

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

Civil Revision No.17 of 2003

Date of Decision: 31.12.2008

Johli Ram (dead) LRs. Gandhi Ram & anr ... Petitioners

## Versus

RajeshKumar &amp; another ... Respondents.

Coram

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

**Whether approved for reporting? No**

For the Petitioner (s) : Mr. Ramakant Sharma, Advocate

For the Respondents : Mr. Vikas Bhardwaj, Advocate.

**Deepak Gupta, J. (Oral ).**

This petition under Section 24 of the H.P. Urban Rent Control Act, 1987 is directed against the order dated 21.11.2002 passed by the learned Appellate Authority (II), Hamirpur in Rent Appeal No. 2/02 (Rent CMA No. 31/2001) whereby he has dismissed the appeal filed by the appellant(s), hereinafter referred to as the tenant and upheld the order of eviction passed against the tenant on the ground of arrears of rent.

The respondents, hereinafter referred to as the landlords, claim to be the mortgagee in respect of the premises in question which are situated in Ward No.2,

Hamirpur. They filed a petition alleging that the appellant was a tenant in the premises in question from 15.3.1981 @ 150/- per month. According to the landlords the tenant had not paid the rent of the premises since June, 1987.

The tenant in his reply denied the relationship of landlord and tenant. According to the tenant, he had taken the premises on rent from the owners M/s Roshan Lal, Braham Dass and Om Prakash and he was paying the rent to them. Both the parties admit that prior to 1981, the tenant had rented out some other shop from the original owners M/s Roshan Lal, Braham Dass and Om Prakash. In the year 1981, the landlords requested the tenants to shift to the present premises and the rent was settled at Rs. 150/- per month. According to the tenant, the mortgage deed executed is illegal. It was also alleged that the rent had been paid upto December, 1992 and thereafter the owners had been taking furniture from the tenant and the rent has been paid in kind.

The learned Rent Controller rejected the contention of the tenant and came to the conclusion that the premises had been mortgaged with the present landlords by the original owners. It was further held that the tenant had not paid the rent from 1987 onwards and

therefore, eviction of the tenant was ordered on the ground of non-payment of arrears of rent. According to the tenant, he has deposited the arrears in accordance with the orders of the learned Rent Controller but he challenged the findings on these two material issues. The learned Appellate Authority dismissed the appeal. Hence, the present revision petition.

I have heard Shri Ramakant Sharma, learned counsel for the tenant and Shri Vikas Bhardwaj appearing on behalf of the landlords.

The main ground of challenge is that both the courts below have misconstrued the documents i.e. the mortgage deed Ex.PW2/B and the writing Ex.PW2/A. The writing Ex.PW2/A appears to be a continuation of a large number of earlier writings probably kept in diary/note-book in which the tenant used to take the written receipts from the landlords in respect of the rent paid by him. The last rent receipt in this regard is for the months of February and March, 1981 and is dated 23.3.1981. The next writing which is the bone of contention between the parties is dated 1.4.1981. This writing is signed by one of the original owners and evidences the fact that the tenant has

vacated one shop and has taken another shop on rent at the rate of Rs.150/- per month.

According to Mr. Ramakant Sharma, since this writing was affected from 1.4.1981 and the alleged mortgage deed was executed on 14.1.1981, it clearly shows that the mortgagee had not rented out the premises to the tenant and therefore, he is not the landlord(s) in respect of the premises in question. It is also argued that the rent has been paid upto December, 1992.

From the material on record, it is apparent that prior to 1981, the landlords were issuing receipts for the rent received by them and the tenant had been maintaining a complete record in respect of the rent paid by him to the landlord(s). There is no explanation why no similar receipts were obtained by the tenant after the year 1981. To my mind the writing dated 1.4.1981 was executed by the original owners to establish the fact that the tenant had vacated the premises earlier held by him as a tenant. No doubt, the premises had been mortgaged with the present landlord(s) but the mere fact that the original owners rented out the premises does not mean that the mortgagee were not aware about such transaction. One

of the owners has stepped into the witness-box and has clearly stated that the premises in question had been mortgaged with the father of the present landlord(s). Therefore, the tenant cannot deny the fact that the rent is payable to the mortgagee. If there is no dispute between the mortgagor and the mortgagee as to who is entitled to the rent of the premises, the tenant has no right to raise such a plea.

As far as the arrears of rent is concerned, the story set up by the tenant is not believable because it cannot be believed that prior to 1981, he was obtaining receipts and thereafter he has not obtained any receipt. It also cannot be believed that the tenant was supplying furniture in lieu of rent that too without any documents. In any event, this is a pure finding of fact which cannot be interfered with in revisional proceedings.

In view of the above discussion, I find no merit in this revision petition which is accordingly dismissed with no order as to costs.

December 31, 2008.

( Deepak Gupta ), J.

s.