

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMP No. 23542 of 2025
in
Civil Revision No. 119 of 2025

Reserved on: 20.07.2026
Decided on: 05.08.2026
Uploaded on: 05.08.2026

Neeraj Kumar

...Non-applicant/petitioner

Versus

Dr. Kishore Kumar

...Applicant/respondent

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the applicant:

Mr. Ashok Sood, Senior Advocate with
Mr. Abhishek Banta, Advocate.

For the respondent:

Mr. Ajay Sharma, Senior Advocate
with Mr. Atharv Sharma, Advocate.

Jiya Lal Bhardwaj, Judge

By way of present application moved under Section 151 of the Code of Civil Procedure (in short "CPC"), the applicant-landlord has prayed for grant of use and occupation charges at the prevalent market rate of Rs.44,000/- per month from the date

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

of passing of the eviction order dated 05.07.2024 until the actual vacation of premises in question.

2. The applicant-landlord had filed the eviction petition under Section 14 of the Himachal Pradesh Urban Rent Control Act, 1987 (in short "the Act"), before the learned Rent Controller, Shimla, District Shimla, Himachal Pradesh, for eviction of the non-applicant/tenant from the premises consisting of two room set (converted into a single room) in ground floor (first floor) of building nos. 65, 66 and 67 (also known as Ashok Niwas), Middle Bazar, Shimla (in short "demised premises") on the grounds of (a) material alterations; (b) bonafide requirement for personal use and occupation; and (c) non-payment of arrears of rent.

3. The learned Rent Controller, vide order dated 05.07.2024, had partly allowed the petition and the applicant-landlord was held entitled for vacant possession of the demised premises on the grounds of (a) non-payment of arrears of rent and (b) bonafide requirement under Section 14(3)(d) of the Act. The non-applicant/tenant was directed to hand over the vacant possession of the demised premises within a period of one month from the date of the order, however, if he pays the arrears of rent

within a period of one month, he will not be evicted from the demised premises, on account of non-payment of arrears of rent.

4. The non-applicant/tenant feeling aggrieved by the order dated 05.07.2024 passed by the learned Rent Controller, preferred an appeal before the learned Appellate Authority, Shimla, however, the same was dismissed vide order dated 10.06.2025.

5. The non-applicant/tenant feeling aggrieved by the order passed by the learned Rent Controller, which has been affirmed by the learned Appellate Authority in appeal, has approached this Court by way of revision petition, which stands admitted on 20.07.2026. In this revision petition, the applicant-landlord has filed the present application seeking use and occupation charges from the non-applicant/tenant.

6. It has been averred that the applicant-landlord, once having been held to be the owner of the demised premises and further the learned Rent Controller had passed an order for eviction and the non-applicant/tenant is still occupying the premises, he is entitled to use and occupation charges, in view of various pronouncements of the Hon'ble Apex Court, wherein it

has been held that the landlord is entitled to receive the fair rent, in case the tenant is ordered to be evicted from the date of passing of the eviction order. It has also been averred that the non-applicant/tenant is liable to pay use and occupation charges at the prevalent market rate of Rs.250/- per square feet per month. The total area of the demised premises is 176 square feet and thus the applicant-landlord claimed a sum of Rs.44,000/- per month from the date of passing the eviction order. The prevalent market rate of the same and similar residential accommodation is more than Rs.250/- per square foot in the vicinity, as also, assessed by this Court in **Champeshwar Lall Sood and another versus Gurpartap Singh and others**, Latest HLJ 2017(HP) 589, which premises is also situated just opposite to the demised premises. The demised premises in question is located in prime residential and commercial location of the Mall Road area of Shimla and is having valuable potential and most suitable for running a Ortho Clinic by Ortho Doctor. It has also been averred that as per the judgment of the Hon'ble Supreme Court in ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.***, (2005) 1 SCC 705, once an eviction order is passed, the status of a

tenant ceases to be a tenant and occupation is unauthorized and is in breach of eviction order. Therefore, the non-applicant/tenant is liable to pay use and occupation charges equivalent to prevailing market rent of premises in urban area.

7. The non-applicant/tenant filed reply to the application and averred that the application filed under Section 151 of the CPC is neither competent nor maintainable, particularly in view of the fact that there is specific provision available in the CPC for determination of use and occupation charges. It has further been averred that as per Section 2 (12) of the CPC, the *mesne* profits has been defined as profits, which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.

8. It has further been averred that as per the provisions of Order XX Rule 12 of the CPC, where a suit for recovery of possession for immovable property and for rent or *mesne* profits is filed, the Court is entitled to pass a decree for possession and mesne profits. Further Order XX Rule 12 (1) (ba) and (iii) of the

CPC are directory and not mandatory. The Hon'ble Apex Court and this Court have held that in order to pass a decree for *mesne* profits, suit must be for possession and profit and not simplicitor for possession. Word "and" in sub-rule (1) of Rule 12 of Order XX of the CPC is conjunctive and postulates that prayer in the suit must be both (a) possession and (b) *mesne* profits and where it is not, as is in the case at hand, the application, as filed for use and occupation charges/*mesne* profit, is neither competent nor maintainable, particularly as no inquiry can be made on the basis of application, when the said plea has not been taken in the plaint.

