

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**OMPs No.384 of 2022 & 197 of 2024
in Civil Suit No.77 of 2022**

Reserved on: 14.09.2026

Decided on 07.10.2026

Date of uploading on Website: 07.10.2026

Hira Nand Sharma

....Plaintiff

Versus

Vivek Kumar and another

....Defendants

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

Whether approved for reporting?¹

For the plaintiff:

Mr. Shrawan Dogra, Senior Advocate,
with Mr. H.C. Sharma & Mr. Tejasvi
Dogra, Advocates.

For the defendants:

Mr. Vikrant Thakur, Senior Advocate,
with Mr. Shubham Singh, Advocate.

Sushil Kukreja, Judge

This common order shall dispose of two applications,
i.e. **OMP No.384 of 2022**, filed on behalf of the plaintiff, under
Section 151 of CPC to pay use and occupation charges @ Rs.20
lacs per month during pendency of the suit and **OMP No.197 of
2024**, preferred by the defendants, seeking permission to deposit
the annual lease amount in the Registry of this Court.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

2. Brief facts of the case are that the plaintiff filed a suit for declaration, possession, permanent prohibitory injunction and damages against the defendants. As per the plaintiff, he is owner of land comprised in Khata No.8, Khatauni No.12, Khasra Nos. 3,6,26 & 27, total measuring 27-2 bighas, situated in Mauza Kalhog, Tehsil Kandaghat, District Solan, HP (hereinafter referred to as the suit land). Defendant No.1-Vivek Kumar approached the plaintiff to take a portion of the suit land on lease and the plaintiff agreed to give part of the suit land, measuring 24-2 bighas, out of 27-2 bighas, leaving 3-0 bighas, adjoining to residential house. Consequently a lease deed was executed on 16.01.2018 between the parties, vide registration No.28/2018, the period of which was 25 years for a total consideration of Rs.3,04,00,000/-, which was to be paid by defendant No.1 in different installments on yearly basis. After execution of the lease deed, defendant No.1 constituted a partnership firm under the name and style of 'Mountain Eco Tourism', as per registered Partnership Deed dated 28.02.2018 and he made changes in the detail of accommodation and its registration as rooms of hotel etc. and also in the name of unit from 'Mountain Eco Health Resort' to 'Banjara Mountain Retreat' of his

own, in violation of the purpose of lease because the leased land could not be utilized for constructing hotel over it. He instead of establishing Eco-Tourism Project, started huge digging over the land and raised concrete structures in the form of restaurant, reception, parking, pathways, Spa, conference hall, swimming pool, water tanks, residences and courtyard etc., contrary to the lease agreement. The plaintiff requested him and his agent many times not to raise concrete structures etc., but he paid no heed and caused a huge damage to the property of the plaintiff and also caused damage to the fruits trees and other valuable trees, existing over the land, removed all existing stone-retaining walls, blocked the egress and ingress of the plaintiff and other landowners of the adjoining land by fixing gates over the existing common path passing through the land in question. He and his agents have also done cutting and digging of the land in an unscientific manner which had resulted into slips and landslides and have also sprayed and drenched some chemicals on the leased land, thereby further damaged the soil and changed the biological/chemical composition of the soil and making the same infertile.

3. The plaintiff issued a notice dated 08.01.2021 to defendant No.1 for terminating the lease, whereby he was asked to hand over the possession of the suit land to him after restoration of the land to its original shape. Thereafter on 12.01.2021, a representative of defendant No.1 tried to pay a sum of Rs.5 lacs in cash to the plaintiff as lease amount for the year 2021, but the plaintiff refused to accept the same. However, the said amount was transferred by defendant No.1 in the account of the plaintiff, which fact came to his notice on 29.01.2021 after updating the bank entries in his pass-book. Defendant No.1 again deposited Rs.5 lacs in the UCO Bank account of the plaintiff on 11.01.2022 and in total, defendant No.1 deposited Rs.10 lacs in the account of the plaintiff after issuance of notice dated 08.01.2021 for termination of lease deed, but the plaintiff transferred back the aforesaid amount of Rs.10 lacs to the remitter's accounts. A suit (Civil Suit No.96 of 2021) was filed against the plaintiff on behalf of M/s Banjara Mountain Retreat, claiming to be a partnership concern. Since there is no privity of contract between M/s Banjara Mountain Retreat and the plaintiff, therefore, no legal right can be claimed to be infringed.

