

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMP No. 23430/2025 in
C.R. No. 101/2025

Reserved on: 20.7.2026
Decided on: 21.8.2026

Sarita Devi and others Petitioners/non-Applicants

Versus

Amarjeet Ahuja ...Respondent/Applicant

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner/ Non-Applicants: Mr. Vishal Mohan, Sr. Advocate with Mr. Vikram Thakur, Mr. Aditya Sood, Mr. Akshit Rana and Mr. Shantanu Sahota, Advocates

For the Respondent/ Applicant: Ms. Devyani Sharma, Sr. Advocate with Ms. Srishti Negi, Advocate.

Romesh Verma, Judge

The instant application has been filed by the applicant/landlord, Amarjeet Ahuja, under Section 151 of the Code of Civil Procedure for issuance of direction to the non-applicants/tenants, to pay use and occupation charges of the demised premises.

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

2 The facts, as emerge in the present case, are that the applicant/landlord filed an eviction petition under Section 14 of H.P. Urban Rent Control Act, 1987 (for short, “the Act”), in the Court of learned Rent Controller, Court No.1, Shimla on 4.12.2008 for eviction of the tenants/non-applicants from Shop No. 69, situated in Lower Bazaar, Shimla, on the ground that the premises are bonafidely required for re-building and reconstruction.

3 As per the case set up by the applicant, shop in question forms part of a building, which is more than 100 years old and has outlived its span of life. The suit property is situated in the commercial locality, therefore, he wants to reconstruct the same in order to put it to better use to augment his income, however, he cannot do so without the demised premises being vacated. He has submitted the proposed plan for reconstruction/rebuilding before the competent authorities, which is still under process, therefore, the applicant filed eviction petition before Rent Controller for eviction of the non-applicants from the demised premises.

4 The eviction petition was resisted by the non-applicants by refuting and denying all the averments as made in the rent petition. As per case of the tenants, building is in good condition and it does not require any reconstruction or

rebuilding in any manner. The applicant is not landlord of the premises and he has no intention or bona fide to reconstruct the same.

5 The Rent Controller vide its order dated 29.12.2022 allowed the eviction petition as filed by the applicant by directing the non-applicants to hand over vacant possession of the demised premises to the applicant within a period of three months from the date of passing of the judgment. The non-applicants were given right of re-entry after reconstruction in accordance with law.

6 Feeling dissatisfied, the non-applicants preferred an appeal before the learned Appellate Authority-II, Shimla on 12.1.2023. In the said appeal, the applicant filed cross objections under Order 41 Rule 22 of CPC. Learned Appellate Authority vide its judgment dated 11.07.2025 dismissed the appeal as filed by the non-applicants and accepted the cross-objections as filed by the applicant, whereby findings recorded by the learned Rent Controller granting right of re-entry to the non-applicants were quashed and set aside.

7 Feeling Aggrieved, the non-applicants have approached this Court by instituting the instant petition under Section 24(5) of the Act.

8 The matter was listed before this Court on 05.08.2025, when the applicant was on caveat and after hearing the learned counsel for the parties, this Court issued the notice to the applicant and in application bearing CMP No. 18749/2025, execution of the impugned order of eviction was ordered to be stayed for the time being.

9 During the pendency of the revision petition, the applicant has filed the instant application for issuing direction to the non-applicants to pay use and occupation charges of the demised premises. It is the case of the applicant that after passing of the eviction order by the learned Rent Controller on 29.12.2022, non-applicants have failed to surrender the demised premises in terms of the order dated 29.12.2022. Non-applicants have been able to drag the proceedings before the learned Rent Controller. One of the non-applicants (non-applicant No.3) had approached this Court by filing Civil Revision No. 238/2017 against the order, dated 15.11.2017, as passed by the learned Rent Controller, who had dismissed the application for setting aside ex parte order. This Court while rejecting the aforesaid petition directed the Rent Controller to decide the rent petition on or before 31.07.2020.

10 As per the case of the applicant, in order to drag litigation, non-applicants had filed three applications – (i) for re-

examining of the applicant under Order 18 Rule 17 of CPC (ii) under Order 8 Rule 3-A of CPC for placing on record photographs and (iii) under Order 6 Rule 17 of CPC for amendment of reply to the effect that the applicant has taken over the possession of adjoining shop, which applications came to be dismissed by the learned Rent Controller on 06.01.2020. Non-applicants No. 1 and 2 laid challenge to the said order before this Court by way of common petition bearing Civil Revision No. 32/2020, titled as Sarita Devi and another vs. Amarjeet Ahuja and another, however, the same came to be dismissed by this Court vide judgment dated 06.07.2022 with a specific direction to the learned Rent Controller to decide the rent petition on or before 31.12.2022.

11 It is further case of the applicant that demised premises is a shop No. 69, situated in Lower Bazaar, Shimla and the non-applicants are using the same for commercial use and reaping fruits from the business. The shop in question is situated in prime locality of Shimla town and rent of such shop, if to be taken on rent, would fetch at least an amount of Rs.2,50,000/- per month. Since the non-applicants have suffered an order of eviction, as passed by both the learned authorities below, therefore, they are liable to pay use and

occupation charges to the applicant @ Rs.2,50,000/- per month from the date of order of eviction i.e. 29.12.2022.

