

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

**Civil Revision No. 48 of 2013.**

**Reserved on : 25<sup>th</sup> June, 2018.**

**Decided on : 29<sup>th</sup> June, 2018.**

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Mohinder Singh (since deceased) through his legal heirs

**.....Petitioners/Landlord.**

Versus

Gian Chand and others

**..Respondents/tenant.**

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***Coram:***

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***

*Whether approved for reporting?<sup>1</sup> Yes.*

**For the Petitioners :** Mr. Arvind Sharma, Advocate.

**For Respondents No.1 to 3:** Mr. B.S. Chauhan, Sr.  
Advocate with Mr. Munish  
Dhatwalia, Advocate.

**For other respondents:** Nemo.

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**Sureshwar Thakur, Judge**

The landlord's (petitioner herein), petition for  
eviction, of the respondents herein, from, the demised  
premises, on the apt grounds of (a) arrears of rent, (b)

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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subletting or change of user, (c) and, additions and alternation, was, concurrently dismissed, by, both the learned courts below. The landlord is aggrieved therefrom, hence, has therefrom instituted, the, instant civil revision petition before this Court.

2. Briefly stated the facts of the case, are ,that Sh.Gian Chand, respondent No.1, is, a building contractor and he wanted suitable accommodation in Rohru town for the storage of building material and housing his labour. As such, he contacted the petitioner and vide agreement of 6.10.2003, agreed to construct a building for the petitioner on his land comprised in Khasra No.408 to 410 of Rohru Bazar. The entire amount on the said construction was to be spent by respondent No.1 Gian Chand. Under the said agreement, multi storeyed building was to be constructed on the said land, wherein, a godown was to be there on the first floor and two shops and godown on the second floor and two shops and

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godown on the second floor. Whereas third floor was to be entirely residential. Further, respondent No.1 was to pay a sum of Rs.5,000/- per month as rent to the petitioner on and w.e.f. 1.10.2003. It has been alleged that this agreement of 6.10.2003, has not been complied with by respondent No.1. In violation of the said agreement, he has constructed one shop in the first floor and sublet it to Sh. Bala Ram, respondent No.2 and his wife Smt. Hira, respondent NO.3 and they are running their business in the said shop. The three rooms immediately in the back of the said shop has been sublet by respondent No.1 to Sh. Dharminder, respondent No.4. It is further averred that respondent No.1 in breach of the said agreement, has constructed three shops, one small room and two godown on the second floor. He has sublet one such shop to Sh. Jagmohan and Sh. Govind Singh (respondent No.5 and respondent No.6 respectively) and they are running their business in the name and style of

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M/s J.K. Jewellers. The second shop has been let out to Sh. Jia Lal, respondent NO.7 and he is doing business in the name and style of Jia Electronic and watch service. The third shop in the second floor, has been sublet by respondent No.1 to Saleem, respondent No.8, who is running his ready made garments shop. The small room is in the possession of respondent No.1 himself and two godown-cum-rooms in the second floor have been sublet by respondent No.1 in favour of Sh. Prem Raj Tegta, respondent No.9 and Sh. Narinder Tegta, Respondent No.10. However, they have further sublet the said shops in favour of Sh. Krishan Thakur, respondent No.11, who is running a shop in the name and stuytle of M/s Krishna Tailor and Sh. Amit Kumar respondent No.12, who runs video mixing lab there. It is alleged that respondent No.1, thus has made material additions and alterations contrary to the agreement of 6.10.2003 and thereby impaired its value and utility. He has sublet the shops

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and rooms in favour of respondents No.2 to 12 without his written consent. Respondent No.1 has also not paid the rent at the rate of Rs.5000/- per month on and w.e.f. 1.10.2003 till 1.11.2005, total sum whereof comprised Rs.1,47,500/-, in terms of the agreement and thus, he is in the arrears thereof. Hence the petition for eviction.

3. The respondent No.1, in his reply, filed to the eviction petition, has taken preliminary objections qua estoppel and maintainability. On merits, it has been averred that the petitioner wanted to construct a building on the aforesaid land. He was not having sufficient funds with him. He approached respondent No.1, and, request him that he should construct a building from his own funds. Pursuant thereto, two affidavits, one on 5.3.2002 and another on 30.12.2002 were executed by the petitioner in his favour. Respondent No.1 constructed a multi storeyed building on the aforesaid land of the petitioner from his own funds and not a single paisa was

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spent by the petitioner. He had agreed vide clause 7 of the agreement of 30.12.2002 that respondent No.2 would be at liberty to rent out shops to anyone he liked and after the completion of 8 years and 4 months, the sitting tenants, were agreed to be treated as the tenants of the petitioner. When the amount on the construction exceeded three lacs, the petitioner agreed to give one shop in the upper floor and one godown in the lower storey to him on rental of Rs.3000/- per month till the amount of Rs.3 lacs was adjusted against it. The other allegations regarding his being in the arrears of rent or having made additions and alterations, in the building have been denied by him.

