



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.
ON THE 14th DAY OF OCTOBER, 2022

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR

CIVIL REVISION NO. 69 OF 2022

Between:-

SHRI DEV RAJ DUGGAL, SON OF SHRI
HARI RAM DUGGAL, MODERN WOOL
HOUSE, GROUND FLOOR, 80, LOWER
BAZAR, SHIMLA HP

....PETITIONER

(BY MR. BIMAL GUPTA, SR. ADVOCATE WITH MR. GURINDER
SINGH PARMAR AND MR. VARUN THAKUR, ADVOCATES)

AND

SHRI HARISH KUMAR SON OF SHRI
BHUPINDERJIT KASHYAP, RESIDENT
OF 80-81, LOWER BAZAAR, SHIMLA HP

...RESPONDENT

(BY MR. BHUPINDERJIT KASHYAP AND
MR. VIPIN BHATIA, ADVOCATES)

Whether approved for reporting? Yes.

This petition coming on for pronouncement this day, the Court passed the following:

ORDER

Petitioner has approached this Court against order dated 25.3.2022, passed by the Appellate Authority-II, Shimla in Appeal No.2-S/13(b) of 2021, whereby order dated 7.8.2020, passed by Rent Controller-III, Shimla in an application preferred in Rent Petition No. 170-A of 2019/17 has been affirmed.

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2. Parties herein shall be referred, for convenience, as per their status before the Rent Controller i.e. as 'landlord' and 'tenant' respectively.

3. Landlord has filed main petition for eviction of tenant from the shop premises rented to the tenant, on the basis of bonafide requirement of landlord for setting up a business by his wife in the said shop premises being most suitable shop for that.

4. In reply to rent petition, preliminary objection has been taken that landlord has also let out a shop in the same building to a new tenant within five years of filing of petition and landlord has received vacant possession of substantial area on first floor of building after its vacation by a tenant and handed over possession thereof to another party, i.e. to an existing tenant, to allow him to have a larger area under tenancy and entire second floor of building in question is lying vacant and is in occupation of the landlord and, therefore, maintainability of rent petition has been questioned.

5. Reply to eviction petition was filed in June, 2017.

6. After filing of rejoinder, issues were framed on 20.7.2017 and case was fixed for evidence of landlord on 31.8.2017. On 31.8.2017, witnesses were not present. On that day, an application was preferred by tenant under Order 7 Rule 11 CPC read with Section 151 CPC.

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7. In application under Order 7 Rule 11 CPC, by referring grounds already taken in reply regarding renting out of a portion of premises within five years to someone, vacation of premises by another tenant and handing over possession thereof to already existing tenant and also availability of vacant hall in the second floor, it was also contended that landlord was occupying another residential and commercial premises within urban limits of area and has rented out two premises for non-residential and commercial purposes in the same building within five years and, therefore, eviction petition deserves to be rejected under Order 7 Rule 11 CPC.

8. Reply to application under Order 7 Rule 11 CPC was filed on 12.9.2017. Thereafter, time to file rejoinder was taken twice and ultimately on 30.11.2017 the application was directed to be taken into consideration, but on 19.12.2017 for non-availability of original counsel for tenant it was adjourned and, thereafter, either for request on behalf of landlord or tenant, it was adjourned, but finally it was dismissed on 20.6.2017.

9. Being aggrieved by aforesaid order dated 20.6.2017, tenant approached the High Court by filing CMPMO No. 290 of 2018, titled Dev Raj Duggal vs. Harish Kumar. The same was dismissed on 12.9.2019 by a Coordinate Bench of this Court on the grounds that in the H.P. Urban Rent Control

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Act, 1987 (the Rent Act), the Rent Controller has no explicit jurisdiction vested in it to apply mandate of Order 7 Rule 11 CPC upon a rent petition; there is no specific contemplation in CPC for making the aforesaid provision applicable in a rent petition; for want of explicit applicability of aforesaid provisions, Rent Controller is incapacitated to adjudicate rent petition like a Civil Suit and, thus, the application was held to be mis-constituted and beyond the ambit of specific legislation, i.e. Rent Act, governing and appertaining the trial of eviction petition by Rent Controller. It was further observed that Rule 12 of H.P. Urban Rent Rules 1990 (Rent Rules) provided specific areas wherein principles of CPC shall be guided principles for adjudicating the application under Rent Act but not provisions of CPC and it does not contemplate applicability of CPC in toto to the eviction petition and, thus, it was concluded that except explicit applicability of CPC in restricted manner specifically enumerated under the Act and Rules, mandates specific exclusion of CPC in the trial of eviction petition. Apart from this, the plea of tenant was also rejected on merit by returning findings that grounds taken in application were also not sufficient grounds to conclude that rent petition, did not, at an incipient stage disclose any valid accruable cause(s) of action or it infracts the consonant therewith provisions of Rent Act and it was observed that after adducing the evidence on issue, the