12 The instant application has been resisted by the non-applicants by filing reply, wherein preliminary objections qua maintainability, suppression of material facts, etc. were raised. On merits, all the averments, as made in the application, have been refuted and denied. It has been stated that the instant application has been filed in order to oust the non-applicants from the demised premises. The shop in question is situated in Municipal Corporation limits and no construction is possible as per municipal laws and without valid sanction plan. No sanction plan has been obtained by the applicant for the alleged reconstruction. The shop in question is only around 4 feet in width and around 16 feet in length, total measuring around 65 sq. feet. It is the case of the non-applicants that even on the Mall road, monthly rental is not more than Rs.500 per sq. feet. Therefore, the claim as made by the applicant, whereby he is seeking use and occupation charges @ Rs.2,50,000/- per month are exorbitant, as such, the non-applicants have prayed for dismissal of the instant application.

13 The applicant has filed rejoinder to the reply, as filed by the non-applicants, wherein all the averments as made in the reply have been denied and the averments as made in the

application have been reiterated. It has been averred that area of shop in question is 180 sq. feet and the averment with respect to the fact that shop in question is measuring 65 sq. feet is totally incorrect. It has been reiterated in the rejoinder that the applicant is entitled for grant of use and occupation charges @ Rs.2,50,000/- per month as after passing of the order of eviction by the both the learned Authorities below, possession of the non-applicants is unauthorized.

14 In order to substantiate averments as made in the application for grant of use and occupation charges, the applicant has placed on record copy of the site plan, which shows that total area of the demised premises is 136.49 sq. feet.

15 By medium of CMP No.4630/2026, the applicant has sought permission for placing on record site plan of the demised premises, wherein it has been stated that the applicant had engaged a retired Assistant Engineer, who on 27.2.2026 visited the shop in question and measurement of the shop in question was conducted in presence of both the parties. The Engineer prepared location plan/site plan of the shop in question, vide which area of shop in question was found to be 136.49 sq. feet.

16 In response to CMP No 4630/2026, the non-applicants, by filing reply, have placed on record plan of the

demised premises, as per which, dimensions of the shop are 121 sq. feet.

17 Ms. Devyani Sharma, learned Senior Advocate, assisted by Ms. Srishti Negi, Advocate, has contended that the applicant is pursuing his remedy in order to get possession of the shop in question since 2008. She has submitted that despite passing of more than 18 years, the applicant has not been able to get fruits of the eviction order, which stood passed on 29.12.2022. She has submitted that since as per mandate of Hon'ble Supreme Court as well as various judgments, as passed by this Court, after passing of the eviction order, possession of the non-applicants is unauthorized, therefore, they may be put to terms by directing them to pay use and occupation charges @ Rs.2,50,000/- per month. She has contended that the non-applicants have made all-out endeavours to drag the applicant in an uncalled-for litigation by filing various and repeated applications in order to avoid eviction from the demised premises. Since after eviction order, possession of the non-applicants is unauthorized and the suit property, which is situated in the heart of Shimla town i.e. Lower Bazaar is still being occupied by the non-applicants, therefore, the instant application, as prayed for, may be allowed in favour of the applicant and against the non-applicants.

18 On the other other, Mr. Vishal Mohan, learned Senior Advocate, assisted by Mr. Vikram Thakur, Advocate, has contended that the instant application is not maintainable in its present form, inasmuch as similar application was filed by the applicants before the learned Appellate Authority and the same came to be dismissed, therefore, the instant application being subsequent one on the same ground is not maintainable. He has further contended that since no stay was granted by the learned Appellate Authority, therefore, there is no question of payment of use and occupation charges from the date when the eviction order was passed by the learned Rent Controller. He has further contended that by virtue of provisions of Section 11 of CPC, principle of *res judicata* applies in the instant case as an application seeking use and occupation charges of the demised premises, which was filed by the applicant before Appellate Authority, came to be rejected, therefore, on the same ground, the instant application is not maintainable keeping in view the fact that said order of rejection in earlier application was never assailed by the applicant in any proceedings. He has submitted that the shop in question, measuring 121 sq. feet is in a dilapidated condition and it has outlived its life and therefore no relief can be granted to the applicant. He has further submitted that instead of passing of the order in the instant application,

main petition can be disposed of on merits. He while relying upon decisions of the Hon'ble Supreme Court in ***Hope Plantations Ltd. vs. Taluk Land Board, Peermade, (1999) 5 SCC 590; Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd., (2005) 1 SCC 705; Anderson Wright & Co. vs. Amar Nath Roy, (2005) 6 SCC 489; Barkat Ali vs. Badrinarain (dead) by LRs, (2008) 4 SCC 615*** and ***State of Maharashtra vs. Super Max International Private Limited, (2009) 9 SCC 772*** has prayed for dismissal of the application with costs.

