

**(2027) 12 SHI CK 0001**

**Himachal Pradesh HC**

**Case No:** Civil Revision No. 140 Of 2022

Dharmender

APPELLANT

Vs

Prem Chand & Others

RESPONDENT

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**Date of Decision:** Dec. 15, 2027

**Acts Referred:**

- Himachal Pradesh Urban Rent Control Act, 1987-Section 14, 14(2), 14(2)(I) , 24(5)
- Himachal Pradesh Urban Rent Control Act, 1971-Section 28(2)

**Hon'ble Judges:** Satyen Vaidya, J

**Bench:** Single Bench

**Advocate:** Neeraj Gupta, Rinki Kashmiri, Vipin Pandit

**Final Decision:** Dismissed

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**Judgement**

Satyen Vaidya, J

1. The instant revision petition has been filed under Section 24 (5) of the H.P. Urban Rent Control Act, 1987 (for short the Act), by the petitioner/tenant against the judgment dated 2.7.2022, passed by the Appellate Authority-III, Solan, District Solan, H.P. in Rent Appeal No. 3 ADJ-II/14 of 2019, whereby the order of eviction dated 22.2.2019, passed by the learned Rent controller-II, Solan in Rent Petition No. 11/2 of 2015, has been affirmed.

2. Rent Petition No. 11/2 of 2015 was filed by respondent No.1 herein (hereinafter referred to as the Landlord) under Section 14 of the Act for eviction of the petitioner (hereinafter referred to as the tenant) from non-residential premises i.e. one shop measuring 10 x 5 feet in House No. 18, Bansal Niwas, Lakkar Bazar, Ward No.9, Solan, H.P. (hereinafter referred to as the shop). The eviction was sought on the following grounds: -

- i) Arrears of rent.
- ii) Personal bonafide requirement of the landlord.

3. The rent was claimed at the rate of Rs. 528/- per month w.e.f. 01.01.2015 and Rs. 580/- per month w.e.f. 01.03.2015. The landlord had also claimed arrears of enhanced rent for the period between 01.03.2012 and 31.12.2014.

4. The landlord had further claimed that he intended to occupy the shop for his personal use, as he had to start his business therein. It was pleaded that the landlord did not possess any other non-residential premises owned by him in the urban area of Solan and he had also not vacated any such premises within five years, preceding the date of filing of the eviction petition. As per landlord, he was residing in Manimajra and was earning his livelihood by running a tea stall. He intended to shift to Solan with his family and to start his own business.

5. The landlord also claimed to be the owner of two residential rooms behind the shop, which were stated to be used by him as a residence. It was claimed that the only available passage to the residential rooms behind the shop was from the shop and for such reasons also, the shop was required by the landlord. It had also been specifically pleaded that earlier there was an alternative passage to the residential rooms behind the shop but the same had been obstructed by putting a gate by the owner of the said passage.

6. The tenant had contested the petition by filing the reply. In reply, the relationship of landlord and tenant between the parties was not disputed. However, it was alleged that the shop and residential rooms behind the shop were joint property of landlord and his brothers and since there was no partition between the co-owners, the landlord could not seek the eviction on the ground of personal bonafide requirement. The tenant did not deny the fact that he had not paid rent w.e.f. 01.01.2015. It was the stand of the tenant that prior to 2015, he had been paying rent to the brother of the landlord and in the year 2015 he had again tendered the rent to the brother of the landlord, who had refused to accept the same. According to the tenant, the landlord was wrongly claiming the rent on enhanced rate whereas, the rent was Rs. 500/- per month. The tenant also came up with plea that the residential rooms behind the shop were not in possession of the landlord, as one of the rooms was in possession of one Ramesh Sharma and the other was with the brother of the landlord.

