

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Civil Revision No.111 of 2023

Date of Decision : 29th December, 2023

Kunal Kapoor

...Petitioner.

Versus

Vijay Kumar Verma

....Respondent.

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Petitioner	:	Mr. Vipin Pandit and Mr. Parikshit Sharma, Advocates.
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For the Respondent	:	Mr. R.K. Bawa, Senior Advocate with Mr. Ajay Kumar Sharma, Advocate.
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Bipin Chander Negi, Judge (Oral)

The present petition has been filed by the petitioner/tenant, challenging order dated 08.06.2023, passed by the learned Appellate Authority-II, Solan, District Solan, H.P., in Rent Appeal No.4-S/14 of 2023/20, titled ***Kunal Kapoor vs. Vijay Kumar Verma***, whereby, order dated 21.08.2019, passed by the learned Rent Controller, Solan, in Execution Petition No.27/10, ***Vijay Kumar Verma vs. Kunal Kapoor***, was upheld.

2. The brief facts giving rise to the present case, are that an eviction order had been passed against the present

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment?***

petitioner vide judgment dated 25.08.2011. The operative part of the same is as follows:-

"In view of my finding on issues supra the petition is allowed on the ground of arrears of rent. The respondent is held to be in arrear of rent w.e.f. 1.3.2009 till 31-8-2011 @ Rs.7,000/- per month i.e. Rs.7,000x30 Rs.=2,10,000/-. The petitioner is further entitled to statutory interest @ 9% per annum Rs. i.e. 24,412.50/-, thus total amount of Rs.2,10,000/- +Rs.24,412.50/-=Rs.2,34,412.50/- along with cost of the petition. Accordingly, the respondent is ordered to be evicted from the premises/shops No.5, 6, 7 and 8 existing in Vijay Kumar Verma's building, Circular Road, Solan, Ward No.6, Tehsil and District Solan, (H.P.) on the grounds of non-payment of rent. However, he shall not be evicted in case he makes the payment of arrears of rent along with statutory interest within 30 days from the date of order. Memo of cost be prepared accordingly."

3. In pursuance to the aforesaid, an execution petition was filed by the Decree Holder. The only question, which arose for consideration before the Courts below was, as to whether, the petitioner/Judgment Debtor had paid the arrears of rent, in accordance with law or not. In the case at hand, in the first instance, an application for deposit of the arrears was made before the Rent Controller on 24.09.2011. A perusal of the application categorically reflects that no effort was made by the petitioner to pay the arrears of rent to the landlord in the first instance. Yet, another fact to be noticed is that the aforesaid deposit was made in the Court on 24.09.2011 by way of a Bank

Draft issued in the name of the Rent Controller. The same was deposited in the Treasury on 26.09.2011, as on 25.11.2011 was a Sunday. It is an admitted fact that no intimation of the deposit was given to the landlord by the present petitioner.

4. Both the Courts below have held in tandem that the payment made in the case in hand was not in accordance with law. Therefore, the objections filed by the petitioner/tenant were dismissed.

5. I have heard learned counsel for the parties and have gone through the entire record of the case carefully.

6. The learned counsel for the petitioner has placed reliance on **1978 (1) Rent Law Reporter, case titled Dr. Mangal Singh Kathait vs. Shri K.D. Sharma**. Based upon the aforesaid contention of the learned counsel for the petitioner is that upon interpretation of a *pari materia* provision in the H.P. Urban Rent Control Act, this Court had held that deposit in Court by the tenant in pursuance to an order of eviction on the ground of arrears of rent is an acceptable legal deposit. Further, according to the learned counsel, this judgment relied upon by the petitioner has not been dealt with/taken into account while delivering the subsequent judgment in **Civil Revision No.128 of 2012, case titled Hans Raj Khimta vs. Smt. Kanwaljeet Kaur alias Sardarni Babli**, decided on 29th February, 2016 and in CMPMO No.156 of 2015, case titled **Sanjay Kumar vs. Smt.**

Pushpa Devi, decided on 6th January, 2016. Since, the subsequent judgment do not take into account the previous judgment, therefore, they cannot be termed to be good law.