19 I have heard the learned counsel for the parties and have also gone through material available on record.

20 In the present case, admittedly, the applicant had filed an eviction petition in the Court of learned Rent Controller, Court No.1, Shimla for eviction of the tenants/non-applicants from the demised premises on the ground that the premises are required bonafidely for re-building and reconstruction. The petition came to be contested by the non-applicants by refuting all the allegations as made in the petition. The learned Rent Controller vide its judgment dated 29.12.2022 allowed the eviction petition thereby directing the non-applicants to hand over vacant possession of the demised premises to the applicant within a period of three months from the date of passing of the order. However, the non-applicants were given right of re-entry

after reconstruction in accordance with law. Thereafter, an appeal came to be preferred by the non-applicants against the order dated 29.12.2022 before the learned Appellate Authority, whereas the applicant also filed cross objections under Order 41 Rule 22 of CPC before it. Learned Appellate Authority vide its judgment dated 11.07.2025 dismissed the appeal as filed by the non-applicants and accepted the cross-objections filed by the applicant, whereby findings recorded by the learned Rent Controller granting right of re-entry to the non-applicants were quashed and set aside.

21 This Court is conscious of the fact that the eviction proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. After obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate orders so that reasonable mesne profit, which may be equivalent

to the market rent, is paid by a person who is holding over the property.

22 In **Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325**, the Hon'ble Supreme Court has held as under:-

"4. From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour decree is

passed and to protect the property including further alienation.”

23 It is well settled that the appellate authority does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned.

24 The Hon’ble Supreme Court in ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd., (2005) 1 SCC 705*** has summed up and concluded as follows:-

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the

contractual rate of rent effective for the period preceding the date of the decree;

(3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.

25 In State of ***Maharashtra and another vs. Super Max International Private Limited ad others, (2009) 9 SCC 772***, the Hon'ble Supreme Court has held that of late, orders are coming to the Court where, in cases arising from ejectment proceedings, the High Courts, with a view to strike a balance between the competing interests of the landlord and the tenant, pass interim orders asking the tenant to pay to the landlord or deposit in court, as monthly rent, certain sum fixed by it far in excess of the existing monthly rent. The Hon'ble Supreme Court in paras 72 to 78 thereof has held as under:-

72. With the perspective thus adjusted all the submissions made by Mr. Lalit on behalf of the appellant have a simple answer. The interim order of the High Court asking the appellant to deposit Rs.5, 40,000/- from the date of the decree as condition for stay of the execution of the decree of ejectment has to be seen as one single package. The appellant may or may not accept the order as a whole. But it is not open to it to accept the order in so far as it stays the execution of the decree and to question the condition attached to it.

73. In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for

as of right. While admitting the appeal or revision, it is perfectly open to the court, to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant-in-revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr. Lalit and in all likelihood would be evicted before the revision is finally decided. In the event the revision is allowed later on, the tenant's remedy would be only by way of restitution.

74. In Atma Ram Properties the Court viewed the issue exactly in the same way (See paragraphs 6, 8 & 9 of the decision). Further, the decision also answers Mr. Lalit's submission that the tenancy did not come to end on the passing of the decree but would continue until the tenant was actually physically evicted from the premises in execution of the decree.

75. In Atma Ram Properties the Court framed two issues arising for consideration as follows:

"10....This submission raises the following two issues: (i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent to the landlord?"

76. The Court answered the first issue as follows:

"16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first

passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy."

The second issue was answered as follows:

"(2)....With effect from that date (the passing of the decree of eviction), the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree."

(words in parenthesis added)

We are in respectful agreement with the decision of the Court in Atma Ram Properties.

77. In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the [Rent Act](#) it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

78. In the case in hand, the High Court has fixed the amount of Rs. 5,40,000/- per month with reference to the

Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted. In fairness to Mr. Lalit he did not challenge the fixation of the amount on that ground.

26 A coordinate Bench of this Court in ***Champeshwar Lall Sood vs. Gurpartap Singh, Latest HLJ 2017 (HP) 589*** has held that from the date of passing of eviction order, the tenant is liable to pay mesne profits or compensation for use and occupation charges of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The very purpose of awarding mesne profit or use and occupation charges is to put a check on the diabolical plans of the tenant who has been ordered to be evicted and ensure that he does not squat on the premises by paying a meager rent. At the same time even the landlord is also compensated to receive higher rent than the contractual rent.

27 Similar proposition of law has been reiterated by coordinate Bench of this court in ***Civil Revision No. 29/2021, titled as Jeevan Khanna vs. Khem Chand through his LRs Arun Kumar & ors., decided on 15.09.2022.***

28 The facts in the present case clearly demonstrate that the eviction petition, which was filed in the year 2008, came to

be allowed in the year 2022 i.e. after elapse of more than 14 years.

29 Learned senior counsel for the applicant has drawn attention of this Court to the relevant record, which reveals that various applications came to be filed by the non-applicants to prolong the litigation and deprive the applicant to get decree of eviction from the learned Rent Controller. The learned Rent Controller vide order dated 29.12.2022 had directed the non-applicants to hand over the possession of the suit premises to the applicant. Thus, after passing of the eviction order, the possession of the non-applicants have become unauthorized and they are liable to compensate the applicant on account of possession of the suit premises.