7. The learned trial Court framed the following issues: -

**1. Whether respondent is in arrear of rent @ 580/-since January 2015 alongwith due with regard to statutory increase since 1.3.2012, as alleged?**

**...OPP**

**2. Whether the petitioner is in bonafide requirement of the premises for his personal use?**

**...OPP**

**3. Whether the area adjacent to shop No. 3 which was used by petitioner for ingress and egress has been blocked by the neighbor by putting gate over the same?**

**...OPP**

**4. If issue No. 3 is decided in affirmative, whether petitioner has left with no ingress and egress to his premises as alleged?**

**...OPP**

**5. Whether petitioner requires shop for his personal use and occupation for earning his livelihood, as alleged?**

**...OPP**

**6. Whether present petition is not maintainable?**

**O R1**

**7 Whether petition is bad for his discloser of material fact as alleged?**

**...OPR1**

**8. Whether petition is bad or non joinder of necessary parties?**

**...OPR1**

**9. Whether Bhupesh Bansal was receiving rent of the premise and had refused to take rent?**

**...OPR1**

**10. Whether present petition has been filed with malafide intention for enhancing amount of rent as alleged?**

**....OPR1**

**11. Relief.**

Issues No. 1 to 5 were answered in affirmative, whereas all other issues were answered in negative. The petition was allowed on both the grounds. The tenant was directed to pay arrears of rent amounting to Rs. 26,779/-with statutory interest at the rate of 12% on the arrears of rent accruing between 16.2.2012 to 31.12.2018. The learned Rent Controller had further ordered that the order of eviction on the ground of arrears of rent would not be available to the landlord for execution in case the tenant deposited the arrears of rent and interest within thirty days from the date of passing of the order.

8. The tenant filed appeal against the eviction order passed by the learned Rent Controller, which came to be decided by the learned Appellate Authority-III, Solan vide impugned judgment. The learned Appellate Authority has affirmed the order of

eviction on both the grounds.

9. I have heard learned counsel for the parties and have also gone through the record carefully.

10. Indisputably, the tenant had not deposited the arrears of rent along with interest, as adjudicated by the learned Rent Controller within thirty days of the order of eviction. The tenant had later deposited a sum of Rs. 45,000/- in the Appellate Forum in terms of the order passed by this Court on 9.5.2022 in CMPMO No. 140 of 2022.

11. Since the tenant had neither paid nor deposited the arrears of rent along with interest within thirty days of the eviction order, the learned Appellate Authority had not stayed the order of eviction. In such circumstances, the landlord had filed execution petition before the learned Rent Controller and in such proceedings, warrant of possession had been issued against the tenant. The issuance of warrant of possession was assailed by the tenant before this Court in CMPMO No. 140 of 2022 and resultantly, the order dated 9.5.2022 was passed by this Court in following terms: -

**3. Learned counsel for the petitioner, in the course of arguments, admitted that the appeal filed against the original order of Rent Controller is pending before the Appellate Authority-III, Solan, H.P.**

**4. It is argued that even though the application for interim relief has been filed along with the appeal, but, since the Rent Controller has passed the orders requiring the petitioner to pay the arrears of rent, which the petitioner could not pay, the Appellate Authority has not granted any interim relief.**

**5. It is submitted that since the Bank Account details of the respondent are not available with the petitioner and that he is staying somewhere in Chandigarh, the petitioner could not immediately deposit the amount in his bank account and that the petitioner is agreeable to now deposit the entire arrears of rent with the Court.**

**6. In case the petitioner deposits the arrears of the rent before the Appellate Authority-III, Solan, the Appellate Authority shall take up the application to pass appropriate interim order with regard to the grievance of the petitioner for staying the execution of the warrant of possession.**

12. As sequel to the aforesaid order, passed in CMPMO No. 140 of 2022, the tenant had deposited a sum of Rs. 45,000/- in the Appellate Forum and the Appellate Authority had thus stayed the execution of the eviction order vide order dated 20.5.2022.

13. The 3rd Proviso to Section 14 (2) (i) of the Act reads as under: -

**Provided further that tenant against whom the Controller has made an order for eviction on the ground of non-payment of rent due from him, shall not be**

**evicted as a result of his order, if the tenant pays the amount due within a period of 30 days from the date of order.**

14. Learned Senior Counsel for the tenant would contend that the aforesaid proviso of Section 14 (2) (i) of the Act will not be attracted in the instant case, as the tenant had deposited the arrears of rent alongwith interest, as adjudicated by the learned Rent Controller, before the Appellate Forum in terms of the order passed by this Court in CMPMO No. 140 of 2022.

