

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 31<sup>st</sup> DAY OF MARCH, 2022

BEFORE

HON'BLE MR. JUSTICE AJAY MOHAN GOEL

CIVIL REVISION No. 221 OF 2018

Between:-

RAMESH CHHABRA S/O LATE SH.  
KESAR MUL CHHABRA RESIDENT OF  
FIRST FLOOR, 105-A, KRISHNA  
NAGAR, SHIMLA, H.P.

.....PETITIONER

(BY MR. R.K. BAWA, SENIOR ADVOCATE  
WITH MR. AJAY KUMAR SHARMA,  
ADVOCATE)

AND

SH. HARMINDER SINGH S/O LATE  
SH. CHAMAN SINGH RESIDENT  
OF 105-A, KRISHAN NAGAAR,  
SHIMLA, H.P. THROUGH HIS SPA  
MANVINDER KAUR W/O SH.  
HARMINDER SINGH, RESIDENT  
OF 105-A, KRISHAN NAGAR,  
SHIMLA, H.P.

.....RESPONDENT

(MR. ARUN KUMAR, ADVOCATE )

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*Whether approved for reporting:* **Yes**

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

## **J U D G E M E N T**

By way of this civil revision petition filed under Section 24(5) of the Himachal Pradesh Urban Rent Control Act, 1987, the petitioner herein has assailed order dated 25<sup>th</sup> September, 2018, passed by the Court of learned Rent Controller, Shimla, at Shimla, in Rent Petition No. 6-2 of 2018/14, vide which, prilimnary Issue No. 1 framed by learned Rent Controller as to 'whether the rent petition was maintainable or not' stands decided against the present petitioner, i.e. tenant and in favour of the respondent herein, i.e. landlord.

2. Brief facts necessary for the adjudication of the present petition are that an application for eviction of the present petitioner (hereinafter to be referred as the 'tenant') was filed by the respondent herein under Section 14 of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter to be referred to as '1987 Act'). The ground on which the eviction has been sought, as contained in para 18(a) of the rent petition, are reproduced herein below:-

18(a)	Grounds on which the eviction is sought.	(1) The petitioner bonafidely required the premises in occupation of the tenant for the purpose of godown-cum-office. In fact the petitioner is
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		<p>running a shoe business since 1960 in the name and style of M/s Jai Hind Shoes situated at 31, Lower Bazaar, Shimla, H.P. The business is both type i.e. wholesaler as well as retailer. The petitioner has a warehouse for the aforesaid business at Godown 105, Krishna Nagar, Shimla, H.P. This godown is on the roof of the building, having tin structure and is not in good condition. All the manufactured material which the petitioner purchased from various companies, kept in this godown. As the business of petitioner is expanding, this godown is falling short for the material and nowadays the petitioner has to keep his manufactured material at veranda of the first floor of his building. As mentioned supra, the godown is having tin structure,</p>
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		<p>therefore a person cannot sit in this godown. Because the business of petitioner is expending, therefore, he bonafidely requires the premises in occupation of the tenant for the purpose of godown-cum-office so that a person can permanently sit there and watch, how much material is coming and how much material is supplied to other and also maintain accounts of the stock. It is further submitted that it is the only largest space available with the petitioner.</p> <p>(2) The petitioner is not occupying any other residential and non-residential building owned by him in the Urban Area nor he has vacated any such building without sufficient cause within five years of the filing of the application.</p>
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3. By way of the reply which was filed to the rent petition, various preliminary objections were taken with regard to the maintainability of the rent petition, which included preliminary objection No. 1, which reads as under:-

*“1. That the petition, as framed, is not at all maintainable. There is no provision in the HP Urban Rent Control Act, 1987 as amended upto date, for personal use of residential premises for non-residential (i.e. Godown-cum-office) purpose.”*

4. During the pendency of the matter before the learned Rent Controller, Court No. 3, Shimla, on 25<sup>th</sup> July, 2018, the following order was passed:-

*“Inadvertently the preliminary issues on the last date of hearing could not be framed and the case was listed for the evidence straightway. Therefore, the following issues require consideration before other issues are taking.*

*1. Whether the petition is not maintainable as there is no provision in the H.P. Rent Control Act for personal use of residential premises for non-residential purpose i.e. godown cum office, alleged?OPP*

*2. Whether the petition is bad for non-joinder of LR of Lt Sh. Kesarmall the tenant, as alleged? OPP*

*3. Relief.*

*Let the consideration on both the issues be conducted on the next date of hearing by both the parties on 18.08.2018.”*

5. Upon consideration, learned Rent Controller not being satisfied with the objections so raised by the tenant, passed order dated 25.09.2018, rejecting preliminary issues. Feeling aggrieved, the tenant has preferred the present revision petition.

