

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

Civil Revision No. 168 of 2024

Reserved on: 15.09.2025

Date of decision 07.10.2025.

Usha Chaudhary & others

...Petitioners.

Versus

Raj Prakash...Respondent.

*Coram:****The Hon'ble Mr. Justice Satyen Vaidya, Judge.****Whether approved for reporting?*¹Yes.

For the petitioners: Mr. S. D. Sharma, Advocate.

For the respondent: Mr. Pradeep K. Verma, Advocate.

Satyen Vaidya, Judge:

This Revision Petition has been filed under Section 25 (5) of the Himachal Pradesh Urban Rent Control Act, 1987 (for short the Act), to assail the judgment dated 17.8.2024, passed by learned Appellate Authority-II, Shimla in Rent Appeal No.09-S/13 of 2021, whereby the order of eviction passed by the learned Rent Controller, on 13.3.2024 in Rent Petition No.213-2 of 2021 has been affirmed.

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

2. The respondent herein (hereinafter referred to as the landlord) filed a petition under Section 14 of the Act, impleading respondents No. 1 to 3 (hereinafter referred to as the tenants) and respondent No.4 (hereinafter referred to as the sub-tenant) with the allegation that the tenants had sublet the premises to the sub-tenant.

3. It was alleged that the landlord had inducted Sh. Shrawan Chaudhary as a tenant in a shop, in Ward No.9, Lower Chakkar, Shimla. After the death of original tenant, the tenancy rights were inherited by the tenants, who had further sublet the premises to the sub-tenant. In addition, the eviction was also sought on the ground of arrears of rent. It was claimed that the tenants had not paid the rent w.e.f. July, 2014. The sub-tenancy was alleged to have been created in the month of April, 2021, without the written consent of the landlord.

4. The respondents had contested the claim of the landlord. The allegation of sub-tenancy was specifically denied. It was submitted that the tenants were in possession of the shop and were carrying the business therein in partnership with the sub-tenant. It was claimed

that the tenants had to enter into the partnership due to ill-health of Smt. Usha Chaudhary (respondent No.1). As regards the arrears of rent, it was submitted that the landlord had claimed the arrears in another case filed by him under the Act. The liability to pay the arrears of rent as claimed was also specifically denied.

5. The sub-tenant filed his separate reply and also raised defence in tune with the stand taken by the tenants. It was submitted that the sub-tenant was partner with the tenants on 50:50 profit and loss sharing basis in the business being run under the name and style of Shiv Trading Company in the demised premises. It was also submitted that except profit/loss share in the business, the sub-tenant had nothing to do with the demised premises.

6. Learned Rent Controller framed the following issues: -

- i) *Whether respondents No. 1 to 3 have sub-let the demised premises to respondent No.4, as alleged? OPP*
- ii) *Whether the respondents are under arrears of rent, as alleged? OPP*
- iii) *Whether the petition is not maintainable, as alleged? OPRs*

iv) *Whether the petition is bad for non-joinder of necessary parties, as alleged? OPRs.*

v). *Relief”.*

7. Issues No.1 and 2 were decided in affirmative and eviction was ordered by the learned Rent Controller on both the grounds.

8. The learned Rent Controller took notice of the partnership deed Ext. RX executed between the tenants and sub-tenant, more particularly, Clause-17 thereof, according to which, the liability to pay the rent, electricity bills, water bills after 1.5.2021 was that of the sub-tenant and in addition, the sub-tenant had also been made liable to pay Rs. 10,000/- per month to Smt. Usha Chaudhary (respondent No.1). The learned Rent Controller on the basis of oral evidence of the parties had found that two of the tenants were working outside the State and the tenant Usha Chaudhary was staying at Lakkar Bazar, Shimla. Notice was also taken of the admission made by tenant Smt. Usha Chaudhary to the effect that after the death of her husband, she did not sit in the shop.

9. On appreciation of the entire evidence, the learned Rent Controller came to the conclusion that the partnership deed had been executed to defeat the provisions of the Act. It was held that the sub-tenant was in user and control of the demised premises, which had been parted with by the tenants in his favour for consideration.

