

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

**RSA No. 215 of 2012.**

**Reserved on : 25.09.2018.**

**Decided on : 28<sup>th</sup> September, 2018.**

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Shri S.K. Sood **.....Appellant/Defendant.**

***Versus***

The Indian Institute of Advanced Study  
**..Respondent/Plaintiff.**

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***Coram:***

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

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

**Appellant in person.**

**For the Respondent:** Mr. V. B. Verma, CGSC

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**Sureshwar Thakur, Judge.**

The Plaintiff's suit for rendition of a decree, for, recovery of penal rent, stood decreed, by the learned trial Court, only, for a sum of Rs.76,146 along with interest at the rate of 12% per annum, commencing from 19.9.1995 till its realization, and, in an appeal preferred

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

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therefrom by the aggrieved plaintiff, before, the learned First Appellate Court, the latter Court allowed the appeal, and, consequently decreed the plaintiff's suit, for, recovery of penal rent, computed at the rate of Rs.55/- per square meter, vis-a-vis, the relevant premises, and, appertaining to the period, commencing from, 1.3.1997 to 21.04.2001. The plaintiff being aggrieved therefrom, hence, institutes, the instant appeal before this Court.

2. Briefly stated the facts of the case are the defendant had been appointed as Private Secretary to the Director of the Plaintiff in the year 1996 and later on the defendant had been promoted as Estate Supervisor. The defendant had been compulsorily retired from service on 18.09.1995 under Fundamental Rule 56(j). It is pleaded that the plaintiff had allotted residential accommodation, i.e. Flat No.4, Del Villa Boileauganj, measuring 112.35 square meters along with two outhouses, measuring 20-10 square meters to the defendant. The defendant had occupied the residential

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premises on 17.12.1984. After retirement from service, the defendant could retain the residential accommodation for four months as per the rules and regulations on the subject. The defendant was required to pay penal rent at the rate of Rs.40/- (later revised to Rs.55/-) per square meter per month after four months of his retirement. It is averred that the defendant had instituted a civil suit against the plaintiff, and, had obtained restraint order on 24.09.1996 against the recovery of penal rent at the rate of Rs.40/- per square meter per month from his retiral benefits. The suit of the defendant was transferred to the Central Administrative Tribunal. Ex-parte ad-interim injunction order, of 24.09.1996 passed by the Sub Judge (4), Shimla had been vacated by the Central Administrative Tribunal vide order dated 16.10.2000. The defendant did not vacate the residential accommodation despite rejection of his application for temporary injunction and his undertaking. The plaintiff had been compelled to apply for eviction of

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the defendant under Rent Restriction Act. Rent Petition No. 135-S/2 of 1999 of the plaintiff was allowed against the defendant vide order dated 4.9.2000 passed by the learned Rent Controller(5), Shimla. The defendant had undertaken to vacate the accommodation within six months, but had failed to do so with the result the plaintiff had to apply for execution of the order dated 4.9.2000. The defendant had been dispossessed on 11.4.2001, pursuant to warrant of possession issued by the learned Rent Controller. The plaintiff says that the defendant had been in unauthorised occupation of premises after four months of his retirement and was liable to pay penal rent/damages at the rate of Rs.40/- (lateron revised to Rs.55/-) per square meter, per month, as per the detailed given in the plaint. The defendant had been drawing pension from the plaintiff. A sum of Rs.2,251/- per month was being deducted from retiral benefits of the defendant w.e.f. February, 2001. The defendant was liable to pay interest amounting to

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Rs.1,06,067 at the rate of 18% per annum on the amount of Rs.4,41,955 for the period from 21.04.2001 to 21.8.2002. Hence the suit.

3. The defendant contested the suit of the plaintiff by filing written statement, wherein, he has taken preliminary objections qua maintainability, limitation, etc. On merit, the defendant had admitted his appointment as Private Secretary in the plaintiff's department. He has also admitted of his being promoted as Estate Supervisor and his being allotted Del Villa along with outhouses. He has also admitted of his standing compulsorily retired from service on 18.09.1995 under FR 56 (j). It has been averred that the plaintiff unauthorizedly and illegally, had proceeded to throw the defendant out of service. The defendant had initiated action for his reinstatement in service. The defendant could retain the residential accommodation under his occupation for four months on the payment of the standard licence fee. The wife of the defendant had been

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in government service. She had applied for allotment of residential accommodation to the plaintiff. The wife of the defendant had not claimed house rent at any stage. The plaintiff had not decided the application for the purpose. The suit premises was property of the Central Government and was subject to the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. At no stage, the defendant had been declared as unauthorized occupant of the premises by the competent authority. Hence, he was not liable to pay the penal rent as claimed. The defendant was also not liable to pay furniture rent and water charges. The defendant had admitted having applied for the stay of penal rent. He has also admitted of his being evicted from the suit premises under orders of the court on 21.04.2001. He has pleaded that he was not liable to pay penal rent etc.