4. Respondents No.2 to 10 have filed a joint reply to the eviction petition, wherein, they have taken preliminary objections qua cause of action and maintainability. On merits, it has been averred that respondent No.1, has built a multi storeyed building with

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the consent and permission of the petitioner. Respondent No.1 took huge amount from these respondents as advance and with the help of that money, built the aforesaid construction. He inducted these respondents except respondent No.2 Sh. Bala Ram and Sh. Govind, respondent No.6, in the shops/godowns as mentioned in the petition, as tenants, on different dates vide separate rent notes. They are the lawful tenants of respondent No.1 and cannot be evicted at the instance of the petitioner. As per them, the petitioner wants to take control of the building on account of dispute with respondent No.1 and for this reason, he has filed the instant petition.

4. The landlord/petitioner herein filed rejoinder(s) to the reply(ies) of the tenants/respondents herein, wherein, he denied the contents of the reply(ies) and re-affirmed and re-asserted the averments, made in the petition.

5. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. Whether the petitioner is entitled for the arrears of rent as prayed for?OPP.
2. Whether respondent No.1 has further subletted the premises to respondents No.2 to 10 and has violated terms and conditions of agreement dated 6.10.2003 and entitled for vacant possession of the premises, as prayed for? OPP
3. Whether respondent No.1 has changed the nature of the premises, as alleged?OPP
4. Whether the respondent No.1 has done over writing over the affidavit dated 30.12.2002, as alleged?OPP
5. Whether the present petition is barred by the act, conduct and deeds of the petitioner, as alleged?OPR-1
6. Whether the petition is bad for want of better particulars?OPR-1
7. Whether the petitioner has violated the terms and conditions of the



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affidavits dated 5.3.2002 and 30.12.2002, as alleged? OPR-1

8. Whether the petition is not maintainable, as alleged? OPR 2 to 10.
9. Whether the petitioner has a cause of action to the present petition? OPR 2 to 10.
10. Whether the petitioner is not the landlord of the premises, as alleged? OPR 2 to 10.
11. Relief.

6. On an appraisal of evidence, adduced before the learned Rent Controller, the learned Rent Controller, hence, dismissed the petition of the landlord/petitioner herein herein. In an appeal, preferred therefrom, by, the landlord/petitioner herein, before, the learned Appellate Authority, the Appellate Authority dismissed the appeal and affirmed the order(s) recorded by the learned Rent Controller.

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7. Now the landlord(s)/petitioners herein have instituted the instant Civil Revision Petition, before this Court, for hence assailing the findings recorded, in its impugned order, by the learned Appellate Authority.

8. Affidavits, respectively borne in Ex. RA and RB, and, respectively sworn on 5.3.2002, and, on 30.12.2002, by the landlord one Mohinder Singh, make a clear display qua his engaging respondent Gian Chand, as a contractor, for raising construction, of, the apt building, wherein the demised premises hence exist. The engagement hence by Mohinder Singh, of Gian Chand as a contractor, arose, from his not possessing sufficient funds, for, carrying out the relevant construction. In pursuance to the relevant contract, borne in Ex.PW1/A, and, in pursuance to the affidavits, respectively borne in Ex.RA and in Ex.RB, one Gain Chand, respondent No.1 herein, uncontrovertedly expended money, for his raising the apposite construction, on the vacant land, owned and

possessed by Mohinder Singh. The relevant part, of, the aforesaid exhibits, makes a clear display, of the amount expended by one Gain Chand, for his carrying out construction, of, a multi storeyed building, upon the vacant land, owned and possessed by one Mohinder Singh, being adjusted, within, a period of eight years and four months, commencing since 6.10.2003 whereon Ex.PW1/A, hence, stood executed. Even though, in the aforesaid exhibits, it is also specifically earmarked that a sum of Rs.3000/- per mensem, being encumbered as rent, upon, respondent No.1 one Gain Chand, (a) yet the aforesaid per mensem quantum, of rent, is enjoined therein, to be adjusted, against, a sum of Rs. 3 lacs, uncontrovertedly expended by aforesaid Gain Chand, for his carrying construction, of a building, upon, the vacant land, owned and possessed by the landlord, (b) besides a period of eight years and four months, is, spelt therein to be likely to be consumed, for hence adjusting, the,