15. In *Kailash Khanna vs. K.S. Goolry & others* 1990 (1) Sim.L.C.163 Honble single judge of this court in almost identical fact situation had answered the contention, to the above effect, in negative in following terms:-

**6. Point No. 2. The learned Counsel for the tenant points out that the entire arrears of rent had been paid during the pendency of the appeal before the Appellate Authority in virtue of the interim order passed by this Court in Civil Revision No. 98 of 1978. The civil revision arose out of an order of the Appellate Authority dismissing an application for stay of execution of the order of eviction pending disposal of the appeal. This Court in revision granted a stay pending the appeal on condition that the tenant deposits the entire arrears of rent up to the date of the order. It is brought to my notice that this order had been complied with and all arrears of rent upto the date of the order in Civil Revision No. 98 of 1978 had been deposited. The compliance of that order enables the tenant to continue in occupation of the building pending disposal of the appeal before the Appellate Authority. Learned Counsel Shri Devinder Gupta submits that the specific case of the tenant in his counter was that there was no arrears of rent as claimed in the petition and without considering the question of arrears of rent, the Appellate Authority was wrong in confirming the order of eviction for the reason of the default of the tenant to deposit the arrears of rent on the date of the first hearing of the petition. The Appellate Authority in its order has stated as follows:**

**At the time of arguments before me the learned Counsel for the Respondent conceded that the Respondent failed to pay arrears of rent either on the first hearing as provided in the Punjab Act nor did he pay till today.**

**7. It has been shown that the last part of the statement is not correct as the tenant had in compliance to the order passed by this Court in Civil Revision No. 98 of 1978 deposited the entire arrears of rent to enable him to continue in occupation of the building until the disposal of the appeal. But what is conceded by the learned Counsel for the tenant before the Appellate Authority is not merely that the arrears of rent were not deposited on the first hearing of the petition, but the concession involves also an admission that the tenant was in arrears on the date of the petition. In view of this concession by Counsel the Appellate Authority was not called upon to consider the question whether**

there was any arrears of rent as claimed. It is also not open to this Court to go into this question in the light of the concession of Counsel referred to above. I, therefore, ver-rule also the second point urged by the learned Counsel f r the tenant.

8. The Punjab Ac , as earlier stated, was repealed by the Himachal P adesh Urban Rent Control Act, 1971 and that Act itself was repealed by the Himachal Pradesh Urban Rent Control Act, 1987. A proviso to clause (i) of Sub-secti n (2) of Section 14 in identical terms in both these enactments enables the tenant to pay the amounts due from him to the landlord within 30 days from the date of the order of the Controller. Subsection (2) of Section 28 of the 1971 Act contained a provision that all pending proceedings are to be disposed of in accordance with the repealed Act as though the said Act had continued to be in force. It is in virtue of that provision that the order of eviction was passed for the reason of failure of the tenant to deposit the arrears of rent on the date of the first hearing of the petition for eviction. Sub-section (2) of Section 14 of the 1987 Act reads as under:

(2) Notwithstanding such repeal, but subject to the provisions contained in Sub-section (3), all suits, appeals and other proceedings including execution proceedings, under the said Act pending, before any court or appellate or revisional authority, on the day shall be disposed of in accordance with the provisions of this Act, as if the provisions contained in this "Act were at the relevant time, in force.