7. Per contra, the learned Senior counsel for the respondent has argued that the subsequent judgment delivered in **Civil Revision No.128 of 2012, case titled Hans Raj Khimta vs. Smt. Kanwaljeet Kaur alias Sardarni Babli**, decided on 29th February, 2016, places reliance on a Supreme Court judgment, wherein it has been held that the Rent Act is a beneficial piece of legislation meant for protection of the Tenant and if in case the tenant wants to seek protection thereof then the tenant must strictly comply with the provisions of the Rent Act of which, he wants to take advantage. According to him interpretation given to the proviso in question in the **1978 (1) Rent Law Reporter**, is not a strict interpretation. The proviso has been wrongly interpreted there.

8. Besides the aforesaid, according to the learned Senior counsel for the respondent, the view taken in **1978 (1) Rent Law Reporter**, is a myopic view. A holistic view of the entire Section 14 of the H.P. Urban Rent Control Act, needs to be taken.

9. Moreover, according to the learned Senior counsel for the respondent a strict interpretation, therefore, needs to be

given to the words **“Pay & Tender”** as they appear in the relevant section i.e. Section 14 of the Rent Act.

10. Further deposit in the case at hand has been made by a bank draft drawn in favour of the Rent Controller and not the tenant. The deposit has been, therefore, made in the Rent Controller account, no intimation has been given of the deposit so made in favour of the Rent Controller to the landlord within the statutory period of thirty days. Hence, there is no valid legal deposit made in favour of the landlord within the prescribed statutory period.

11. In Hans Raj Khimta’a case (supra), a reference has been made to judgment titled as **Atma Ram vs. Shakuntala Rani, (2005) 7 SCC 211**. The relevant extract of the judgment is being reproduced herein below:-

.....“The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters.”

It will thus appear that this Court has consistently taken the views that in Rent Control legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.”

12. From the aforesaid, it is evident that since the Rent Act is a beneficial piece of legislation meant for protection of the tenant, therefore, if the tenant desires to take benefit/protection

of any provision thereof the tenant needs to strictly comply with the provisions thereof.

13. In the subsequent judgment i.e. Hans Raj Khimta and Sanjay Kumar's case (supra), a holistic and not a myopic view (proviso) of the provisions of the Rent Act has been taken. Besides in sync with the law laid down by the Apex Court a strict view/interpretation has been done of the provisions in question. The same is evident from the below mentioned.

14. At the cost of repetition it is reiterated that protection under the Act is only till such time the tenant dutifully complies with the same. The third proviso necessarily has to be read conjunctively with the first proviso to the sub-Section.

15. For determining the controversy in issue, the relevant provisions of the "Act" (Section-14) is reproduced as under:-

"Section 14 (1). A tenant in possession of a building or rented land shall not be evicted there from in execution of a decree passed before or after the commencement of this Act or otherwise, whether before or after the termination of the tenancy, except in accordance with the provisions of this Act.

(2). A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied -

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at the rate of 9

percent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;

Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 percent per annum:

Provided further that the 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 the order; or

(ii) to (iv) ; or

(v) ;

The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:"

16. Careful perusal of the aforesaid provisions leads to one conclusion. Section 14 of the Act does not envisage a situation whereby tenant can deposit the amount with the Rent Controller.

17. The only meaning which can be given to the expression "pay" (third proviso) and "tender" (Part (i) of sub-section 2 of Section 14) is that the rent is to be directly paid to the landlord and not deposited in the Court.

18. The tenant also cannot be allowed to take advantage of the fact that the Bank draft deposited by her stood encashed and entered in the records of the rent controller. The Bank Draft was in the name of the Rent Controller and not the landlord. As such, Court encashed it. There was no prayer made before the

Rent Controller for remitting the rent to the landlord or informing him of such action. The tenant took recourse to such action at his own peril. It is also not her case that she did so under any legal advise.

19. For the aforesaid reasons the 1978 (1) Rent Law Reporter **case titled Dr. Mangal Singh Kathait vs. Shri K.D. Sharma**, cannot therefore, be said to be good law and, therefore, reliance placed on the same is of no consequence.

20. In view of the aforesaid discussion, I find no merit in the instant petition and the same is dismissed, so also the pending application(s), if any. No order as to costs.

(Bipin Chander Negi)
Judge

29th December, 2023
(CS)