IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.19286 of 2025
Date of Decision: 2.11.2026

Uttam Chand

.....Petitioner

Versus

Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni.

.....Respondent

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Mr. Vipin Pandit Advocate.

For the Respondent: Mr. Ramesh Chand Sharma, Advocate.

Sandeep Sharma, J. *(Oral)*

Being aggrieved and dissatisfied with order dated 23.09.2025 passed by learned Divisional Commissioner, Shimla Division Shimla, Camp at Solan in Revenue Appeal No. 126/2025 titled *Uttam Chand v. Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, Solan*, thereby rejecting application filed by the petitioner for condonation of delay in filing the appeal, petitioner has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India praying therein to set aside the aforesaid order.

2. Precisely the grouse of the petitioner as has been highlighted in petition and further canvassed by Mr. Vipin Pandit, learned counsel representing the petitioner is that learned Divisional Commissioner,

Shimla, while passing impugned order, failed to take note of the fact that limitation to file appeal against the order passed under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter referred to as the 'Act') shall commence from the date of publication of such order, not from the date of announcement of the order. He states that since order dated 10.11.2023 passed by learned Sub Divisional Collector, Solan, in Case No. 5/13-A of 2019 never came to be published, delay, if any, in filing the appeal against the aforesaid order, which otherwise stood explained, ought to have been condoned.

3. To the contrary, Mr. Ramesh Chand Sharma, learned counsel representing the respondent-University states that as per averments contained in the application filed by the petitioner, there was a delay of more than 148 days coupled with the fact that there was no plausible explanation rendered qua the aforesaid delay and as such, no illegality can be said to have been committed by learned Divisional Commissioner while passing the impugned order.

4. Having heard learned counsel representing the parties and perused material available on record, this Court finds that eviction proceedings were initiated against the petitioner under the Act for his having failed to pay arrears of rent. Learned Sub Divisional Collector,

Solan, in the case detailed hereinabove, vide order dated 10.11.2023, ordered eviction.

5. Being aggrieved and dissatisfied with the aforesaid order of eviction, petitioner preferred an appeal in the Court of learned District Judge, Solan, but since same was not maintainable before the aforesaid Court, petitioner, after having withdrawn the appeal from the aforesaid Court, filed the same before learned Divisional Commissioner. Since there was a delay in maintaining the appeal, an application under Section 5 of the Limitation Act also came to be filed. Since no plausible explanation was rendered for the delay in filing the accompanying appeal, learned Divisional Commissioner, vide impugned order dated 23.09.2025, proceeded to dismiss the appeal. In the aforesaid background, petitioner has approached this Court in the instant proceedings.

6. At this stage, it would be apt to take note of Section 9 of the Act, which reads as under:

> 9. Appeals.- (1) An appeal shall lie from every order of the Collector made in respect of any public premises under section 5 or section 7 to the Commissioner.
>
> (2) An appeal under sub-section (1) shall be preferred-
>
> (a) in the case of an appeal from an order under section 5, within thirty days from the date of publication of the order under subsection (1) of that section; and

> (b) in the case of an appeal from an order under section 7, within thirty days from the date on which the order is communicated to the appellant:
>
> Provided that the Commissioner may entertain the appeal after the expiry of the period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
>
> (3) Where an appeal is preferred from an order of the Collector, the commissioner may stay the enforcement of that order for such period and on such conditions as he deems fit.
>
> [(4) Every appeal under this section shall be disposed of by the Commissioner within a period of three months.]
>
> (5) The costs of any appeal under this section shall be in the discretion of the Commissioner."

Careful perusal of Section 9(2) clearly provides that appeal under sub section (1) can be filed within a period of thirty days from the date of publication of the order under sub section (1).

7. Having perused the aforesaid provision of law, this Court finds force in the submission of learned counsel representing the petitioner that period of limitation, if any, can be counted from the date of publication. However, in the instant case, order of eviction passed under Section 9(1) appears to have not been published, which fact has been otherwise admitted by both the parties. Even otherwise, careful perusal of order dated 10.11.2023 passed by learned Sub Divisional Collector, Solan, which came to be challenged by way of appeal, nowhere suggests that the same was

ordered to be published and as such, this Court otherwise has a reason to presume and believe that order dated 10.11.2023 was never published.