9. As per this provision, pending proceedings are to be disposed of in accordance with the provisions of the 1987 Act. It is accordingly submitted that the proviso to clause (i) of Section 14(2) of the Act enabling the tenant to pay the amount due to the landlord within 30 days from the date of the order should be applied in his favour for the reason that payment had already been made in pursuance to the order in Civil Revision No. 98 f 1978. That order, as earlier stated, was one staying the execution of the order for eviction pending he appeal before the appellate authority. The tenant has taken advantage of that order and on deposit of the arrears had continued in occupation of the premises. The third proviso to clause (i) of Sub-secti n (2) f Section 14 of the 1987 Act reads as under:

Provided further that the tenant against whom the ontroller has made an order for eviction on the ground of non-payment of rent due from him shall not be evicted as a result of his order, if the tenant pays the amount due within a period of 30 days from the date of order;

10. No payment was made in the present case within 30 days of the order of eviction passed by the Controller. The subsequent payment to enable the tenant to continue in occupation of the building pending the appeal is not of

any avail to attract the 3rd proviso quoted above. V.D. Misra, C. J. in ILR 1982 HP 279 M/s. K.N. Trading Company v. Masonic Fraternity of Simla, referring to a similar provision in the 1971 Act:

This section gives various opportunities to a tenant to pay the arrears of rent. The second proviso gives a last chance to the tenant to pay up the amount due from him. This he can avail even after the order of eviction has been passed. The period during which he can deposit the dues is fixed. It is 30 days from the date of the order. He can save the eviction only if he pays the amount due within the prescribed period in terms of the aforementioned proviso. This period can neither be enlarged nor abridged by the court. There is no provision for condonation of the delay in depositing the rent. Since the time is fixed by law there is no question of anyone misleading the tenant about the same.

The same view was expressed by Pathak, C. J. in ILR 1977 HP 122 Kishan Kumar v. Gurbax Singh, wherein it is stated at page 124:

It is apparent that the statute itself provides a period of 30 days from the date of the order for payment of rental arrears by the tenant. On such payment, the statute declares, effect will not be given to the order of eviction. The statute does not leave the determination of the period to the Rent Controller. It is not open to the Rent Controller, when disposing of the petition for eviction, to make an order either abridging or enlarging the period of 30 days. Indeed, the period having been determined by the statute itself, no order was necessary by the Rent Controller.

11. Since no payment had been made within the period of 30 days from the date of the order of the Controller, the tenant has not availed of the benefit of the proviso introduced in the 1971 Act and re-enacted in the 1987 Act. I, therefore, see no merit in the third point also urged on behalf of the revision Petitioner.

16. The same principle has been followed by another Bench of this Court in the matter of Krishan Murari vs Amar Dutt Sharma, 1994 (Suppl.) SLC242.

17. Thus, in view of settled position in law, the deposit of arrears of rent by the tenant after thirty days of the order of eviction, even though the deposit was made in terms of the order passed by this court in CMPMO 140 of 2022 will not save him from the consequence of eviction. Therefore, the contention raised on behalf of the tenant is rejected.

18. Learned Senior Counsel for the tenant has further tried to persuade this Court to take another view by projecting discrepancies in the arrears of rent adjudicated by the learned Rent Controller. However, since, the tenant had not deposited the arrears of rent along with interest, as held by the learned Rent Controller, within thirty days from the date of order, he cannot be heard further on the issue whether

the rent was rightly adjudicated or not, more particularly for the reasons that the tenant had not denied his liability to pay arrears of rent at the rate of Rs. 500/- per month w.e.f. 01.01.2015. It is not the case of the tenant that he had deposited the arrears as per his own calculations.

19. Thus, I do not find any illegality or impropriety in the impugned order in so far as the eviction on the ground of arrears of rent has been upheld.

20. Learned Senior Counsel for the tenant next submitted that the landlord had not been able to prove the bonafide in seeking eviction of the tenant from the premises for personal requirement. According to him, it was proved on record that two residential rooms behind the shop were in occupation of other persons viz one Ramesh Sharma and Sushil Bansal, hence, the landlord could not occupy the same and resultantly, the alleged requirement to use the shop as a passage to the residential rooms had been rendered redundant. It was also submitted that the mere wish of the landlord was not sufficient to evict the tenant as the need had to be bonafide.