10. The learned Rent Controller further found the tenants to be in arrears of rent to the tune of Rs. 5,23,994/-.

11. The tenants and sub-tenant jointly filed appeal before the learned Appellate Authority, which also came to be dismissed *vide* judgment impugned herein. The learned Appellate Authority has affirmed the findings of facts recorded by the learned Rent Controller on issues No. 1 and 2. The said authority also viewed the execution of partnership deed Ext. RX in the same manner as was done by the learned Rent Controller. Consequently, the partnership was held to be a mere camouflage and, thus, all ingredients to prove subletting were found established.

12. I have heard learned counsel for the parties and have also gone through the record carefully.

13. At the outset, it will be relevant to take notice of the developments that have taken place during the pendency of this revision petition. The revision petition was dismissed on 16.5.2025 by this Court for non-prosecution, as none had appeared for the revision petitioners. An application being CMP No. 17405 of 2025 came to be filed under Order 9 Rule 9 read with Section 151 of the Code for restoration of the revision petition only on behalf of the sub-tenant. On notice, in the said application, the landlord filed reply and besides taking exceptions to the averments made in the application pointed out a fact that the tenants had agreed to handover the possession of the demised premises to the landlord. Copies of the orders passed by the Executing Court, evidencing such facts were placed on record.

14. This Court *vide* order dated 15.9.2025 allowed the restoration of the revision petition with observations that the effect of the changed circumstances would be considered while deciding the revision petition on merits.

15. Thus, the facts as have emerged are that the tenants have impliedly withdrawn their challenge to the eviction order. They have not come forward to get the revision petition restored. The fact that the tenants have decided to handover the possession of demised premises to the landlord has also not been controverted or refuted by the sub-tenant.

16. In above background, the learned counsel for the landlord vehemently argued that the revision petition on behalf of sub-tenant would not be maintainable. He would contend that the sub-tenant was not even a necessary party and the eviction order against the tenants would also bind the sub-tenant.

17. On the other hand, learned counsel for the sub-tenant placed reliance on the judgment passed by Hon'ble Supreme Court in ***Karam Singh Sobti and another*** vs. ***Sri Pratap Chand and another, AIR 1964 SC 1305*** to defend the action.

18. The landlord had filed the eviction petition by impleading tenant and sub-tenant as party respondents. Sub-tenant filed the statutory appeal under Section 24 of

the Act and at that stage the landlord does not appear to have taken such an objection. In *Karam Singh Sobti* (supra), Hon'ble Supreme Court has held as under: ◇

“23. The next question is as to the rights of the appellant in the absence of an appeal by the Association from the decision of the trial Court. This question does not present any real difficulty. The suit had been filed both against the tenant and the sub-tenant, being respectively the Association and the appellant. One decree had been passed by the trial judge against both. The appellant had his own right to appeal from that decree. That right could not be affected by the Association's decision not to file an appeal. There was one decree and, therefore, the appellant was entitled to have it set aside even though thereby the Association would also be freed from the decree. He could say that decree was wrong and should be set aside as it was passed on the erroneous finding that the respondent had not acquiesced in the sub-letting by the Association to him. He could challenge that decree on any ground available. The lower appellate Court was, therefore, quite competent in the appeal by the appellant from the joint decree in ejectment against him and the Association, to give him whatever relief he was found entitled to, even though the Association had filed no appeal.”

19. A sub-tenant is not a necessary party to a petition for eviction on the ground of subletting. The

eviction order against the tenant binds even the sub-tenant, but since in the instant case the landlord herself had impleaded sub-tenant as a party, keeping in view the exposition of law in *Karam Singh Sobti* (supra), it cannot be said that the sub-tenant is not the aggrieved party. Thus, the objection raised on behalf of the landlord cannot be sustained.

20. It is more than settled that this Court, while exercising revisional jurisdiction under the Act, will not sit as a Court of appeal. The findings of fact recorded concurrently by the original and appellate Court cannot be normally interfered with except in case where perversity or absolute illegality is found to have been committed. Similarly, reappraisal of evidence in revisional jurisdiction is not permissible. The revisional Court also cannot substitute its view for the view taken by the original and appellate Court if the same is found to be a possible one.