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Rent Controller has to return findings thereon and, therefore, it was observed that it would be premature at that stage to conclude that the ground taken in application is merit-worthy warranting dismissal of rent petition at initial stage.

10. After dismissal of aforesaid petition, rent petition was resumed before the Rent Controller and was listed for evidence of petitioner on 30.1.2020 on which date another application under Order 14(3)(a)(i) of H.P. Urban Rent Control Act was preferred by tenant on the same grounds on which application under Order 7 Rule 11 CPC was filed earlier, however, adding two more paras giving information with respect to filing of earlier application as well as CMPMO No. 290 of 2018 preferred by tenant and dismissal thereof. The only difference in this application was that it was filed by citing Section 14(3)(a)(i) of Rent Act instead of Order 7 Rule 11 CPC.

11. This application was dismissed by Rent Controller vide order dated 7.8.2020. The said order was assailed by tenant by filing Rent Appeal No.2-S/13(b) of 2021 which was dismissed by Appellate Authority with observation that tenant would have ample opportunity to prove his contention as made in application during the proceedings of main petition by observing that question raised by tenant is a question of law and fact which is to be determined after leading evidence by both parties and, therefore, it cannot be determined at that

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stage as being sought by tenant by filing the application particularly when rent petition is pending for landlord's evidence and thus application was held to be not maintainable at that stage.

12. Learned arguing counsel for tenant has submitted that landlord can seek eviction of tenant under Rent Act on any of grounds or more than one as enumerated in Section 14 of Rent Act but in present case ground on which eviction is sought is neither available to landlord nor mentioned in the Act. He has referred provisions of Section 14(3)(d) which provides a ground for eviction of tenant if premises is required for use as an office or a consulting room by son of landlord who intends to practice as a lawyer, an architect, a dentist, an engineer, a veterinary surgeon or a medical practitioner including a practitioner of Ayurvedic Unani or Homeopathic System of Medicine or for the residence of his son who is married. He has further submitted that in rent petition, premises has been sought to be evicted for bonafide requirement of wife and there is no provision available in Rent Act for eviction for setting up a business for wife and, therefore, rent petition is neither competent nor maintainable but is an abuse to the process of law. He has also reiterated other grounds taken in reply to rent petition as well as in applications filed before the Rent Controller under Order 7 Rule 11 CPC and under Section 14(3) (a)(i) of the Act.

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13. It has also been argued that when rent petition on the face of it is not maintainable then there is no reason for continuing the same causing wastage of time of Court by continuing trial.

14. Learned counsel for the landlord has submitted that there is no provision under the Rent Act to file, maintain and adjudicate such application as has been filed by tenant and further that on identical grounds application was dismissed and against the said dismissal, CMPMO No. 290 of 2018 was preferred by tenant which was dismissed by holding that mandate of Order 7 Rule 11 of Civil Procedure Code is not applicable in the rent petition and applicability of provisions of CPC are deemed to have been specifically excluded except those which have been specifically mentioned in Rule 12 of Rent Rules which provides applicability of CPC in rent petition at particular stage which means that all provisions of CPC are not to be followed by Rent Controller in disposing of a petition under Rent Act. Further that issues raised in the application were already framed for adjudication in main petition which are to be decided on the basis of evidence led by parties, and, therefore, it has been contended that application filed by tenant under Section 14(3)(a)(i) of Rent Act is barred by res-judicata and further that there is no provision of filing and adjudicating such application under Section 14 of the Rent Act.