9. It has also been averred that the non-applicant/tenant is in possession of the demised premises since early 1970 and rent @Rs.148/- per month inclusive of MC taxes etc. is being paid by him, as has been held in the impugned judgment passed by the Rent Controller in the main revision petition and as such the application claiming use and occupation charges @Rs.44,000/- per month, what to speak of *prima facie* but *ex facie* is not maintainable and liable to be dismissed.

10. On merits, it has been pleaded that the revision

petition preferred by the non-applicant/tenant is based on arguable points, more particularly with respect to *bonafides* of the applicant-landlord. No doubt, the eviction orders have been passed against him, but the matter being *sub-judice* in this Court, that too, in statutory revision petition, it cannot be said that the non-applicant/tenant is in unauthorized occupation, as is being stated by the applicant-landlord and thus prayed for dismissal of the application.

11. The applicant-landlord filed rejoinder to the reply and controverted the facts.

12. I have heard the learned senior counsel on both sides and also perused the record carefully.

13. It is not in dispute that the non-applicant/tenant is facing order of eviction, which has been passed by the Rent Controller on 05.07.2024. It is also not in dispute that the property is situated in the Middle Bazar, which is near to the Mall road. The order passed by the learned Rent Controller has been affirmed by the Appellate Authority in appeal. The revision petition preferred by the non-applicant/tenant has been admitted and the same is likely to take some time for final adjudication.

14. As per the application, no doubt the applicant-landlord has claimed a sum of Rs.44000/- per month as rent, but since no material fact has been placed on record, the Court cannot consider the said figure as the market value of the premises. The applicant-landlord has not even disputed the fact that the non-applicant/tenant is occupying the demised premises since 1970. No doubt, at the relevant time when the premises was let out to the non-applicant/tenant, the rent was fixed @Rs.148/- per month inclusive of MC taxes, however, at present, the demised premises is in occupation of the non-applicant/tenant and further he is facing the eviction order and enjoying the property since 1970. This Court can take judicial notice of the fact that the premises is located in the Middle Bazar, which is nearer to the Mall Road and if the same is let out, it can easily fetch a sum of Rs.15,000/- per month.

15. Mr. Ajay Sharma, learned senior counsel representing the non-applicant/tenant vehemently contended that as per the provisions of Section 2 (12) of the CPC, where *mesne* profits have been defined, as profits, which the person in wrongful possession of such property actually received, the same can be determined

only where a suit for recovery of possession for immoveable property and for rent is filed and the Court passes a decree. The said contention cannot be accepted for the reason that as per the law laid down by the Division Bench of this Court in ***Chaman Lal Bali and others vs. State of Himachal Pradesh and another***, 2016 (2) Shim.LC 1593, it has been held that no doubt there is no provision for claiming *mesne* profit for use and occupation charges, but after passing of the 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 could have been able to let out the premises and earn rent if the tenant could have vacated the premises. The relevant para of the judgment reads as under:-

"23. *In Marshall Sons and Co.(I) Ltd. vs. Sahi Oretrans (P) Ltd. and another (1999) 2 SCC 325, the Hon'ble Supreme Court after taking into consideration the invariable delay in Court proceedings held that reasonable mesne profit which may be equivalent to the market rent should be awarded to prevent parties in wrongful possession from taking undue advantage of lengthy delays in the main proceedings and thereafter in execution proceedings. It is apt to reproduce paras 4 and 6 of the judgment which read thus:*

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.

6. *Having considered the relevant submissions of the parties including the submissions with regard to market rent and without expressing any opinion on the*

merits of the contentions of the parties in the pending suit, we think it appropriate to dispose of this matter with the following directions:

(1) That the suit in question be disposed of as expeditiously as possible, preferably within one year from today;

(2) The respondents are directed to pay the mesne profits/compensation at the rate of Rs.10/- per sq. ft. from 1984 till today and at the rate of Rs.20/- from today till the disposal of the suit. While making this payment, the payments already made shall be adjusted. So far as the arrears are concerned, it be paid in 12 equal monthly instalments."

16. Once this Court has already adjudicated upon the issue that reasonable *mesne* profit, which may be equivalent to the market rent should be awarded to prevent parties in wrongful possession from taking undue advantage of lengthy delay in the main proceedings and thereafter in execution proceedings, the non-applicant/tenant, who is now in unauthorized possession has to pay reasonable amount of use and occupation charges. Thus, the plea taken by the learned senior counsel that the application is not maintainable under Section 151 of the CPC, when there is specific provision and further the *mesne* profits can be determined only where a suit for recovery of possession for

immoveable property and for rent is filed and the Court passes a decree, is rejected.

