deprecated the appreciation of the evidence led in one application while deciding the other application.

4. Having heard learned Counsel for the parties and having perused the impugned order as well as other documents appended with the petition, this Court is of the considered view that the impugned order is not sustainable in the eyes of law.

5. It is a matter of record that the respondent herein, who is the Decree Holder, had filed an application under Order 21, Rule 32 of the Civil Procedure Code, in which said party had led the evidence. Thereafter, another application was filed by the Decree Holder under Order 21, Rule 31 of the Civil Procedure Code. While

deciding said application earlier, the learned Executing Court relied upon the application while was led in the application filed under Order 21, Rule 32 of the Civil Procedure Code.

6. Feeling aggrieved, the present petitioners approached this Court by way of CMPMO No.45 of 2017, which was disposed of in the following terms:-

“4. It would be evidently clear from the aforesaid order that the learned trial Court while allowing the application relied upon the so called evidence which infact had not been led in this application as the same was only filed on the date when the order was announced i.e. on 10.6.2016. To the contrary the learned Court relied upon the evidence that had been led in the earlier application filed by the respondent under Order 21 Rule 32 CPC. This position is indefensible and is therefore rightly not disputed by the respondent. Therefore, once the botch-up is at the instance of the learned Court below, the order passed by it on 10.6.2016 is not sustainable in the eyes of law and is accordingly set-aside.

5. The parties through their counsel are directed to appear before the learned trial Court below on 5.6.2017.

With the aforesaid observations, present petition stands disposed of, so also, pending application(s), if any.”

7. Despite this, in terms of the impugned order, the learned Executing Court again relied upon the evidence which was led by

the applicant in the application filed under Order 21, Rule 32 of the Civil Procedure Code. This demonstrates that there was a complete non application of judicial mind by the learned Judge concerned, who did not care to go through the order passed by this Court in the earlier CMPMO. This is deprecated because when already in the same case there was an order passed by the High Court directing and holding that the evidence led by the applicant in the application filed under Order 21, Rule 32 of the Civil Procedure Code could not be looked into while deciding the application under Order 21, Rule 31 of the Civil Procedure Code, the learned Executing Court by no stretch of imagination could have decided the application by relying upon the evidence led by the applicant in the application filed under Order 21, Rule 32 of the Civil Procedure Code.

8. Therefore, on this count, this petition petition is allowed. Impugned order dated 28.09.2020 is set aside and the learned Executing Court is directed to decide the application filed under Order 21, Rule 31 of the Civil Procedure Code afresh on its own merit taking into consideration by permitting the Judgment Debtor to file objections thereto, in accordance with law. The parties are directed to appear before the learned Court concerned on 17.11.2025. As a date for the presence of the parties is given by the

Court, if the Decree Holder fails to appear before the Court, then the proceedings will be dismissed for non prosecution and in case the Judgment Debtor fails to appear before the Court, then the parties shall be proceeded against *ex parte*,

9. The petition stands disposed of. Interim order, if any, stands vacated. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

October 14, 2025
(Rishi)

High Court of H.P.