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15. On behalf of landlord, it has been further submitted that in para 18(a)(i) of rent petition landlord has specifically stated that shop premises in occupation of tenant is most suitable for the landlord and landlord has not vacated 'such non-residential premises' without sufficient cause within five years of filing of petition and plea taken in this para and in reply thereto is to be adjudicated by Rent Controller on the basis of evidence to be led by parties and, therefore, it would be pre-mature to decide these issues in an application like the application filed in present case as the landlord has every right to explain his plea in evidence. It has been further contended that plea of tenant that premises is required by wife of landlord to set up a business is not a valid ground for eviction of tenant is not sustainable, for explanation of 'family' as given in Explanation-2 of Section 14(3)(a) of Rent Act also includes wife in it. It has been further submitted that in any case this issue is not to be decided in an application that too without leading evidence, at this stage, being not permissible in the procedure prescribed under the Rent Act and Rent Rules for disposing of an application.

16. Learned counsel for landlord, to substantiate maintainability of eviction petition, for setting up a business for wife, has referred pronouncements of the Supreme Court in *Joginder Pal v. Naval Kishore Behal*, (2002) 5 SCC 397; and

Kailash Chand and another v. Dharam Dass, (2005) 5 SCC 375, as well as judgments of this High Court, based on that, in *Jagat Ram Chauhan v. Smt. Avinash Partap and another*, Latest HLJ 2014 (HP) 420 and judgment dated 18.7.2019, passed in Civil Revision No.41 of 2019, tilted as *Mandeep Singh v. Gian Chand*.

17. It has been contended on behalf of landlord that tenant is 88 years old, having two shops in his possession, whose wife has expired and two daughters are living and earning their livelihood separately but the tenant in order to harass the landlord is filing such applications and taking adjournments for lingering on the matter.

18. Unless specifically excluded, provisions and principles of procedure contained in the Civil Procedure Code shall be applicable in civil proceedings. Exclusion of provisions of CPC may be implied as well as explicit.

19. I have gone through the record and have considered the submissions made by learned counsel for parties.

20. Rent Act is a special enactment framed and made applicable to all urban areas of Himachal Pradesh. Rent Rules provide procedure for conducting the proceedings by Rent Controller under this Act. Civil Procedure Code is a general enactment prescribing procedure in civil litigations. No doubt proceedings under the Rent Act are also civil in nature but such

proceedings are governed and regulated by Rent Act and Rules made thereunder.

21. Rent Control Act is a complete Code in itself dealing with filing, adjudication and disposal of rent petitions under it. It provides determination of fair rent, revision of fair rent in certain cases, increase in fair rent, complaint against cutting off or withholding essential supply or services, eviction of tenants, recovery of immediate possession of premises, also recovery of possession for limited period and deposit of rent by tenant with the Controller as provided under Sections 4, 5, 6, 11, 14, 15, 17 and 21 of the Act.

22. Section 24 provides an appeal against order passed by Rent Controller and Section 24(5) empowers the High Court to entertain revision petition, on application of any aggrieved party or on its own motion or calling and examining the record related to any order or proceedings taken under the Rent Act.

23. In Rent Rules, Rule 3 prescribes that application under Sections 4, 5, 6, 11, 14 and 15 shall be made in Form "A", Rule 4 provides procedure for permission and recovery of possession under Section 17 of the Act by filing an application in Form "B" and Rule 8 provides filing of an application under Section 21 for deposit/payment of rent with Rent Controller in Form "D". The manner, in which an application is to be made and procedure to be followed by Controller in disposing of such

application, has been provided in Rule 5 and Rule 12. Rule 14 provides procedure for filing appeal whereas Rule 15 provides manner in which application for revision is to be made under Section 24 of the Act.

24. Scheme of Rent Act and Rent Rules not only impliedly but explicitly prohibits the applicability of all provisions of Civil Procedure Code, except those mentioned in the Act and Rules itself, during adjudication of application(s) under the Rent Act. It also specifies the causes and issues regarding which applications can be filed under the Rent Act. Therefore, as already held by Coordinate Bench of this Court in CMPMO No. 290 of 2018 neither provisions under Order 7 Rule 11 CPC nor similar prayer otherwise is permissible to be made during adjudication of rent petition.