21. The contention so raised again will not serve the cause of the tenant for the reason that eviction had not been sought on the sole ground that the shop would be used as passage to residential rooms. The landlord had specifically pleaded the requirement of shop for running his own business after vacation by the tenant. In that regard learned Rent Controller had arrived at the findings of fact in favour of the landlord after scrutinizing the evidence before it. The landlord had examined himself as his own witness and had also produced PW-2 to prove the site plan. Another witness PW-3 was produced to seek corroboration to the versions of the landlord. On the other hand, the tenant had examined only himself as the sole witness. Having gone through the testimonies of all the witnesses, I do not find any illegality or perversity in the approach adopted by the learned Rent Controller. It is also trite that in revisional jurisdiction this Court will not substitute the view taken by the trial or appellate court, even if another view is possible, unless the original view suffers from absolute perversity.

22. Further, it also stood proved that there was no alternative passage to the residential rooms and in this view of the matter the occupation of said residential rooms by some other persons becomes meaningless more particularly when one of those persons is the brother of the landlord and the case as set up also suggested that a family settlement had already taken place between the landlord and his brothers.

23. It has next been contended that the findings recorded by the learned Rent Controller on the issue of bonafide requirement of landlord had not been tested by the learned Appellate Authority and the affirmation has been made without assigning any reason.

24. The impugned judgment reveals that the learned Appellate Authority had taken into consideration the evidence on record and thus it can clearly be inferred that nothing had been found so as to upset the findings of fact recorded by the learned Rent Controller. Moreover, when the findings recorded by the learned Rent Controller are borne from the record, this Court does not find it prudent to interfere with the order of affirmation passed by the learned Appellate Authority, merely on technical grounds.

25. Another argument raised on behalf of the tenant is that the landlord had not been able to prove the partition inter-se the co-owners and hence the eviction on the ground of personal bonafide requirement could not have been ordered. The argument so raised also deserves rejection for the reason that even one of the co-owners can maintain the petition for eviction against the tenant. The requirement is that there should be relationship of landlord and tenant between the parties. In the instant case, the tenant has not denied such relationship. In reply to para-3 of the eviction petition, the tenant had admitted the contents thereof and thereby had clearly admitted the existence of relationship of landlord and tenant. Further, in his cross-examination, the tenant had clearly deposed that the brother of the landlord had refused to accept the rent in the year 2015 on the ground that the tenant should tender the rent to the landlord (respondent) herein. Even otherwise also, none of the co-owners have come forward to object to the filing of eviction proceedings by the landlord against the tenant.

26. In the last, it was contended that the tenant had filed an application before the learned Appellate Authority, seeking amendment to the grounds of appeal and there was no adjudication on such application. Therefore, the case of the tenant has been prejudiced.

27. It is revealed from the interim order dated 2.7.2022, passed by the learned Appellate Authority that the aforesaid application had been disposed as having been rendered infructuous and this evidently has been done in view of the impugned judgment passed by the learned Appellate Authority. In para-15 of the impugned judgment, the learned Appellate Authority has recorded the submission of the learned counsel for the tenant to the effect that the grounds of appeal were required to be amended and thereafter, the said authority had proceeded to dismiss the appeal for the reasons, detailed therein. Furthermore, the application was moved by the tenant to amend the grounds of appeal by incorporating a legal argument that the learned Rent Controller had not specified the amount of rent due in terms of the judgment passed by this Court in *Wazir Chand vs. Ambika Rani & another* 2005 (2) SLC498. The ground sought to be added in the grounds of appeal being a legal ground could have been asserted and pressed by the tenant at the time of hearing of the appeal, however, the impugned judgment does not reveal that any such attempt had been made. Except for making a reference to the application for amendment, it does not appear to have been shown before the learned

Appellate Authority as to how and in what manner, the non-compliance with the judgment of this Court was made out and further, how it had affected the right of the tenant. This observation is being made keeping in view the fact situation of this case where the tenant had failed to deposit the rent adjudicated by the learned Rent Controller within thirty days of the order in terms of 3rd Proviso of Section 14 (2) (i).

28. In result, I do not find any merit in the petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed of. Record be sent back forthwith.