4. On the pleadings of the parties, the following issues were struck:

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1. Whether the plaintiff is entitled to recovery the suit amount along with the costs and interest from the defendant as claimed? OPP
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the suit is time barred as alleged. If so, its effect?OPD.
4. Whether the plaintiff has not come to the Court with clean hands. If so, its effect?OPD.
5. Whether this Court has no jurisdiction to hear and decide the matter as alleged?OPD.
6. Whether the defendant was a tenant on payment of Rs.85 per month as claimed. If so, its effect?OPD
7. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction?OPD.
8. Relief.

5. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court decreed the suit of the plaintiff/respondent herein, only, for a sum of Rs.76,146/- along with interest @12% per annum w.e.f. 19.9.1995. In an appeal, preferred therefrom by the plaintiff/respondent herein before the learned First Appellate Court, the latter Court allowed the appeal, and, decreed the plaintiff' suit, for, recovery of penal rent, computed at the rate of Rs.55/- per square meter, vis-a-

vis, the relevant premises, and, appertaining to the period, commencing from, 1.3.1997 to 21.04.2001.

6. Now the defendant/appellant herein, has instituted the instant Regular Second Appeal, before, this Court, wherein he assails the findings, recorded in its impugned judgment and decree, by the learned first Appellate Court. When the appeal came up for admission, this Court, on 26.06.2012, admitted the appeal instituted by the defendant/appellant against the judgment and decree, rendered by the learned first Appellate Court, on the hereinafter extracted substantial question of law:-

1. Whether the findings of the learned First Appellate Court and the learned Trial Court on issues No.1 to 5, 7 and 8 are a result of complete misreading of pleadings, evidence and the law as applicable to the fact sof the case and particularly documents Exhibit PW1/E, Ex.PW1/J, D4 and D5 as such palpably erroneous and illegal and if so to what effect?
2. Whether the First Appellate Court failed to formulate proper points for determination and



whether failure deciding the applications filed by the appellant under Order 41, Rule 27 C.P.C. And Section 151, has affected its judgment and resulted into miscarriage of justice to appellant?

3. Whether the finding of the Courts below on the issue of limitation is palpably illegal and contrary of law and facts?

4. Whether the provisions of H.P. Urban Rent Control Act, 1987, are applicable to the disputed property and if so to what effect?

**Substantial questions of Law No.1 to 4.**

7. Before proceeding, to, mete an answer, vis-a-vis, the afore substantial questions of law, it is deemed imperative, to allude to an application, cast under the provisions of Order 41, Rule 27 of the CPC, application whereof, stands, ascribed CMP No. 5478 of 2018, (i) wherethrough, the applicant/appellant seeks leave of this Court, to, place on record, a, notification issued by the respondent herein, in pursuance to the directions of this Court rendered, on 15.12.2009 in CWP No. 1038 of 2002, (ii) whereunder, the date of superannuation of the appellant/applicant, is, enjoined, to stand treated to

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occur, on 31.10.1996, (iii) thereupon, it is contended that with both the learned courts below, rather construing the date of superannuation of the applicant/appellant herein, to, rather commence from a period earlier to the one displayed, in, the afore notification, (iv) hence, rife contradiction emerging, inter se, the apposite date, of his superannuation, borne in Annexure A-1, appended with the instant application, vis-a-vis the one reflected, in, the impugned verdict. Furthermore, it is contended, that effect thereof would be, qua there being consequential reduction(s) in the computation, of, the penal rent assessed, upon, the appellant/applicant.

8. Be that as it may, both the learned Courts below were not seized with the afore material, as stands, appended with the application at hand. Since, the documents appended with the application are just and essential for resting a clear, and, clinching finding with respect to the apt penal liability, of, the appellant/applicant, appertaining to his purported

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unauthorised occupation of the relevant premises, (i) besides when the afore documents, may, mobilise, an, apt concomitant effect, qua hence rather reduction(s), being, visitable, upon, his apt penal pecuniary liability, (ii) thereupon, the leave for adducing the aforesaid notification, is granted. Consequently, CMP No.5478 of 2018, is, allowed and the appellant is permitted to place on record, the aforesaid documents.

9. As aforestated, since, the documents were not existing on the record of the learned Courts below, and, hence remained neither alluded to, nor referred, especially, vis-a-vis, their apt probative vigour, (i) thereupon, it is deemed befitting, for, rather enabling the learned First Appellate Court to pronounce, upon, the purported vigour thereof, to, after quashing the impugned judgment, and, decree, rendered by the learned First Appellate Court, hence remand the lis to it, for enabling it, to, after permitting the appellant/applicant to tender into evidence, the, original(s) of, documents

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aforesaid, and, thereafter after permitting the plaintiff/respondent herein, to adduce evidence in rebuttal thereto, hence, pronounce a fresh decision, in accordance with law, upon the apt civil appeal.

10. For the foregoing reasons, the instant appeal is allowed and the impugned judgement and decree is quashed and set aside. In sequel, the matter is remanded to the learned First Appellate Court, for its, rendering a decision afresh, in, the manner aforesaid. The afore exercise be completed within six months from today. The parties are directed to appear before the learned First Appellate Court on 26<sup>th</sup> October, 2018. All pending applications also stand disposed of. No order as to costs. Records be sent back forthwith.

**28<sup>th</sup> September, 2018.**  
**(jai)**

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