21. In ***Hindustan Petroleum Corporation Limited vs Dilbahar Singh, (2014) 9 SCC 78***, Hon'ble Supreme Court has held as follows:-

“31. We are in full agreement with the view expressed in *Sri Raja Lakshmi Dyeing Works* that where both expressions “appeal” and “revision” are employed in a statute, obviously, the expression “revision” is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression “appeal”. The use of two expressions “appeal” and “revision” when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a re-hearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an ‘appeal’ and so also of a ‘revision’. If that were so, the revisional power would become co-extensive with that of the trial Court or the subordinate Tribunal which is never the case. The classic statement in *Dattonpant* that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second Court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three Rent Control Statutes, the High Court is not conferred a status of second Court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.”

22. Similarly in ***Patel Valmik Himatlal and others***
vs. ***Patel Mohanlal Muljibhai (dead) through LRs., AIR***

1998 SC 3325, Hon'ble Supreme Court has expounded the legal principles as under:-

"6. The powers under section 29(2) are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to re-hear the matter and re-appreciate the evidence. The mere fact that a different view is possible on re-appreciation of evidence cannot be a ground for exercise of the revisional jurisdiction.

7. In the instant case we find that the High court fell into an error in re-appraising the entire evidence and recording a finding on the basis of that re-appreciation without in any way pointing out any error of law or material irregularity as may have been committed by the trial court or the first appellate court. In our opinion even the appreciation of evidence by the High Court was not correct. Certain facts were assumed by the High Court which were not on record and generalisation was made without any basis. In this connection a reference to paragraph 12 of the order of the High Court would be relevant. it reads:-

"12. This would clearly mean that starting of the said Branch office was clearly recorded in form of a Commission Agency Agreement in Exh. 78, another copy of which is at Exh. 110, and that was done openly and publicly inviting particularly the business community to attend the function.

If the idea was to sublet the premises, a tenant would hardly be expected to advertise the fact in this manner."

8. *The question whether or not the premises had been sublet could not be decided on the basis whether a tenant generally is "expected to advertise the fact in this manner". The findings recorded by both the trial court and the first appellate court based on a critical appreciation of the terms of the agreement Exh. 78 and the evidence led by the parties on the record suffered from no error or material irregularity. Both the courts had rightly come to the conclusion that the tenant had in fact sublet the suit premises and parted with the possession of the premises without consent of the landlord. There was no error committed by the courts below which required any correction at the hands of the High Court in exercise of its revisional jurisdiction. The judgment of the High Court, under the circumstances, cannot be sustained".*

23. Learned counsel for the sub-tenant has not been able to point out any perversity or illegality in the findings recorded by the original and Appellate Courts. He argued that the terms of partnership deed *inter-se* the respondents have been wrongly construed. According to the learned counsel for the sub-tenant, the *de-facto* possession of the

shop was with the tenants and the sub-tenant was a partner in the business only.

24. The contention so raised on behalf of the sub-tenant also deserves rejection for the reasons that the view formed by both the Courts is a possible view borne from the material on record. In order to substantiate their defence neither the tenants nor the sub-tenant had placed on record any transaction which could validate the terms of the partnership deed Ext. RX. No account books were produced to show that the sharing of profit and loss was in fact put to effect between the parties. On the other hand, Clause-17 of the partnership deed as has been read by the learned Rent Controller and Learned Appellate Authority needs no other interpretations. Evidently, the partnership deed was executed for dual purpose, *firstly* to camouflage the relationship and *secondly* to secure the interest of the tenants to get monthly income.

25. In result, I do not find any material to interfere with the concurrent findings of facts more particularly when no perversity or illegality can be attributed to the

view taken by the learned Rent Controller and the learned Appellate Authority.

26. Accordingly, the petition is dismissed. Pending applications, if any, also stand disposed of.

27. No order as to costs.

28. Record be sent back forthwith.

7th October, 2025
(kck)

(Satyen Vaidya)
Judge