30 As per mandate of law as laid down in ***Atma Ram Properties (P) Ltd.*** case (supra) , the tenancy terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

31 The aforesaid proposition of law has been consistently followed in all the subsequent judgments, as referred to hereinabove, whereby it has been held that after passing of the order of eviction, possession of the tenant becomes unlawful. The tenant continuing in occupation of the tenanted premises after the termination of tenancy is an unauthorized and wrongful occupant and a decree for damages or mesne profits can be passed for the period of such occupation, till the date he delivers the vacant possession to the landlord. After termination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the Act. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value.

32 While passing order for grant of damages or mesne profits, the Court has to keep in mind that it is depriving the successful landlord of the fruits of the decree by invoking provisions of Order 41 Rule 5 of CPC. Therefore, there is every justification for the appellate Court to put the tenant on terms and direct the tenant to compensate the landlord by payment of a reasonable amount.

33 As held in **Marshall Sons & Co. (I) Ltd.** case (*supra*), once decree for possession of immovable property has been passed, it is necessary for the Court to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. Similar proposition of law has been reiterated in **Champeshawar Lall Sood** case (*supra*).

34 Submission of the learned senior counsel for the non-applicants, whereby he has submitted that since the present proceedings are in continuation of rent petition, therefore, till the time the rent is not finally adjudicated by the superior Court, no orders can be passed for grant of mesne profits, does not hold good. As per law laid down by the Hon'ble Supreme Court, the moment, eviction order is passed by the Rent Controller, possession of the tenant becomes unauthorized and appellate Court is competent to grant use and occupation charges on account of prolonging the execution of the eviction order and depriving the landlord of the fruits of the decree having been passed in his favour.

35 Learned counsel for the non-applicants has contended that since there was no stay order passed by the Appellate Authority, therefore, order, if any, has to be passed only in those cases where interim protection is granted by the

superior authority. He has submitted that before the learned Appellate Authority an application for stay was filed, however the appellate Authority did not pass an interim order, therefore, under such circumstances, order cannot be passed for grant of mesne profits from the date of passing of the eviction order.

36 The aforesaid submission of the learned senior counsel for the non-applicant is not sustainable in view of exposition of law, as discussed hereinabove, wherein it has been categorically held that the landlord is entitled for grant of use and occupation charges from the date of eviction order.

37 In the present case, as observed above, eviction order was passed on 29.12.2022 and thereafter, occupation of the demised premises by the non-applicants is unauthorized and therefore, they are liable to pay use and occupation charges to the applicant.

38 Though the tenants had statutory right to prefer an appeal before the Appellate Authority and revision petition before this Court, but that does not disentitle the landlord/applicant to get the use and occupation charges when he is being deprived of fruits of the decree, which stood passed in his favour in the year 2022.

39 Learned senior counsel for the non-applicants has drawn attention of this Court to paras 24 to 29 of the impugned

judgment, as passed by the learned Appellate Authority to contend that instant application is not maintainable in view of the fact that similar application was filed by the applicant before the Appellate Authority seeking use and occupation charges for the period of pendency of the proceedings. However, the Appellate Authority came to the conclusion that since no interim order staying the operation or execution of the eviction decree was ever granted by the Court, therefore, applicant had every opportunity to approach the executing court for obtaining possession of the premises in accordance with law. It has been held by the appellate Authority that since the applicant has chosen not to pursue the execution of the decree and allowed the matter to be finally heard and adjudicated without any stay in operation, the applicant cannot now at this belated stage, seek fixation of use and occupation charges through collateral proceedings in the form the application and the said Authority is not obligated to initiate parallel adjudication on ancillary monetary claims such as use and occupation charges. Thus, the application seeking fixation of use and occupation charges being devoid of merit was dismissed.

40 To the said submission, leaned senior counsel for the applicant has submitted that such observations and findings of appellate Authority are perverse and contrary to record. She has

drawn attention of this Court to execution petition No. 1620/2024, which was filed before the learned Rent Controller and the same came to be registered prior to passing of the judgment by the Appellate Authority. She has brought to the notice of this Court the zimini orders and has submitted that the applicant primarily instituted execution petition before the learned Rent Controller and the non-applicants tried their level best to prolong the matter, whereby various dates were taken by the non-applicants in order to file objections to the said execution petition and ultimately same was stayed vide order dated 5.8.2025 on account of orders passed by the Court in the main revision petition.

41 Perusal of the zimini orders of the execution petition which was filed by the applicant before the learned Rent Controller, reveals that findings as returned by the Appellate Authority on the application under Section 151 of CPC are totally incorrect and not sustainable in the eyes of law. The applicant, within his right, immediately filed execution petition before the executing Court and apprised that very Court that he had filed an application under Section 151 of CPC for grant of use and occupation charges. The findings, as returned by the learned Appellate Authority to the effect that the stay has not been granted to the tenants and that the landlord has failed to file

execution petition, therefore, on that account, said application came to be dismissed as having been rendered infructuous are contrary to the record as available on the case file.

