

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 8074/2026

1. Mr. Naresh Kumar Khandelwal, Son Of Mr. Nand Kishor Khandelwal, Aged About 47 Years, Sole Proprietor Of M/s. Naresh Kumar Suresh Kumar, Having Its Place Of Business At Opp. Randwara, Main Shahbad Road, Near Shivaji Colony Chauraha, Baran-325205 Rajasthan.
2. M/s. Naresh Kumar Suresh Kumar, Through Its Sole Proprietor, Mr. Naresh Kumar Khandelwal, Aged About 45 Years, Son Of Mr. Nand Kishor Khandelwal, Sole Proprietor Of M/s Naresh Kumar Suresh Kumar, Having Its Place Of Business At Opp. Ramdwara, Main Shahbad Road, Near Shivaji Colony Chauraha, Baran 325205, Rajasthan.

----Petitioners

Versus

ITC Limited, A Public Limited Company Registered And Incorporated In India, Having Its Registered Office At Virginia House, 37, Jawaharlal Nehru Road Kolkata, West Bengal, India-700071, And Having Its Local Office/ Principal Place Of Business In Rajasthan At Hotel Sheraton, W.g., Rajputana Palace, Palace Road, Jaipur, Rajasthan, 302006 And Sales Office No. 201, Durlabh Chambers, D-24, Prithviraj Road, C-Scheme, Jaipur-302001, Through Its Authorised Representative Mr. Priyank Maheshwari, Aged About 43 Years, S/o Shri Shailesh Maheshwari.

----Respondent

Connected With

S.B. Civil Writ Petition No. 12128/2025

ITC Limited, A Public Limited Company Registered And Incorporated In India, having Its Registered Office At Virginia House, 37, Jawaharlal Nehru Road Kolkata, West Bengal, India-700071, And Having Its Local Office/ Principal Place Of Business In Rajasthan At Hotel Sheraton, W.g., Rajputana Palace, palace Road, Jaipur, Rajasthan, 302006 And Sales Office No. 201, Durlabh Chambers, D-24, Prithviraj Road, C-Scheme, Jaipur- 302 001, Through Its Authorised Representative Mr. Priyank Maheshwari, Aged About 43 Years, S/o Shri. Shailesh Maheshwari, Presently Mr. Mayank Joshi, Aged About 49 Years, S/o. Sh. Vidhya Sagar Joshi.

----Petitioner

Versus

1. Mr. Naresh Kumar Khandelwal Son Of Mr. Nand Kishor Khandelwal, Aged About 45 Years, Sole Proprietor Of M/s. Naresh Kumar Suresh Kumar, Having Its Place Of Business At -Opp. Ramdwara, Main Shahabad Road, Near Shivaji Colony Chauraha, Baran - 325205, Rajasthan.
2. M/s. Naresh Kumar Suresh Kumar, Through Its Sole

Proprietor, Mr. Naresh Kumar Khandelwal, Aged About 45 Years, Son Of Mr. Nand Kishor Khandelwal, Having Its Place Of Business At - Opp. Ramdwara, Main Shahabad Road, Near Shivaji Colony Chauraha, Baran - 325205, Rajasthan

-----Respondents

For Petitioner(s)	:	Mr. Rajat Ranjan with Mr. Rohan Agarwal (8074/2026), Mr. Shivangshu Naval with Ms. Akansha Noval (12128/2025)
For Respondent(s)	:	Mr. Shivangshu Naval with Ms. Akansha Noval (8074/2026) Mr. Rajat Ranjan with Mr. Rohan Agarwal (12128/2025)

HON'BLE MR. JUSTICE MANEESH SHARMA
Order

07/05/2026

1. Mr. Rajat Ranjan, learned counsel, accepts notice on behalf of the respondents in *S.B. Civil Writ Petition No. 12128/2025*. Thus, service is complete.

3. Since common legal issue is involved in both the writ petitions, with the consent of both parties, both these matters were heard together and disposed of by a common order.