17. Learned senior counsel representing the non-applicant/tenant had vehemently argued that as per Order XX Rule 12 (1) (ba) and (iii) of the CPC, the provisions are directory and not mandatory and to pass a decree for *mesne* profits, the suit must be for possession and profits and not simpliciter for possession. Once the non-applicant/tenant is not disputing the possession, despite order of eviction passed against him, the plea taken by the learned counsel that the provisions are directory and not mandatory and furthermore, the suit must be for possession and profits is rejected in view of the law laid down by the Hon'ble Supreme Court in **Anderson Wright and Co. versus Amar Nath Roy and others**, (2005) 6 SCC 489, wherein it has been held that once a decree of eviction is passed, in the event of execution of the decree for eviction being stayed, 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 on being vacated by the tenant. The relevant paras of the judgment read

as under:

"5. As held by this Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, once a decree for eviction has been passed, in the event of execution of decree for eviction being stayed, the appellants can be put on such reasonable terms, as would in the opinion of the appellate court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed. It has also been held that with effect from the date of 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 on being vacated by the tenant. While determining the quantum of the amount so receivable by the landlord, the landlord is not bound by the contractual rate of rent which was prevalent prior to the date of decree.

6. The learned counsel for the appellants submitted that the appellants cannot be held liable to pay anything more than the standard rent of the premises, in spite of the decree for eviction having been passed as the same is subjudice. This submission needs a summary dismissal in view of the Judgment of this Court in *Atma Ram Properties (P) Ltd.'s case (supra)*. Both the parties have filed affidavit and counter affidavit, placing on record material giving the Court an idea of the rate of rent generally prevalent in the locality where the suit property is situated. Canara Bank on the first floor of this building is paying rent @ Rs. 25/- per sq. ft. other than

maintenance and municipal taxes. One Rumpa Ghosh entered as the tenant in the year 2002 is paying rent @ Rs. 32/- per sq. ft. Taking an overall view of the material made available by the parties, we think that the appellants should, from the date of the decree of the eviction, pay mesne profits/compensation for use and occupation @ Rs. 15/- per sq. ft. subject to final determination of the same by a competent forum."

18. From the above ruling of the Hon'ble Supreme Court, it is crystal clear that the Court after passing an order for eviction of tenant can always put the occupant of the premises to terms including payment of *mesne* profits. The purpose of awarding *mesne* profits or use and occupation charges is to put a check on the diabolical plans of a tenant, who has been ordered to be evicted and ensure that he does not squat on the premises by paying a meager rent. After the eviction order in favour of the landlord, he is entitled to receive the fair rent than the contractual rent.

19. The Hon'ble Supreme Court in ***Atma Ram's*** case (*supra*) has clearly held that the tenant with the passing of the decree of eviction is liable to pay *mesne* profits or compensation for use and occupation charges of the premises at the same rate

on which the landlord would have been able to let out the premises and earn rent.

20. The learned counsel for the non-applicant/tenant had vehemently argued that since the premises was let out to him @Rs.148/- per month, the amount claimed is highly excessive. No doubt, the applicant-landlord has not placed on record any cogent material, as already mentioned above, but keeping in view the fact that the premises is located in the heart of the city and further the Court is also considering the fact that the non-applicant/tenant is occupying the premises since 1970, the use and occupation charges @Rs.15000/- per month would be reasonable to be paid by him to the applicant-landlord from the date of passing the eviction order by the Rent Controller on 05.07.2024. Had the non-applicant/tenant not being in possession of the demised premises since 1970 and also not paying rent @Rs.148/- per month from the said date, this Court could have fixed more amount as use and occupation charges. Therefore, to balance the equities, since neither any documentary evidence has been placed on record by the applicant-landlord nor the non-applicant/tenant has placed on

record any material, which can suggest that the rent in the premises adjacent to the demised premises is of a particular amount, this Court after considering the fact the premises is located in the heart of city, is hereby ordering to pay a sum of Rs.15,000/- per month as use and occupation charges to the applicant-landlord from the date of passing the order of eviction by the learned Rent Controller.

21. Resultantly, the present application is allowed in the following terms:-

- (i) The non-applicant/tenant is ordered to pay use and occupation charges @Rs.15,000/- per month to the applicant-landlord w.e.f. 05.07.2024 i.e. from the date of eviction order passed by the Rent Controller;*
- (ii) The non-applicant/tenant is directed to deposit the arrears before this Court within four months from today, failing which, the eviction order shall become executable.*

The application stands disposed of accordingly.

5th August, 2026
(priti)

(Jiya Lal Bhardwaj)
Judge