6. Mr. R.K. Bawa, learned Senior Counsel appearing for the petitioner/tenant has argued that the impugned order passed by learned Rent Controller, especially with regard to preliminary Issue No. 1, is not sustainable in the eyes of law for the reason that while passing the impugned order, learned Rent Controller has erred in not appreciating the statutory provisions of Section 14(3)(d) of the Act, perusal whereof makes it evident that eviction of a tenant from residential premises cannot be sought for use thereof for non-residential purposes, except for purposes specifically contained in Section 14(3) (d). Learned Senior Counsel has submitted that as requirement specified in the rent petition by the landlord was not in terms of what is provided in Section

14(3)(d) of the 1987 Act, the preliminary objection No. 1 taken by the petitioner before the Rent Controller, could not have been dismissed by the said Court and dismissal of the same is an act of perversity which requires to be set aside by this Court by invoking its powers of revision. Learned Senior Counsel has also argued that otherwise also the impugned order is not sustainable in the eyes of law as the learned Rent Controller has erred in not appreciating that in terms of the provisions of Section 12 of the 1987 Act, residential premises cannot be permitted to be used for non-residential purpose, except with the written permission of the Collector and the present landlord was not having any such permission. It is primarily on these bases that the impugned order stands assailed by the petitioner.

7. Defending the order passed by learned Rent Controller, Mr. Arun Kumar, learned Counsel for the respondent-landlord has argued that there is no bar in Section 14(3)(d) of the Act that the owner of the residential premises cannot pray for eviction of a tenant on the ground that he wants to use the residential premises for non-residential purposes. Learned Counsel has argued that language of Clause (d) of Section 14(3) itself is self speaking that in case, landlord requires the residential premises for use as an office etc. then, he can do so and in the present case, the requirement,

as was put forth by the landlord, was for the use of the demised premises as “**godown-cum-office**”, and in this background, the order under challenge cannot be faulted with and the present revision being devoid of merit deserves to be dismissed. Learned Counsel has also taken an objection with regard to the maintainability of the revision petition on the ground that the revision which has been preferred against the order impugned by the petitioner is not maintainable in view of remedy of appeal available to him. He has argued that as the order impugned rejects the prayer of the tenant for dismissal of the rent petition on the ground of same being not maintainable, then against said order, an appeal lies and not a revision petition.

8. Controverting the argument so addressed by learned Counsel for the respondent, learned Senior Counsel appearing for the petitioner-tenant has drawn the attention of the Court to the three Judge judgment passed by this Court in Cr. No. 136 of 2010, titled as Shri Vinod alias Raja vs. Smt. Joginder Kaur, decided on 5<sup>th</sup> July, 2012, and on the strength of the findings returned in the said judgment, learned Senior Counsel has argued that the law as it stands is that at the behest of any person aggrieved by an order which finally decides his fate in the case, for which appellate authority is not provided in the notification issued by the



government under Section 24(1) of the Himachal Pradesh Urban Rent Control Act, 1987, an appeal is maintainable as per the scheme of the Civil Procedure Code, until otherwise specified by the government by way of an appropriate notification, and in all other cases, the aggrieved party has to file the revision petition. As per him, as in the present case, the order passed by learned Rent Controller rejected the preliminary issues, therefore, as no right of appeal is available against such an order, the revision petition was rightly filed by the petitioner-tenant.

9. I have heard learned Counsel for the parties and have gone through the order impugned as well as the documents appended with the petition.

10. In the present case, the order under challenge is one, which has rejected the preliminary objection raised by the tenant with regard to non maintainability of the rent petition. Though, this Court is aware that the provisions of the Code of Civil Procedure are *stricto senso* not applicable as far as rent proceedings are concerned but taking a cue from what is contained under Section 115 of the Civil Procedure Code, this Court has no hesitation in holding that against an order vide which a preliminary objection has been rejected by the learned Rent Controller, a revision would be maintainable and not an

appeal. This Court places reliance upon the judgment which has been passed by Hon'ble Coordinate Bench of this Court in C.R. No. 3 of 2011, titled as **Rajesh @ Raju vs Shri Dayawant Singh and another**, decided on 26.11.2018, in which in paras 11 and 12 thereof, Hon'ble Coordinate Bench has been pleased to hold as under:-

*11. An order passed under the provisions of Order IX Rule 8 CPC decides the fate of the person aggrieved finally. Since in the notification, as discussed hereinabove, there exists no provisions to challenge an order of this nature and as the impugned order has decided the fate of the rent petition finally, therefore, in view of the law laid down by the Full Bench of this Court in Vinod's case cited supra, learned Appellate Authority has not committed any illegality or irregularity in entertaining the appeal. The contentions to the contrary brought to this Court in the present petition are not legally sustainable.*

*12. It is worth mentioning that the rules of procedure being hand made are meant for advancement of justice and not to thwart it. When by way of notification the forum to challenge an order dismissing the rent petition in default has not been provided by the legislature, therefore, the petitioner-landlord has rightly preferred the appeal under the Scheme of the Civil Procedure Code as per the*

*law laid down by the Full Court in Vinod's case cited supra."*

In this case, as the order impugned did not finally decide the fate of the rent petition, therefore, but natural, the same could have been assailed by way of a revision petition, as has been done by the tenant.