8. True, it is that as per averments contained in the application filed under Section 5 of the Limitation Act along with appeal, there was delay of more than 148 days, but once date for the purpose of counting limitation is not ascertainable on account of non-publication of eviction order passed in terms of Section 9(1), prayer made on behalf of the petitioner for condonation of delay ought not have been rejected by the learned Divisional Commissioner, rather he ought to have proceeded to decide the application on its own merits.

9. Moreover, this Court finds that prior to filing the appeal in the Court of learned Divisional Commissioner, petitioner, on the incorrect advice of counsel representing him, filed appeal before learned District Judge at first instance, as a result thereof, further delay was caused in approaching the appropriate court of law, i.e. Divisional Commissioner.

10. Reliance is placed upon judgment rendered by the Hon'ble Apex Court in case titled ***Sarwan Kumar etc. v. Union of India etc.***, AIR 1975 SC 1737, wherein paragraphs 5 and 6 read as under:

> "(5.) Sec. 9 of the Act provides for appeals. An appeal lies against an order under Sec. 5. In respect of an appeal from an order under Sec. 5, Sec. 9(2) provides a period of fifteen days "from the date of

publication of the order under Sub -section (1) of that section" It is apparent that the starting point of the period of limitation is the date on which the order under Sec. 5(1) of the Act is published. Now publication implies communication to the general public or to a Sec. thereof but not communication to an individual in his personal capacity, that is to say, in a capacity other than as a member of the public. The word "publication" has been defined in Webster's Third New International Dictionary to mean "Communication (as of news or information) to the public: public announcement: the act or process of issuing copies (as of a book, photograph, or music score) for general distribution to the public". Where copies are given by way of private communication it cannot be said that there is any publication. Stroud's Judicial Dictionary, sets out a number of illustrative cases from which it is clear that publication must necessary imply communication to the general public. Publication may be accomplished in a variety of ways according to the subject matter. While a book or other literary matter is published by being surrendered by its author for public use, its circulation amongst friends gratuitously or to pupils by lectures is not publication, nor is circulation amongst subscribers for their private use. A newspaper or periodical is published whenever and wherever it is offered to the public by the proprietor. A sculpture or bust is published when it is publicly exhibited.

(6.) The rules of limitation are technical rules of procedure and it is now settled law that they must be so construed. If the rule prescribes that limitation shall commence from a specified date, it cannot be construed as referring to any other date. Sec. 9(2) declares that the limitation for filing an appeal under Sec. 9(1) of the Act shall commence from the date of publication of the order under Sec. 5(1) of the Act. Publication of such order is effected when the copy of the

> order is affixed on the outer door or some other conspicuous part of the public premises. It is not effected when notice of the order is served personally on the individual found to be in unauthorised occupation of the public premises. The Appellate Officer has taken an erroneous view of the law in computing the period of limitation from the date of such service. The appellate order in each case is liable to be quashed."

11. Be that as it may, once it is not in dispute that order passed by learned Sub Divisional Collector, Solan was never published and there was no date notified for the purpose of counting limitation for filing appeal, this Court is persuaded to accept the prayer made in the instant petition, but while doing so, this Court in the interest of justice deems it fit to direct the petitioner to deposit arrears of rent from September 2017 till 20.02.2026, when possession of the shop in question was taken by the respondent University on account of non grant of stay against the order dated 10.11.2023. As per own calculations of the petitioner, sum of Rs. 7,75,710/- is payable for the aforesaid period.

12. Consequently, in view of the above, present petition is allowed and impugned order dated 23.09.2025 passed by learned Divisional Commissioner (Annexure P-9) is set aside with the direction to the Court of learned Divisional Commissioner, Shimla to decide Revenue Appeal No. 106/2025 on its own merits, subject to deposit of the aforesaid amount within a period of two weeks.

13. Needless to say, as and when the aforesaid amount is paid within a period of two weeks, possession of the shop in question shall be given back to the petitioner during the pendency of the appeal, merely to pursue his occupation. It is also made clear that petitioner further shall keep on paying rent on regular basis, failing which the respondent University shall be entitled to charge penal rent.

In the aforesaid terms, present petition is disposed of along with pending applications, if any.

November 02, 2026 **(Sandeep Sharma),**
(manjit) **Judge**