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aforesaid amount, expended by one Gain Chand, for raising construction, of, a building, upon, the vacant land owned, and, possessed by Mohinder Singh. The effect(s), of, the aforesaid, prescribed mode, of, adjustment, of a sum of Rs.3 lacs, expended by one Gian Chand, for raising construction, of a building, upon, the vacant land owned and possessed by the petitioner herein, by apposite contractual encumbrance(s), upon, Gian Chand, hence embodying per mensem quantum, of, rent borne, in a sum of Rs.3000/- per mensem, (c) and, of, the apposite contractual adjustment, of, the necessary expenses, hence, imperatively consuming a period of eight years, and, four months, (d) is, qua this Court being constrained, to conclude qua hence the aforesaid contractual adjustment, of the expenses incurred, by Gain Chand, for the latter, rather raising construction of a building, upon, the vacant land owned, and, possessed by one Mohinder Singh, landlord, (e)

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tantamounting qua the respondent(s) being construable not to be a tenant, and, natural corollary thereof, being the apt petition, for, his eviction from the demised premises, being at this stage, not, maintainable against him. The reason being the definition, of, a tenant encapsulated, as, in clause (j) of Section 2 of the H.P. Urban Rent Control Act (hereinafter referred to as the Act), as, stands extracted hereinafter:-

“(j) “tenant” means any person by whom or on whose account rent is payable for a residential or non residential building or rented land and includes a tenant continuing in possession after termination of the tenancy,.....”

(i) unveiling qua though its including, any person legally obliged to or through an authorised agent, hence make attornments of rent, qua his landlord, and, vis-a-vis the apt residential or non-residential building. However, the deeper intrinsic nuance thereof, is, (ii) qua actual tenderings, of, rent by a person, vis-a-vis, his landlord,

and, qua any residential or non-residential building, being imperative for a person or entity, being hence construable to be a tenant. However, evidently hereat, no actual tenderings or defrayments of rent nor attornment of rent, has yet being made, by one Gian Chand to one Mohinder Singh. Even if, Gian Chand had raised construction, upon, the vacant land owned and possessed by one Mohinder Singh, and, even though there are recitals borne in Exts. PW1/A, Ex.RA and in Ex. RB, qua expenses being evidently incurred, by one Gian Chand, to raise construction, upon, the vacant land owned and possessed, by one Mohinder Singh, (iii) yet with the aforesaid expenses being contractually agreed to be adjusted against rent quantified, at Rs.3000/- per mensem, hence yet the aforesaid adjustment, through, quantifications, of, a rent borne in a sum of Rs.3000/- per mensem, is, neither any actual tendering or defrayment or physical attornment, of, rent by Gian Chand, to

Mohinder Singh. Consequently, Gian Chand, yet cannot, be construed to be a tenant, rather the contractual adjustment of apt construction expenses, through, rent is merely an arrangement, for liquidating the expenses incurred or for setting off, the expenses incurred, by Gian Chand, and, never acquire any, colour of Gian Chand, being construable to be a tenant. Even otherwise, the actual or physical attornment of rent, by Gian Chand, would, only occur on expiry of a period of eight years and four months, since, the execution of Exts. PW1/A, EX.RA, and, of Ex. RB, hence, the extant petition is premature. Since, the instant petition, is cast, without yet a period of eight years and four months, hence expiring, (i) thereupon, the instant eviction petition, is, prematurely cast, (ii) whereas, it being preferable, only, after elapse of eight years and four months, since the apposite execution, of, the relevant contract inter se both, (iii) whereat the expenses, incurred for raising construction,

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of, a building on the vacant land owned and possessed by Mohinder Singh, would stand adjusted besides completed, (iv) and, thereafter actual or physical attornment of apt rent, would occur, inter se the tenant, and, the landlord, thereupon, reiteratedly at this stage the instant petition, is premature and as such, it is not maintainable.

11. The above discussion unfolds qua the conclusions arrived by both the learned Courts below are based upon a proper and mature appreciation of evidence on record. While rendering the apposite findings, both the learned Courts below have not excluded germane and apposite material from consideration.

12. In view of above discussion, the present petition is dismissed and the verdicts impugned hereat are affirmed and maintained. All pending applications also stand disposed of. No order as to costs.

**29<sup>th</sup> June, 2018.**  
**(jai)**

**(Sureshwar Thakur)**  
**Judge.**