4. The present writ petitions have been filed by the petitioners assailing the impugned order dated 03.04.2025 passed by the learned Commercial Court No. 1, Jaipur Metropolitan-II, in Civil Suit bearing CIS No. 110/2024 (CMC No. 57/2024) and CIS No. 212/2024 (CMC No. 104/2024), whereby the applications under Order 38 Rule 5 of the Code of Civil Procedure, 1908 (CPC) were allowed, and the defendant No.1 and plaintiff were directed to furnish a security bond or bank guarantee amounting to Rs. 1.25 crores and Rs. 2.25 crores respectively, within thirty days.

5. Brief facts giving rise to the present writ petitions are that the plaintiff-ITC Ltd. filed a suit for recovery of money amounting to Rs. 94,47,832.74/- against the defendants before the learned Commercial Court.

6. Thereafter, defendant No. 1, Naresh Kumar Khandelwal, filed a counter-claim to the aforesaid suit for recovery of money amounting to Rs. 1,90,48,320/-.

7. Both the plaintiff as well as defendant No. 1 filed separate applications under Order 38 Rule 5 of the CPC, apprehending that the opposite party is trying to dispose of their property with an intent to obstruct or delay the execution of any decree that may be passed against them in the present suit/ counter claim.

8. The learned Commercial Court, after hearing the arguments of the respective parties, allowed both the applications and directed the plaintiff-*ITC Ltd.* to furnish a security bond or bank guarantee of Rs. 2.25 crores and defendant No. 1-*Naresh Kumar Khandelwal*, to furnish a security bond or bank guarantee of Rs. 1.25 crores.

9. Aggrieved by the same, both the plaintiff-*ITC Ltd.* and the defendant No.1-*Naresh Kumar Khandelwal*, have preferred the present writ petitions.

10. Learned counsel for the respective petitioner submits that the learned Court below seriously erred in issuing a harsh direction against the respective petitioner, as the learned Commercial Court passed the impugned order without recording a satisfaction to the effect that the opposite party, with an intent to obstruct or delay the execution of any decree that may be passed

against them, is about to dispose of the whole or any part of their property, as required under Order 38 Rule 5 of the CPC prior to passing the aforesaid orders. They, therefore, pray that the respective impugned order dated 03.04.2025, being perverse in law, may kindly be quashed and set aside.

11. Learned counsel for the respective-respondent have opposed the submissions made by learned counsel for the respective petitioner and made an endeavour to support the respective impugned order.

12. Heard learned counsel for the parties and perused the material available on record.

13. From a bare perusal of the impugned order, it is evident that though the Court while accepting the applications filed under Order 38 Rule 5 of the CPC, directed the plaintiff-*ITC Ltd.* to furnish a security bond or bank guarantee for Rs. 2,25,00,000/- and defendant No. 1, *Naresh Kumar Khandelwal*, to furnish a security bond or bank guarantee for Rs. 1,25,00,000/-. However, the learned Court below failed to record its prior satisfaction to the effect that the opposite party, with an intent to obstruct or delay the execution of any decree that may be passed against them, is about to dispose of the whole or any part of their property, which is a *sine qua non* for passing any order upon an application filed under Order 38 Rule 5 of the CPC. Without recording a prior satisfaction, such a stringent order untenable in the eye of law.

14. The power under Order 38 Rule 5 of the CPC 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 law.

15. Considering the facts and circumstances of the case, since the learned Commercial Court has not recorded its prior satisfaction to the effect that the opposite party, with an intent to obstruct or delay the execution of any decree that may be passed against them, is about to dispose of the whole or any part of their property, which is a *sine qua non* as per Order 38 Rule 5 of the CPC. Therefore, the impugned orders dated 03.04.2025 are set aside.

16. Consequently, the matter is remitted to the learned Commercial Court to decide the applications under Order 38 Rule 5 of the CPC afresh, independently, and strictly in accordance with the law, or without being influenced by the impugned orders.

17. At the same time, the learned Commercial Court is expected to decide the respective applications filed under Order 38 Rule 5 of the CPC, preferably within two months from the next date fixed in the matter, and that the parties shall be at liberty to raise all legally available objections at the time of hearing of the applications under Order 38 Rule 5 of the CPC.

18. With the aforesaid directions, these present writ petitions stand disposed of.

19. The Stay applications as well as the other pending applications, also stand disposed of.

(MANEESH SHARMA),J