



**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**OMP No. 1189 of 2025 in Civil
Suit No. 94 of 2016**

**Reserved on: 02.04.2026
Date of decision: 06.05.2026**

Ajay Kaushal

.....Applicant/plaintiff.

Versus

M/S Rajpura Hydra Power Private Limited & another

.....Non-applicant/defendant.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?* Yes.

For the applicant:

Mr. B.S. Chauhan, Senior
Advocate, with Mr. Sahil
Sharma, Advocate.

Non-applicants No. 1 & 5 *ex parte*.

For non-applicant No. 2: Mr. Vikas Chauhan, Advocate.

None for non-applicants No. 3 & 4.

Sushil Kukreja, Judge.

The instant application has been preferred by the applicant (plaintiff) under Order 10, Rule 2(2) of the Code of Civil Procedure (CPC) with the prayer to allow the application and non-applicant/defendant No. 2, i.e., M/S Rajanya Infrastructure Private Limited, through its director be

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



summoned for the purpose of oral examination with complete record of payments made to the plaintiff.

2. It is averred in the application that the Civil Suit No. 94 of 2016 has been filed against the non-applicants, which is still pending. Initially, the suit was filed against three defendants (non-applicants), but subsequently defendant No. 3 was deleted from the array of defendants. The applicant further averred that after filing of the suit, defendant No. 2 changed the name of company as well as the name of some of the directors. At present, the civil suit is fixed for framing the issues and admission and denial of documents. As per the applicant it took lot of effort of the applicant (plaintiff) to find out the name of the amended Company and its newly added Directors and they all were served. It is averred that vide work order dated 25.04.2014 the applicant was awarded some construction work and as per the requirement of non-applicant No. 2 the work was carried. The applicant averred that the stand of non-applicant No. 2 is that work has been carried by the applicant and entire payment has been made to him. As per the applicant, non-applicant No. 2, being a company and dealing in construction work of crores of rupees, the mode of payments made to the plaintiff has



neither been explained nor any receipt thereof has been placed with the written statement. Non-applicant No. 5 had filed reply to the legal notice, wherein liability towards the applicant had been admitted, but non-applicant No.5 was removed from the company and such removal was only after filing of the reply, through an Advocate, to the legal notice and the removal has been manipulated and ante-dated. Lastly, the applicant prayed that the instant application be allowed and non-applicant No. 2, through its director deserves to be summoned for oral examination with complete record of payments made to the applicant, so as to elucidate the matter in controversy.

3. Non-applicant No. 2 filed its reply, wherein it has been averred that the application is not maintainable at this stage, as the pleadings are complete. The provision of Order 10, Rule 2 CPC is intended merely for elucidating matters in controversy prior to the framing of the issues and not for recording evidence or cross-examination for summoning records or seeking admission beyond pleadings. The replying non-applicant/defendant No. 2, on merits averred that the instant application has been filed at a belated stage after completion of pleadings with sole objective to delay the



proceedings. As per the replying non-applicant/defendant No. 2, formal changes in the non-applicant No. 2-company or status of its directors are matter of record with Registrar of Companies and the same are not relevant for the purpose of the present application. The replying non-applicant/defendant No. 2 denied any liability to pay any further amount and reliance placed by the applicant on reply to the legal notice was misconceived, as in the written statement the claim of the applicant (plaintiff) has been clearly denied. It has been admitted that work order was issued in favour of the applicant, but it has categorically been denied that any amount was due to the applicant, as all the legitimate dues were paid to him, as per the work executed. The allegations of manipulation or antedating are baseless, frivolous, hence denied. The non-applicant/defendant No. 2 averred that application for summoning non-applicant No. 2, through its director, with its complete records, for the purpose of oral examination under Order 10, Rule 2(2) CPC is wholly misconceived, as the said provision is only for elucidation of controversies in pleadings and it does not envisage evidence collection, summoning of accounts or admission of liability at this stage. Lastly, it has been prayed that the application,



being not maintainable and devoid of merits, be dismissed.

4. The applicant filed rejoinder to the reply filed by non-applicant No. 2, wherein averments made in the application were reiterated and the stand taken by non-applicant No. 2 was refuted.