4. In their written statement, the defendants took preliminary objections qua cause of action, there was no valid termination of the lease-deed, the plaintiff is estopped from filing the suit by his own conduct, no specific clause regarding type and nature of construction to be raised in the leased premises, the lease deed was entered subsequent to the Eco-tourism policy of the State and the suit being pre-mature. On merits, it is pleaded that the plaintiff had been working in HP University and his children were also occupied in their pursuit of obtaining education, therefore, the land in question was not being tilled. It is further pleaded that the lease amount was being paid regularly and the defendants intended to provide 13 double bed cottages (Swiss Tents), 30 Tents, a restaurant, health club, garden/terrace garden, conference hall, swimming pool, parking and other facilities. The total cost of the project was estimated at Rs.1.6 crores, out of which, approximately a sum of Rs.96 lacs was to be spent on buildings, the balance amount of Rs.64 lacs was to be invested on other fixed assets and the employment sought be generated was to the extent of 59 employees. The structures created at the site are temporary (pre fabricated tents), which have been made in a manner that no loss is

caused to the land underneath the structures and can easily be removed upon termination of the lease and the land would be restored to its original state. It is denied that there was no meeting of minds between the parties that the leased land could be utilized for the purpose as detailed in the registration certificate and by change of name, there was no change in the activity being done at the site in question. As per the terms of the lease, the plaintiff was to provide space for setting-up a pump house on his land located in Ashwani Khud and the defendants had made huge investment in laying pipes from Ashwani Khud, however, the plaintiff has not provided the same till date and the plaintiff is raising ill-founded, baseless objections with the sole intent of harassing the defendants.

5. By way of the application, being OMP No.384 of 2022, filed under Section 151 of CPC, the applicant-plaintiff has prayed that the non-applicants/defendants may be directed to pay use and occupation charges at the rate of Rs.20 lacs per month during pendency of the main suit. As per the applicant, since the non-applicants/defendants are in unauthorized occupation of the suit land w.e.f. 01.07.2021 till 31.05.2022, i.e. before filing of the suit at

the rate of Rs.16.6 lacs per month, which is calculated on the basis of fact admitted by defendant No.1 in Civil Suit No.96 of 2021 and after 01.06.2021 on the basis of the fact that the land in question has tremendous potential for Eco-tourism, therefore, the profits from 100 tents and cottages even at the minimum present prevalent rates would be around Rs.20 lacs per month. Hence, it is prayed that the defendants may be directed to pay use and occupation charges at the rate of Rs.20 lacs per months during pendency of the suit.

6. In reply to the application, the non-applicants/defendants raised preliminary objection to the effect that a valid registered lease cannot be terminated merely by issuing a notice and the same can only be terminated on grounds specifically provided in the lease. In the absence of termination of the lease, it still subsists and the investment made by the defendants cannot be jeopardized on non-existent grounds. On merits, it is averred that the land in question was lying fallow, which was not being tilled by the applicant/plaintiff or his family members. By change of name, there was no change in the activity being done at the site and the structures created are temporary structures, which have been made

in a manner that no loss is caused to the land underneath the structures, which can easily be removed upon termination of the lease and the land would be restored to its original state. Since there is no explicit and implicit bar on the nature and type of construction to be raised at the site in question, therefore, the alleged termination is illegal and subsequent return of the land, being sought, is without any authority of law. The non-applicants/defendants have invested approximately Rs.4 crores, hence, the returns anticipated would take into account the investment made plus the lease money to be paid.

7. I have heard Senior Counsel for the plaintiff as well as learned Senior Counsel for the defendants and also carefully gone through the material available on record.

8. Learned Senior Counsel for the applicant/plaintiff submitted that upon expiry of the notice period, the defendants, having no lawful right, title or interest in the suit property, were reduced to the status of trespassers and encroachers. He further submitted that no right, title or interest could have been legally conveyed in favour of the defendants, and their continued occupation of the suit property is unauthorised. Learned Senior

Counsel has accordingly sought arrears of *mesne* profits for the period from 01.07.2021 to 31.05.2022 at the rate of Rs.16.6 lacs per month and thereafter at the rate of Rs.20 lacs per month. It was contended that denial of interim relief would result in grave and irreparable loss to the plaintiff.