42 Before the Appellate Authority when the applicant filed an independent application under Section 151 of CPC for grant of use and occupation charges, it was incumbent upon the said authority to have decided the application strictly in accordance with law either way. Merely on the ground that there is no stay order and the landlord has not availed remedy is not a ground to dispose of the application for mesne profits as having become infructuous. The observation that the appellate authority is not obligated to initiate parallel adjudication on ancillary monetary claims such as use and occupation charges is totally incorrect and not sustainable. Once the application stood filed by the landlord for the grant of use and occupation charges, in that event it was duty of the appellate authority to have decided the same on merits.

43 As rightly pointed out by the learned senior counsel for the applicant that it is duty of the Court to have decided the application which was filed by the landlord for grant of use and occupation charges. She has further submitted that in a slipshod manner, it has been observed by the Appellate Authority that the applicant/landlord chose not to pursue execution of

the decree and allowed the matter to be finally heard and adjudicated without any stay in operation and the applicant cannot now at this belated stage seek fixation of use and occupation charges through collateral proceedings.

44 The appeal came to be filed by the tenants before Appellate Authority on 12.1.2023. The applicant/landlord immediately filed an application for use and occupation charges on 7.6.2023. Once application came to be filed before the Appellate Authority, it was incumbent upon it to have decided the application either way. Rather taking responsibility, the authority has shifted onus on the landlord. For the act of the Court shall prejudice no man.

45 In **Odisha Forest Development Corporation Ltd. vs. Anupam Traders, (2020) 15 SCC 146**, the Hon'ble Supreme Court has held as under:-

19. In that regard, it is to be noticed that in the instant case in a circumstance where the private respondent had filed the writ petition, even though the High court had permitted the process of retender to progress, the finalization thereof had been stayed. If that be the position, the appellant herein was not in a position to immediately bring the Kendu leaves for reauction by receiving the amount from the subsequent purchaser and the same is likely to have dissuaded purchasers to offer the best price due to uncertainty looming large. Whether all these and any other factor has caused the loss to the appellant and the public exchequer is a matter to be determined based on materials

and evidence but the fact remains that such resultant delay was at the instance of the private respondent. As noticed from the terms of the agreement, any loss caused was permissible to be recovered from the respondent after adjusting the security deposit available. Therefore, even if the amount of deposit made pursuant to the order passed by the High Court is not considered as an additional security deposit, the right of the appellant to proceed in accordance with law to assess the damage suffered and to recover the same from the private respondents, would still remain intact. As such the deposit ordered will have to be considered as a conditional deposit to protect the interest of the appellant as well.

21. xxx xxx

22. *As noticed above, the appellant in any event would have the right to determine the loss suffered and recover the same in accordance with law as the process to re tender, was at the ‘.....cost and risk’ of the private respondent as stated in the notice of termination. In that circumstance, when it is prima facie indicated that due to the delay caused at the instance of the private respondents the value of the Kendu leaves had reduced, thereby causing loss, in view of legal proceedings initiated by the private respondents, the Court will have to bear in mind the maxim actus curiae neminem gravabit, namely, no party should suffer due to the act of Court. In such event, since the interim order was at the instance of the respondent the appellant should in our opinion be permitted to retain the amount and complete the process by providing opportunity to the private respondents.*

SCC 559, the Hon'ble Supreme Court has held as under:-

"10. On facts of this case and based on the arguments advanced before us we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to delay in instituting the prosecution or to delay in taking cognizance. As noted above according to learned counsel for the appellants the limitation prescribed under the above Chapter applies to taking of cognizance by the concerned court therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the Chapter-Heading of Chapter XXXVI of the Code which reads thus : "Limitation for taking cognizance of certain offences". It is primarily based on the above language of the Heading of the Chapter the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 471 indicates while computing

the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said Section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the early decision of this Court in the case of [Rashmi Kumar](#) (supra)."

47 Similar proposition of law has been reiterated in
South Eastern Coalfields Ltd. vs. State of M.P. (2003) 8
SCC 648.

48 Therefore, in the considered opinion of this Court, observations as made by the Appellate Authority, by dismissing the application as infructuous will not debar the present applicant to file the instant application for grant of use and occupation charges.

49 Learned senior counsel for the non-applicant has vehemently contended that as per provisions of Section 11 of the CPC, instant application is barred by principles of res judicata. He has submitted that once similar application came to be decided by the competent authority, therefore, subsequent application seeking same and similar relief is not maintainable.

50 Provisions of Section 11 of CPC read as follows:-

11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

51 Perusal of the discussion as made by the Appellate Authority clearly reveals that authority has not decided

application on merits. The appellate authority did not record any findings or adjudicate the competing rights of the parties on the substantive legal issues and the application has been dismissed as having been rendered infructuous. Once learned Appellate Authority has come to the conclusion that application has become infructuous meaning thereby there is no adjudication on the merits of the case and the principles of res judicata, especially Section 11 of CPC in the considered opinion of this Court, would not apply to the case in hand.