25. What cannot be done directly can also not be permitted to be done indirectly. Rule 12 explicitly provides the procedure to be followed by Rent Controller in disposing of an application under the Rent Act. Rule 12(2) provides that the Controller shall give a reasonable opportunity to parties to state their case. Further that he shall record the evidence of parties and witnesses examined on either side, and while doing so, and also in fixing the date for hearing of parties and their witnesses, in adjourning the proceedings and dismissing the applications for default or for other sufficient reason, the

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Controller shall be guided by principles of procedure as laid down in CPC, meaning thereby that during adjudication of an application under the Rent Act, applicability of CPC is limited to the extent as provided under Rule 12(2) of Rent Rules. Applications which are permissible to be filed under the Rent Act have been enumerated in Sections 4 to 6, 11, 14, 15, 17, 21 and procedure and performa, i.e. Forms "A", "B" and "D", for filing them have also been provided in and with Rules i.e. Rules 3, 4, and 8. Procedure for filing appeal and revision has also been prescribed under Rules. Therefore, intention of Legislation is very clear that CPC or its principles have not been made applicable in entirety to the proceedings under the Rent Act and special Act has been enacted for disposing of applications made therein as expeditiously as possible without adhering to cumbersome and lengthy procedure provided under CPC for adjudication of a regular suit. Had the intention of Legislation to make all provision of CPC applicable, there would not have been any necessity to mention applicability of CPC, its certain provisions and principles contained therein with special reference as provided in Sections 16(9), Section 25 and Section 26 of Rent Act as well as Rule 5 and Rule 12 of Rent Rules.

26. Rent Act and Rules provide limited application of provisions of CPC or principles contained therein. Explanation in

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Section 9 provides that expression “legal representative” has the same meaning as assigned to it in the Code of Civil Procedure with further qualification that it includes also, in the case of joint family property the joint family of which the deceased was a member. Section 16(9) provides that Rent Controller may exercise the power of review in accordance with provisions of Order XLVI of CPC where no application for revision has been made to the High Court. Section 25 empowers the Rent Controller to summon and enforce the attendance of witnesses and to compel the production of evidence as the Court is empowered under CPC; Section 66 provides that orders passed under the Rent Act by Controller or Appellate Authority shall be executable by Controller as a decree of Civil Suit and for this purpose, Controller shall have all powers of Civil Court. Rule 5 provides the manner in which applications are to be made under the Rent Act providing that every such application shall be signed and verified in the manner prescribed under Rules 14 and 15 of Order 6 of CPC. Rule 12 speaks about applicability of principles of procedure as laid down in CPC with respect to recording the evidence of parties, examination of witnesses of either side, fixing the dates for hearing of parties and their witnesses, adjourning the proceedings and dismissing the applications for default or for other sufficient reasons. There is no other provision either in

Rent Act or Rent Rules making applicability of the provisions of CPC or principles contained therein as a whole in proceedings under Rent Act. Even Rules 14 and 15 provide a procedure for filing appeal and revision under Section 24 of Rent Act independently without referring procedure prescribed in CPC.

27. Section 14, especially Section 14(3)(i), of Rent Act does not provide filing of an application like present one during pendency of rent petition for rejection of petition as provided in CPC under Order 7 Rule 11 CPC, rather, Rent Act or Rent Rules nowhere provide filing of such application. Had it been the case of invoking wrong provisions, invoke for filing applications, this Court would have considered and decided it on merits without going into the issue of filing of application by mentioning wrong provisions as for doing substantial justice, if application would have otherwise maintainable, it would have been considered and adjudicated on merits of issues raised therein, but no such application is permissible under Rent Act, therefore, this application was liable to be dismissed and thus present petition arising out of dismissal of such application by Rent Controller as well as Appellate Authority, is also liable to be dismissed being not maintainable.

28. Section 14 nowhere, either explicitly or impliedly, casts duty upon the Rent Controller to entertain such application as has been preferred by petitioner for determining

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the issues raised therein. Permissibility of such application, especially in absence of provision under the Rent Act, would amount to permitting a mini trial during pendency of main petition and it would be not only de hors the provisions but also against the essence of Rent Act.

29. Section 14 does not provide or speak about filing of application for rejection of petition/application/eviction petition as has been filed by tenant in present case under Section 14(3)(a)(i). Therefore, such application is not maintainable.

30. The Supreme Court in *Joginder Pal's* case (supra) has held that expression 'for his own use' is not confined in its meaning to actual physical user by the landlord personally but also includes his normal emanations, with following observations:

"24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user.

Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act."