9. Per contra, learned Senior Counsel for the non-applicants/defendants, argued that this application filed by the Plaintiffs is wholly misconceived. The application proceeds on the incorrect assumption that the defendants are unauthorized occupants of the suit property. It was further contended that defendant No.1's possession originates from a valid lease deed and pursuant to the lease, defendant No.1 has remained in exclusive possession of the property. Learned counsel also submitted that after the lease, defendant No.1 raised temporary constructions over the suit property and had invested approximately Rs.4 crores. He further submitted that since the defendants are in lawful possession of the suit property, therefore the plaintiff is not entitled to *mesne* profits/ use and occupation charges.

10. It is an admitted position that the plaintiff had entered into a lease agreement with the defendant No.1 on 16.01.2018 with

respect to the suit property. At this stage, it would be pertinent to reproduce the relevant clauses of the lease- agreement, which read as under:-

"That the lessor out of his land Khata/Khatauni No. 8/12 Khasra No. 3 area total 7-18, Khasra No. 6 area total 13-13 Bigha, Khasra No. 26 area total 3-07 Bigha, Khasra No. 27 area total 2-04 Bigha Kita-4 total area 27-02 Bigha Mohal Kalhog Tehsil Kandaghat District Solan H.P. excluding building and adjoining 3 bigha land has leased for 25 years for Rs 3,04,00,000/- (Rs Three Crore four Lakhs). Now on the leased land, the lessor and his legal heirs have no possession for next 25 years till the lease amount regularly and timely is paid.

Details of lease amount year wise:

Rent from 1 st to 8 th Year = 5 Lakhs x 8	=	40 Lakhs
Rent from 9 th to 10 th Year = 12 Lakhs x 2	=	24 Lakhs
Rent from 11 th to 15 th Year = 14 Lakhs x 5	=	70 Lakhs
Rent from 16 th to 20 th Year = 16 Lakhs x 5	=	80 Lakhs
Rent from 21 st to 25 th Year = 18 Lakhs x 5	=	90 Lakhs

Total Years 25

3 Crore 4 lakhs

So now the lessor and lessee have agreed as follows-

1. *That the Lessor has handed over with possession above land, the details of which have been given above on 16/01/2018 on lease for next 25 years. The lease amount will start from 16/01/2018.*
2. *xxxxxxxxxx*
3. *xxxxxxxxxx*
4. *That the lessor on 15th January every year will take yearly lease money in one installment in advance and the lessee for next 25 years will be paying every year by 15th January annual lease amount in cash or cheque/draft.*
5. *xxxxxxxxxxxxxx*
6. *xxxxxxxxxxxxxx*
7. *That the lessee can further transfer by lease the above land to any person, organization and can hand over possession to anyone....."*

11. Thus, perusal of the lease agreement shows that defendant No.1's possession over the suit property originates from a valid lease agreement and pursuant to the lease, defendant No.1 has remained in exclusive possession of the property. Its perusal further shows that for the first eight years the defendant No.1 had agreed to pay the rent to the plaintiff @ Rs.5 lacs per annum, from 9th to 10th year @ Rs.12 lacs per annum, from 11th to 15th year @ Rs.14 lacs per annum, from 16th to 20th year @ Rs.16 lacs per annum and from 21st to 25th year @ Rs. 18 lacs per annum.

12. Admittedly, the plaintiff issued a notice dated 08.01.2021 to defendant No.1 terminating the lease, whereby he was asked to hand over the possession of the suit land to him after restoration of the land to its original shape. As per the plaintiff, after termination of lease, the defendants have no lawful right, title or interest in the suit property and they were reduced to the status of trespassers and encroachers and as such, prayed for *mesne* profits at the rate of Rs.16.6 lacs per month from 01.07.2021 to 31.05.2022 and thereafter at the rate of Rs.20 lacs per month during the pendency of suit.

13. Now the first question, which arises for consideration before this Court, is as to whether this Court can direct the defendant No.1 to pay the use and occupation charges, damages or *mesne* profits during the pendency of the suit for possession in excess of the contractual rent.