52 In **Civil Appeal No. 6161/2008, titled as Noharlal Verma vs. District Cooperative Central Bank Limited, Jagdalpur**, the Hon'ble Supreme Court has held as under:-

15. So far as res judicata is concerned, in our opinion, the appellant is right in submitting that the Tribunal was not justified in holding that the application filed by the appellant was barred by res judicata. It is clear from the facts stated hereinabove that the application was filed by the appellant to Joint Registrar, Raipur. It was pending. Meanwhile, however, District Bastar had its own Registry and hence, an application was submitted to District Registrar, Bastar. The application preferred by the appellant to the Joint Registrar, Raipur, in the circumstances, became infructuous. It was not decided on merits. As per settled law, such decision does not operate as res judicata. The High Court was, therefore, right in coming to the conclusion that the Tribunal was in error in dismissing the application on the ground of res judicata.

That part of the order passed by the Tribunal was, therefore, rightly not approved by the High Court.

53 Expression “infructuous” has been defined by the Hon’ble Supreme Court in ***Union of India vs. Narender Singh, (2005) 6 SCC 106***, which reads as under:-

“6. The expression infructuous means ineffective, unproductive and unfruitful. It is derived from the Latin word "fructus" (fruit). By implementing an order, the challenge to the validity of the order is not wiped out and is not rendered redundant.”

54 The observations as made by the learned Appellate Authority by no stretch of imagination can be held to be sustainable as neither the application was adjudicated on merits nor there is any determination after taking into consideration rival contentions of the parties. Even otherwise, as rightly urged by the learned senior counsel for the applicant at the most it can be said to be a mere court finding as admittedly the appeal filed by the tenants has been dismissed and cross-objections as filed by the landlord have been accepted. She has submitted that since no appeal lies against a mere finding, therefore, observations/findings as rendered by the learned Appellate Authority could not have been challenged by the applicant as per mandate of the Hon’ble Supreme Court in ***Ganga Bai vs. Vijay Kumar, (1974) 2 SCC 393***, wherein it was held as under:-

15. It is thus clear that the appeal filed by defendants 2 and 3 in the High Court was directed originally not against any part of the preliminary decree but against mere finding recorded by the trial court that the partition was not genuine. The main controversy before us centers round the question whether that appeal was maintainable on this question the position seems to us well-established. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.

16. Under [section 96\(1\)](#) of the Code of Civil Procedure, save where otherwise expressly provided by the Code or by any other law for the time being in force, an appeal lies from every decree passed by any court exercising original jurisdiction, to the court authorised to hear appeals from the decisions of such court. [Section 100](#) provides for a second appeal to the High Court from an appellate decree passed by a court subordinate to the High Court. [Section 104\(1\)](#) provides for appeals against orders of the kind therein mentioned and ordains that save as otherwise expressly provided by the Code or by any law for the time being in force an appeal shall lie "from no other orders". Clause (i) of this section provides for an appeal against "any orders made under Rules from which an appeal is

expressly allowed by rules". 'Order 43, Rule 1 of the Code, which by reason of clause (i) of [section 104\(1\)](#) forms a part of that section, provides for appeals against orders passed under various rules referred to in clauses (a) to (w) thereof, Finally, [section 105\(1\)](#) of the Code lays down that save as otherwise expressly provided, no appeal shall lie from any order made by a court in exercise of its original or appellate jurisdiction.

17 These provisions show that under [the Code of Civil Procedure](#), an appeal lies only as against a decree or as against an order passed under, rules from which an appeal is expressly allowed by Order 43, Rule 1. No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal. It must follow that First Appeal No. 72 of 1959 filed by defendants 2 and 3 was not maintainable as it was directed against a mere finding recorded by the trial court.

55 Similar proposition of law has been reiterated in ***Deva Ram vs. Ishwar Chand (1995) 6 SCC 733***, wherein it was held as under:-

25. Let us now consider the plea regarding the effect of an adverse finding recorded by the court against a party in whose favour the suit or the appeal is ultimately decided.

26. It is provided in [Section 96](#) of the C.P.C. that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeal from the decision of such court. So also, [Section 100](#) provides that an appeal shall lie to the High Court from every decree passed in appeal. Thus sine qua non in both the provisions is the "decree" and unless the decree is passed, an appeal would not lie under [Section 96](#) nor

would it lie under [Section 100](#) of the Civil Procedure Code. Similarly, an appeal lies against an "order" under [Section 104](#) read with Order 43 Rule 1 of the Civil Procedure Code where the "orders" against which appeal would lie have been enumerated. Unless there is an "order" as defined in [Section 2\(14\)](#) and unless that "order" falls within the list of "orders" indicated in Order 43, an appeal would not lie.

27. Thus, an appeal does not lie against mere "findings" recorded by a court unless the findings amount to a "decree" or "order". Where a suit, is dismissed, the defendant against whom an adverse finding might have come to be recorded on some issue, has no right of appeal and he cannot question those findings before the appellate court. (See *Ganga Bai v. Vinay Kumar & Ors.*: (1974) 3 S.C.R.882).