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

“(1)- At the first hearing of the suit, the court-

- (a) shall, with a view to elucidate matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in court, as it deems fit ; and*
- (b) may orally examine any party appearing in person or present in court, or any person or present in the court or any person , able to answer any material question relating to suit , by whom such party or his / her pleader is accompanied.....*

(2)-At any subsequent hearing , the court may orally examine any party appearing in person or present in court, or any person or present in the court or any person , able to answer any material question relating to suit , by whom such party or his / her pleader is accompanied. if it thinks fit

(3)-The court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party. ‘It is an attempt to identify the real issue in controversy and to elucidate matters which in view of court required to be discussed’.”

6. Rule 2 of Order 10 talks about the oral examination of the parties. In order to comprehend the matter in controversy, the court exercising jurisdiction over the subject matter of the suit has the power to orally examine the parties. In ***Kapil Corepacks (P) Ltd. & ors. v. Harbans Lal (since deceased) through LRs, (2010) 8 SCC 452*** the



Apex Court while determining the scope and ambit of Rule 2 of Order 10 stated that where on one hand Rule 1 enables to ascertain the admissions and denials by the parties, Rule 2 is not restrictive to allegations made by other parties, rather, it leads to elucidating any matters of controversy. It further stated that “Rule 2 enables the court to examine not only any party, but also any person accompanying either party or his pleader, to obtain answer to any material question relating to the suit, either at the first hearing or subsequent hearings. The object of oral examination under Rule 2 of Order 10 is to ascertain the matters in controversy in suit, and not to record evidence or to secure admissions. The relevant portion of the judgment reads as under:

“14. On the other hand, the examination under Rule 2 of Order 10 of the Code, need not be restricted to allegations in the pleadings of the other party, but can relate to elucidating any matter in controversy in the suit. Further, under Rule 1 of Order 10, the court can examine only the parties and their advocates, that too at the “first hearing”. On the other hand, Rule 2 enables the court to examine not only any party, but also any person accompanying either party or his pleader, to obtain answer to any material question relating to the suit, either at the first hearing or subsequent hearings.

15. The object of oral examination under Rule 2 of Order 10 is to ascertain the matters in controversy in suit, and not to record evidence or to secure admissions. The statement made by a party in an examination under Rule 2 is not under oath, and is not intended to be a substitute for a regular examination under oath under Order 18 of the Code. It is intended to elucidate what is obscure and vague in the pleadings. In other words, while the purpose of an examination under Rule 1 is to clarify the stand of a party in regard to the allegations



made against him in the pleadings of the other party, the purpose of the oral examination under Rule 2 is mainly to elucidate the allegations even in his own pleadings, or any documents filed with the pleadings. The power under Order 10 Rule 2 of the Code, cannot be converted into a process of selective cross-examination by the court, before the party has an opportunity to put forth his case at the trial.

16. *The above position of law is well settled. We need refer only to two decisions in this behalf. In Manmohan Das v. Ramdei [AIR 1931 PC 175] the Privy Council observed: (AIR pp. 176-77)*

“... No doubt under Order 10 Rule 2, any party present in court may be examined orally by the court at any stage of the hearing, and the court may if it thinks fit put in the course of such examination questions suggested by either party. But this power is intended to be used by the Judge only when he finds it necessary to obtain from such party information on any material questions relating to the suit and ought not to be employed so as to supersede the ordinary procedure at trial as prescribed in Order 18.”

(emphasis supplied)

17 *A Division Bench of the Madras High Court in Arunagiri Goundan v. Vasantharoya Koundan [AIR 1949 Mad 707] held as follows referring to Order 10 Rule 2 of the Code: (AIR p. 708, para 3)*

“3. ... At the outset it must be pointed out that this [Order 10 Rule 2] does not provide for an examination on oath. This provision was intended to be used to elucidate the matters in controversy in suit before the trial began. This is not a provision intended to be used to supersede the usual procedure to be followed at the trial.”

18. *The object of Order 10 Rule 2 is not to elicit admissions. Nor does it provide for or contemplate admissions. The admissions are usually contemplated:*

(i) in the pleadings (express or constructive under Order 8 Rule 5 of the Code);

(ii) during examination of a party by the court under Order 10 Rule 1 of the Code;

(iii) in answers to interrogatories under Order 11 Rule 8 of the Code;

(iv) in response to notice to admit facts under Order 12 Rule 4 of the Code;

(v) in any evidence or in an affidavit, on oath; and

(vi) when any party voluntarily comes forward during the pendency of a suit or proceedings to make an admission.