14. This issue is no longer *res-integra* as in ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., (2005) 1 SCC 705***, it has been held by the Hon'ble Supreme that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant and on such termination, his possession does not become wrongful and he is not liable to pay any damages or *mesne* profits for that period until and unless a decree for eviction is passed. Relevant para of the judgment reads as under:-

"11. Under the general law, and in cases where the tenancy is governed only by the provisions of Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of Chander Kali Bai & Ors. (supra) the tenancy premises were situated in the State of Madhya Pradesh and the provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8th March 1973 after serving a notice on

the tenant terminating the contractual tenancy w.e.f. 31st December 1972. The suit came to be dismissed by the trial Court but decreed in first appeal decided on 11th August, 1975. One of the submissions made in this Court on behalf of the tenant-appellant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in Section 2(i) of the M.P. Act which included "any person continuing in possession after the termination of his tenancy" but did not include "any person against whom any order or decree for eviction has been made". The court, persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 1st January 1973 and ending on 10th August 1975 but he remained liable to pay damages or mesne profits from 11th August 1975 until the delivery of the vacant possession of the accommodation. During the course of its decision this Court referred to a decision of Madhya Pradesh High Court in Kikabhai Abdul Hussain Vs. Kamlakar, 1974 MPLJ 485, wherein the High Court had held that if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of "relation back" on the reasoning that on the passing of a decree for possession, the tenant's possession would become unlawful not from the date of the decree but from the date of the termination of the contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in Kikabhai Abdul Hussain's case but distinguished it by observing that the law laid down in Kikabhai Abdul Hussain's case was not applicable to the case before it in view of the definition of 'tenant' as contained in the M.P. Act and the provisions which came up for consideration of the High Court in Kikabhai Abdul Hussain's case were different."

15. In ***Martin and Harris Private Limited and another Vs. Rajendra Mehta and others, (2022) 8 SCC 527***, the view taken in the case of ***Atma Ram's*** case (supra) has been reaffirmed by the Hon'ble Supreme Court in para-18 of the judgment, which reads as under:-

"18. Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in the case of Atma Ram (supra) has been reaffirmed in the case of State of Maharashtra Vs. Super Max International Pvt. Ltd and others, (2009) 9 SCC 772 by three Judges Bench of this Court. Therefore, looking to the fact that the decree of eviction passed by Trial Court on 03.03.2016 has been confirmed in appeal; against which second appeal is pending, however, after stay on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just equitable and reasonable."

16. Thus, in view of the aforesaid authoritative pronouncements of law, it has become clear that the possession of a person over the suit property does not become wrongful even after the termination of his contractual tenancy and he is not liable to pay any *mesne* profit for that purpose. The pendency of a civil dispute or a challenge to title does not, by itself, render long-standing possession unlawful. In a suit for eviction and recovery of possession upon termination of the tenancy by service of notice by the landlord, an interim direction can not be passed by the Court for

payment of occupational charges, damages, *mesne* profits etc. in excess of the contractual rent during the pendency of such suit. The question of paying occupational charges would arise only if the plaintiff succeeds in the suit and will get a decree for eviction and recovery of possession and not in a pending suit. No direction can be issued to deposit the *mesne* profits in excess of the contractual rent during the pendency of the suit for staying in the property before the conclusion of the trial and there is no scope under the Civil Procedure Code for the Court to direct such payment.

17. In the instant case, it is an admitted fact that defendant No.1 has been in open, peaceful, continuous and uninterrupted possession of the suit property since 16.01.2018 on the basis of a valid lease deed dated 16.01.2018, entered with the plaintiff, with respect to the suit property for a period of 25 years. However, the plaintiff has terminated the aforesaid lease agreement alleging that the applicant/defendant No.1 has deviated from the terms and conditions of the agreement as such defendant No.1 was asked to hand over the possession of the suit land to him. It is also an admitted fact that the suit for possession is still pending adjudication

before this Court and till date no Court of law had passed any decree of possession against the defendants.