56 In the present case, appeal of the tenants came to be rejected, whereas cross-objections of the landlord were allowed by Appellate Authority, therefore, observations/findings as rendered by the Appellate Authority could not have been challenged by the landlord in view of dismissal of the appeal filed by the tenants.

57 Coming to grant of mesne profits, it is contended by learned senior counsel for the applicant that total area of suit premises is 136.49 sq. feet and the site plan has been taken on record. As observed above, the applicant had engaged a retired Assistant Engineer, who on 27.2.2026 visited the shop in question and measurement of the shop in question was

conducted in presence of both the parties vide which area of shop in question is 136.49 sq. feet. She has further submitted that suit property is situated in the heart of Shimla town i.e. Lower Bazaar, which is commercially viable area, where lot of people throng throughout the day for their daily needs. The applicant has prayed that at least Rs.2,50,000/- per month be fixed as use and occupation charges and the same be paid to the applicant from the date when the eviction order came to be passed.

58 On the other hand, learned senior counsel for the non-applicant has placed on record plan reflecting therein area of disputed shop to be 121 sq. feet.

59 As observed above, after passing of the eviction order, tenants being in unauthorized possession are liable to pay damages and use and occupation charges and the said rate should be reasonable and it should not be fanciful and exorbitant.

60 The word 'reasonable' has been defined in the judgment of Three-Judge Bench of Hon'ble Supreme Court in ***Rena Drego vs. Lalchand Soni, (1998) 3 SCC 341***, wherein it was held as under:-

9. It is difficult to give an exact definition of the word 'reasonable'. It is often said that "an attempt to give a specific meaning to the word 'reasonable' is trying to count

what is not number and measure what is not space." The author of 'Words and Phrases' [Permanent Edition] has quoted from *In re Nice & Schreiber*, 123 F. 987,988 to give a plausible meaning for the said word. He says "the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined." it is not meant to be expedient or convenient but certainly something more than that. While interpreting the word 'reasonable' in Section 13 of the Act, the Bombay High Court has suggested in *Krishchand Moorjimal vs. Bai Kalavati*, AIR 1973 Bombay 46, "that the word 'reasonable' cannot mean convenient or luxurious, though it may not necessarily exclude the idea of convenience and comfort." However, the expression reasonable can be taken as providing an angle which is conformable or agreeable to reasons, having regard to the facts of the particular controversy.

10. In *Municipal Corporation of Delhi vs. Jagan Nath Ashok Kumar*, 1987 (4) SCC 497, this Court has stated that "the word 'reasonable' has in law *prima facie* meaning of reasonable in regard to those circumstances of which the actor, called upon to act reasonable, knows or ought to know." This has been reiterated by Sabyasachi Mukherjee J. (as his Lordship then was) in *Gujarat Water Supply & Sewerage Board vs. Unique Erectors (Gujarat) p. Ltd*, 1989 (1) SCC 532.

61 In ***Union of India vs. Shiv Shankar Kesari, (2007)***

7 SCC 798, the Hon'ble Supreme Court has held as under:-

8. The word "reasonable" has in law the *prima facie* meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or

ought to know. It is difficult to give an exact definition of the word 'reasonable'. Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. (See: *Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar and another* (1987) 4 SCC 497 and *Gujarat Water Supplies and Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. and another* [(1989) 1 SCC 532].

9. It is often said "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space". The author of 'Words and Phrases' (Permanent Edition) has quoted from *re Nice & Schreiber* 123 F. 987, 988 to give a plausible meaning for the said word. He says, "the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined". It is not meant to be expedient or convenient but certainly something more than that.

10. The word 'reasonable' signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See: *Municipal Corporation of Greater Mumbai and another v. Kamla Mills Ltd.* (2003) 6 SCC 315).

62 Therefore, the word 'reasonable', has to be interpreted in a manner so as to ensure that the landlord is reasonably

compensated for the loss occurred by the delay in execution of the decree by grant of stay order and the rent has to be determined on case to case basis depending upon the cogent material placed on record by the parties and would therefore, normally be dependent upon the occupation, trade or business etc. of the tenant and would further not be dependent solely on the capacity to pay or actual earning of the tenant, who has suffered an order of eviction.

63 The fixation of mesne profits and use and occupation charges are to be assessed on the basis of the evidence led by the parties as to the prima facie market value existing at the time of admission of the appeal after the eviction order, which has been exclusively bestowed on the landlord so that he would be reasonably compensated for loss caused by delay in execution of the decree. The Court while doing so is not to be guided by the factors that the parties at one point of time while creating the tenancy had agreed at a meager amount of rent, it would depend upon the material produced before the Court which under no circumstances can be ignored even though thereafter the rent so fixed may work out to be multiple times to the one which was fixed at the time of creation of the tenancy.

64 The word reasonable has to be interpreted liberally and it cannot be fanciful on the higher side, rather it should be

in the form of compensation to be paid to the landlord of which, he has been deprived to enjoy the property as per eviction order passed by the competent court of law.