19. *The power of court to call upon a party to admit any document and record whether the party admits or refuses or neglects to admit such document is traceable to Order 12 Rule 3-A rather than Order 10 Rule 2 of the Code. Nothing however comes in the way of the court combining the power under Order 12 Rule 3-A with its power under Order 10 Rule 2 of the Code and calling upon a party to admit any document when a party is being examined under Order 10 Rule 2. But the court can only call upon a party to admit any document and cannot cross-examine a party with reference to a document.*

... ..

22. *The object of the examination under Order 10 Rule 2 of the Code is to identify the matters in controversy and not to prove or disprove the matters in controversy, nor to seek admissions, nor to decide the rights or obligations of parties. If the court had merely asked the second appellant whether he had executed the agreement/receipt or not, by showing him the document (by marking the document for purposes of identification only and not as an exhibit), it might have been possible to justify it as examination under Order 10 Rule 2 read with Order 12 Rule 3-A of the Code. But any attempt by the court, either to prove or disprove a document or to cross-examine a party by adopting the stratagem of covering portions of a document used by the cross-examining counsel, are clearly outside the scope of an examination under Order 10 Rule 2 of the Code and the power to call upon a party to admit any document under Order 12 Rule 3-A of the Code. What the High Court has done in this case is to 'cross-examine' the second appellant and not examine him as contemplated under Order 10 Rule 2 of the Code. We therefore hold that the purported examination under Order 10 Rule 2 of the Code, by confronting a party only with a signature on a disputed and unexhibited document by adopting the process of covering the remaining portions thereof is impermissible, being beyond the scope of an examination under Order 10 Rule 2 of the Code."*

7. In another case of **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President & others, (2012) 6 SCC 430**, it was held by the Apex court that framing of issues is a very crucial stage of a civil trial and it is important for a judge to critically examine the pleadings of



the parties before framing the issues under Rule 2 of Order 10. In search of truth, the court must go to the core of the matter and eliminate the controversies". The relevant portion of the judgment reads as under:

"Framing of issues

30. Framing of issues is a very important stage of a civil trial. It is imperative for a Judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order 10 CPC enables the court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. Rule 2 of Order 10 reads as under:

***"2.Oral examination of party, or companion of party.—
(1) At the first hearing of the suit, the court—***

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.

(2)-(3)***

It is a useful procedural device and must be regularly pressed into service.

31. As per Rule 2(3) of Order 10 CPC, the court may if it thinks fit, put in the course of such examination questions suggested by either party. Rule 2(3) of Order 10 CPC reads as under:

"2. (1)-(2)***

(3) The court may, if it thinks fit, put in the course of an examination under this Rule questions suggested by either party."

8. Thus, the object or aim of Order 10, Rule 2 CPC is to ascertain the matters in dispute and not to take evidence or ascertain what is to be the evidence in the case. The oral examination of a party enables to narrow down the



controversy and the examination under this Rule will not be recorded on oath and is not intended to be a substitute for a regular examination on oath.

9. In the instant case, the plaintiff/applicant seeks to summon respondent No. 2, through its director, for the purpose of oral examination with complete record of payments made to the plaintiff. However, in the opinion of this Court, by summoning the complete record of the payments, the ordinary procedure at trial cannot be allowed to be superseded. The bone of contention between the parties is whether the amount which was due to the plaintiff has been paid by the defendant No. 2 as per the work order executed or not. No doubt, defendant No. 2 has not produced any document(s) on record to show that the entire payments had been made to the plaintiff. However, defendant No. 2 may be doing so at its own risk and consequences of non-production of such documents, whatever they are, would follow. In the opinion of this Court, at this stage, it would not be appropriate to direct defendant No. 2, through its Director, to give its statement under Order 10 Rule 2 CPC, because the object of examination under this rule is to ascertain the matters in dispute and not to take



evidence or to ascertain what is to be the evidence in the case.

10. In view of what has been discussed hereinabove, the application, which sans merits, deserves dismissal and is accordingly dismissed.

(Sushil Kukreja)
Judge

6th May, 2026
(virender)