18. Therefore, in view of the aforesaid authoritative pronouncements of law, even after the termination of the lease deed/agreement by the plaintiff, the possession of defendant No.1 does not become unauthorized/ wrongful and he is not liable to pay any damages or *mesne* profits, as claimed by the plaintiff, during pendency of the suit until or unless a decree of possession is passed in his favour. Hence, the present application (OMP No.384 of 2022) is dismissed, being devoid of any merit.

19. The defendants have also filed an application, being OMP No.197 of 2024, under Section 151 of CPC, seeking permission to deposit the annual lease amount in the Registry of this Court. It has been averred in the application that the plaintiff, after having received a sum of Rs.15 lacs in respect of the lease amount of three years, refused to receive any further amount towards lease money. An amount of Rs.10 lacs for the fourth and fifth year was reversed by the plaintiff on different dates and such refusal was made a ground to file the present suit. The applicants/defendants in order to show *bona fide* and to

protect/secure rights in respect of the suit property and under the lease, had also instituted a suit being Civil Suit No.96 of 2021, prior in time than the present suit. It has further been averred that Civil Suit No.96 of 2021 was withdrawn due to a formal defect and on account of the fact that the lease amount to the tune of Rs.10 lacs stands already accepted by the plaintiff and is lying deposited in the aforesaid suit, which was withdrawn, therefore, in order to secure his right, the applicants/defendants are seeking permission to deposit the lease amount for the year 2023 and 2024 in the present suit as was being deposited in Civil Suit No.96 of 2021.

20. In reply to the application, the non-applicant/plaintiff raised preliminary objection of maintainability on the ground that the plaintiff had already terminated the lease deed/agreement with the applicant/defendant. On merits, it is averred that the lease agreement was executed only with respect to 24 bighas of land and the rest was kept by the non-applicant/plaintiff for his own use. Since the applicant/defendant has deviated from the terms and conditions of the agreement, therefore, the plaintiff was forced to terminate the lease agreement. The construction work of RCC structure on the land was not at all agreed upon between the

parties, whereas the applicant/defendant was to install temporary structures on the suit land, which would not damage the fertility of the land. The applicant/defendant is not having any right over the suit property after termination of the lease agreement, hence, the applicant/defendant is liable to pay use and occupation charges/*mense profit*.

21. It is a settled proposition that a person who is enjoying the property and commercially exploiting the same cannot be allowed to use it without any payment. The plaintiff cannot be asked to suffer and wait till the conclusion of the trial, which takes painfully long time.

22. As discussed above, defendant No.1 cannot deny the liability to pay the admitted contractual rent as occupational charges. Such claims will be subject to the final decision of the suit, but the defendants cannot avoid payment of the contracted rent and enjoy the premises for free during the pendency of the suit. The income of the lessor by renting out a valuable property should not be put on hold till the final decision in the suit.

23. In view of the discussion made herein above, there is nothing more which should detain this Court from reaching an

inevitable conclusion that defendant No.1 cannot deny the liability to pay the admitted contractual rent and to insist upon depositing the same in the court. Therefore, in my opinion, defendant No.1 is liable to pay the agreed annual rent @ Rs.5 lacs per annum for the first eight years from 9th to 10th year, @ Rs.12 lacs per annum from 11th to 15th year, @ Rs.14 lacs per annum from 16th to 20th year, @ Rs.16 lacs per annum and from 21st to 25th year @ Rs.18 lacs per annum in terms of the aforesaid lease agreement. It is an admitted position that for the period of first three years, defendant No.1 had already paid rent to the plaintiff @ Rs.5 lacs per annum in terms of the aforesaid lease agreement.

24. Therefore, instead of depositing in the Court, the defendant No.1 is directed to pay to the plaintiff, arrears of lease money/rent w.e.f. 2021 till 2026 strictly in terms of the lease agreement within a period of three months from the date of this order and thereafter they shall keep on paying the future rent in terms of the lease deed. Needless to add that acceptance of the lease money/rent by the plaintiff shall in no manner come in his way to get his rights adjudicated by way of present suit.

25. Both the applications stand disposed of, in the aforesaid terms.

26. Be it stated that the observations made hereinabove are purely for the disposal of these applications and shall have no bearing on the merits of the main suit.

October 07, 2026
(*V.Himalvi*)

(Sushil Kukreja)
Judge