65 The learned senior counsel for the applicant has relied upon judgment passed in **Champeshwar Lall Sood** case (supra), wherein the property was situated in Middle Bazaar i.e. in between Lower Bazaar and Mall Road. This Court after analyzing the entire material placed on record came to the conclusion that tenant is liable to pay rent @ Rs.250/- per sq. feet. She has also relied upon another judgment of this Court in **Jeevan Khanna** case (supra), wherein shop in question was situated in Lower Bazaar and the Court, after analyzing and considering the material factors, assessed use and occupation charges @ Rs.500/- per sq. feet. from the date of passing of the eviction order.

66 In the present case, admittedly, none of the parties has placed on record any documentary evidence to substantiate their rival contentions. Neither the applicant has placed on record material to show current market value of the demised premises nor the non-applicants have filed any document to rebut the case of the applicant.

67 To strengthen the claim of use and occupation charges of the demised premises, learned senior counsel for the

applicant has relied upon judicial precedents in ***Marshall Sons & Co. (I) Ltd, Champeshwar Lall Sood, Jeevan Khanna cases (supra)***.

68 Admittedly, in the case of ***Champeshwar Lall Sood***, the suit property was situated in the middle of the lower bazaar and Mall road i.e. Middle Bazaar and after relying on documents, which were placed on record, this Court came to the conclusion that rent @ Rs.250/- per sq. feet shall be reasonable qua mesne profits to the landlord. This Court is conscious of the fact that value of the shop at Lower Bazaar is more commercially viable as compared to property situated at Middle Bazaar. Lower Bazaar is a busy place, which is thronged by people throughout the day. More people visit Lower Bazaar than the Mall Road. Entire business activities including day to day requirement of the residents of Shimla town are catered to by the shops situated at Lower Bazaar.

69 Relying upon the decision in ***Jeevan Khanna's*** case, wherein this Court has assessed use and occupation charges @ Rs.500/- sq. feet from the date of eviction order, it is contended by the learned senior counsel for the applicant that the present applicant is also similarly situated and thus is entitled for grant of use and occupation charges @ Rs.800/- sq. feet qua the demised premises as the order in the case of ***Jeevan Khanna's***

case was passed on 15.09.2022 and now we are in 2026, therefore, in view of the increasing price index, the occupation charges as assessed in the aforesaid case require enhancement.

70 The prayer as made in the instant application has been vehemently opposed by learned Senior Counsel for the non-applicants. He has submitted that in the attending facts and circumstances of the case, especially, in view of any evidence on record, no order can be passed for grant of use and occupation charges as there is no material placed on record to show and prove that the applicant is entitled for grant of use and occupation charges. It has been contended by learned Senior Counsel for the non-applicants that the application as filed by the applicant is without any substance and merit and the same deserves to be rejected.

71 Taking into consideration entirety of the facts, it would be noticed that the non-applicants are carrying out commercial activities in the demised premises, which is situated in the heart of the Shimla town i.e. Lower Bazaar. Therefore, in all eventualities, use and occupation charges @ Rs.500/- sq. feet shall be reasonable and appropriate qua the demised premises.

72 As in the present case, the landlord had approached the Rent Controller way back in the year 2008 to get possession of the shop in question, and despite having passed about 18

years, he is still running from pillar to post to get his property vacated. Once the eviction order has been passed by the learned Controller, as per mandate of the Hon'ble Supreme Court, occupation of the tenants/non-applicants is unauthorized, therefore, they are liable to pay use and occupation charges to the landlord.

73 The purpose of grant of use and occupation charges is to compensate the landlord on account of delay for not being able to execute the eviction order. The plan of demised premises has been annexed with the application filed by the applicant bearing CMP No. 4630/2026 as Annexure A-1, to establish on record that area of shop in question is 136.49 sq. feet, however, in reply to the aforesaid application, the non-applicants have also placed on record map of the demised premises and rent receipts, Annexures R-1 and R-2 respectively to contend that the area of shop in question is 121 sq. feet.

74 This Court after taking into consideration rival contentions of the parties and the documents placed on record qua area of shop in question, deems it appropriate to round off the area of shop in question to be 130 sq. feet and as such, use and occupation charges are to be assessed accordingly by taking into consideration various aspects i.e. location, potential and area etc. of building. Location, potential, area etc. which are

prime factors for fixation of use and occupation charges are not in dispute and thus, use and occupation charges of the demised premises are assessed @ Rs.500/- sq. feet (Rs.500 x 130 = Rs.65,000/- per month) from the date of passing of eviction order, dated 29.12.2022, which comes to Rs.28,60,000/- till 31.08.2026 (Rs.65,000/- x 44 months), which shall be deposited by the non-applicants within a period of eight weeks from today, whereas current use and occupation charges shall be paid by the non-applicants to the applicant by 10th of every month from next month i.e. September, 2026.

75 The instant application is allowed in the aforesaid terms.

76 Any expression of opinion, hereinabove, shall have no bearing on the merits of the case and shall be deemed to have been made only for the purpose of disposal of instant application.

21st August, 2026
(*pankaj*)

(Romesh Verma)
Judge