11. This Court is further placing reliance upon judgment passed by Hon'ble Full Bench of this Court in Vinod alias Raja vs. Smt. Joginder Kaur (supra) , in which, the issue of 'which order can be appealed and which order can be revised' has been thoroughly discussed by Hon'ble Full Bench and the conclusions arrived at therein are as under:-

*"30. Wherever a right is provided by a statute, a remedy though not expressly provided for, may necessarily be implied. Whenever there is a right, there should also be an action for its enforcement and the legal procedure should be sufficiently elastic and comprehensive to afford the requisite means for the protection of the rights which the law has recognized, as held by the apex Court in Constitution Bench decision in Makhan Singh Tarsikka versus The State of Punjab, reported in AIR 1964 SC 381.*

*31. Guided thus by the salutary and first principles in the matter as above, we hold that any person aggrieved by*

*an order which finally decides his fate in the case for which appellate authority is not otherwise provided in the notification issued by the government under Section 24(1) of the Himachal Pradesh Urban Rent Control Act, 1987, an appeal is maintainable as per the scheme of the Civil Procedure Code, until otherwise specified by the government by way of an appropriate notification.”*

12. In this view of the matter, this Court holds that there is no merit in the objection taken by learned Counsel for the respondent that proceedings initiated against impugned order by way of revision petition are not maintainable.

13. Now coming to the merits of the case. I have already quoted the contents of para 18(a) of the rent petition hereinabove, perusal of which demonstrates that the possession of the demised premises was sought by the respondent herein for the purpose of using the same as a godown-cum-office. The contention of the landlord, as is borne out from the averments made out in the rent petition, was to the effect that the landlord was running a shoe business since 1960, both as a wholesaler and as a retailer and he had a warehouse for the aforesaid business, which now no more was in good condition and as the business of the petitioner was expanding and godown in issue was falling short, therefore, the

demised premises were required by the landlord for the purpose of using the same as 'godown-cum-office. While dismissing the preliminary objection taken by the tenant qua the maintainability of the rent petition, learned Rent Controller held that Section 14(3)(d) of the 1987 Act clearly states that any residential property can be used for the purpose of office, consulting room for starting practice as a Lawyer and such like profession and if the petitioner has not acquired any other building for the use as an office, then, starting up a business or any other profession and using any building as an office was duly covered under the provisions of the Act and make out a ground of eviction by law. It is by assigning these findings that the preliminary objection has been dismissed.

14. In terms of the provisions of Section 14(3)(d) of the 1987 Act, a landlord may apply to the controller for an order directing the tenant to put the landlord in possession in the case of any residential or non-residential building, if he requires it for use as an office or consulting room by his son who intends to start 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. This of course is subject to the subsequent statutory provisions contained

therein. A bare reading of the said statutory clause demonstrates that a residential or for that purpose even a non-residential building can be got vacated by a landlord if he requires the same for use as an office, architect, dentist etc. as stands explicitly spelled out in this particular clause. Incidentally, the purposes which have been spelled out in this particular clause are the only purposes for which the premises can be got vacated. It is not as if the purposes are only illustrative. In view of this, in terms of Section 14(3)(d), a residential premises or may be a non-residential premises, if they are required to be vacated under this particular clause can be got vacated only for the purposes which are specified therein. Now if we compare the content of the provisions of Section 14(3)(d) either with the grounds mentioned in para 18(a) of the rent petition preferred by the landlord or the reasons which have been assigned by the Rent Controller while dismissing the preliminary objections, one finds that the learned Rent Controller has erred in not appreciating that the provisions of Section 14(3)(d) of the 1987 Act could not have been invoked by a landlord for getting a residential premises vacated for using the same as a godown. Simply by mentioning that the same was required for **“office-cum-godown”**, the intent of the landlord that the premises in fact was needed to be used as a godown could not have been

ignored. Not only this, there is further a perversity in the findings which have been returned by learned Rent Controller and the same is that the conclusion drawn by the learned Rent Controller that in terms of provisions of Section 14(3)(d) of the 1987 Act, the demised premises can be got vacated for starting up a business or any profession is completely erroneous. In fact, these findings do violence to the language of Section 14(3)(d) of the 1987 Act, which specifically culls out the purposes for which the premises can be got vacated by invoking the provisions of the 14(3)(d) of the 1987 Act.

15. Accordingly, in view of what has been held hereinabove, the present petition is allowed by setting aside order dated 25.09.2018, passed by learned Rent Controller, Court No. 3, Shimla, and the preliminary objection No. 1 is upheld by holding that the rent petition filed by the petitioner seeking eviction of the tenant for personal use of residential premises for non-residential purpose, i.e. godown-cum-office, is not maintainable.

Pending miscellaneous application(s), if any, also stand disposed of accordingly.

**(Ajay Mohan Goel)**  
**Judge**

March 31, 2022  
(narendar)