31. Similar view has been taken by the Supreme Court in *Dwarkaprasad v. Niranjan and another*, (2003) 4 SCC 549.

32. In *Kailash Chand's* case (supra), the Supreme Court, reiterating its view, has explained expressions 'for his own use', 'his own occupation' and 'for occupation by family' and has held that these phrases include requirements of member of family of landlord or those dependent on him, observing as under:

"24. The expression 'his own occupation' as occurring in sub-clause (i) of clause (a) of section (3) is not to be assigned a narrow meaning. It has to be read liberally and given a practical meaning. 'His own occupation' does not mean occupation by the landlord alone and as an individual. The expressions "for his own use" and "for occupation by himself" as occurring in two other Rent Control Acts, have come up for the consideration of this Court in *Joginder Pal v. Naval Kishore Béhal*, (2002) 5 SCC 397 and *Dwarkaprasad v. Nirnajan and Another*, (2003) 4 SCC 549. It was held that the requirement of members of family of the landlord or of the one who is dependent on the landlord, is the landlord's own requirement. Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for 'his own occupation'."

33. Following the aforesaid judgment, this High Court has decided **Civil Revision No.16 of 2014**, titled as *Jagat Ram Chauhan v. Smt. Avinash Partap and another*, reported in Latest HLJ 2014(HP) 420 (supra); and **Civil Revision No.41 of 2019**, titled as *Mandeep Singh v. Gian Chand*, on 18.7.2018 (supra).

34. In view of aforesaid exposition of law, plea that requirement for wife cannot be a ground for eviction on bonafide requirement is not sustainable and is rejected accordingly.

35. Plea of landlord that premises occupied by Tenant is most suitable for his bonafide requirement as well as plea of Tenant that landlord is having vacant floors/accommodation and that during last 5 years landlord has rented out another

available premises to another Tenant, are to be adjudicated by the Rent Controller on the basis of material placed before him in the light of pronouncements of the Supreme Court in *Meenal Eknath Kashirsagar (Mrs) v. Traders & Agencies and another*, (1996) 5 SCC 344; *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222; *Ragavendra Kumar v. Firm Prem Machinery & Co.*, (2000) 1 SCC 679; *M.L. Prabhakar v. Rajiv Singal*, (2001) 2 SCC 355; *Deena Nath v. Pooran Lal*, (2001) 5 SCC 705; *Sidhalingamma and another v. Mamtha Shenoy*, (2001) 8 SCC 561; *Savitri Sahay v. Sachidanand Prasad*, (2002) 8 SCC 765; and *Akhileshwar Kumar and others v. Mustaqim and others*, (2003) 1 SCC 462, wherein it has been held that landlord is the best judge of his requirement for residential or business purpose and subjective choice of landlord shall be respected by the Court without thrusting its own wisdom or Tenant's choice upon the choice of landlord and suitability has to be seen from convenience of landlord and his family members on the basis of totality of circumstances including their profession, vocation, style of living, habits and background, and choice of landlord to choose either or any of two or more tenanted premises as well as requirement of area or space, for bonafide requirement, is not to be questioned by the tenant.

36. Perusal of present application and application filed under Order 7 Rule 11 CPC at earlier point of time, clearly

depicts that both applications have been filed exactly on one and same ground with similar averments in verbatim except two new paras disclosing about filing of an application under Order 7 Rule 11 CPC as well as CMPMO No. 290 of 2018. Though it has been stated in para 5 of latter application, which is in reference in present petition, that CMPMO No. 290 of 2018 was dismissed on the ground that provisions of CPC are not applicable in rent cases, however, it is half truth as in para 7 of judgment in CMPMO No. 290 of 2018 it has been categorically held that grounds taken in application were not sufficient to conclude that either the rent petition does not, at an incipient stage, disclose any valid accruable cause(s) of action or it infracts with provisions of the Rent Act and further that issues raised in application were to be decided after adducing the evidence by parties facilitating the Rent Controller to return findings thereon and grounds, taken, were considered to be pre-mature at that stage and, thus, application was also dismissed for want of sufficient meritworthy ground warranting the dismissal of main petition at an incipient stage. Therefore, in view of verdict of Coordinate Bench, which has not been further assailed, application in reference was not maintainable at all, rather, it is an abuse of process of law for which tenant deserves to be burdened with costs.

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37. Therefore petition stands dismissed. However, taking a lenient view, no cost is being imposed, considering that petitioner was acting bonafide on ill advice.

Parties are permitted to use/produce downloaded copy of this judgment from the Website of the High Court before the authorities concerned and that said authorities shall not insist for certified copy, but, if required, may verify passing of the order from the Website of the High Court of otherwise.

October 14, 2022
(ms/sd)

(Vivek Singh Thakur)
Judge

High Court

SCJP