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'C'

Code of Civil Procedure, 1908- Order 16 Rule 1- Order 39 Rule 2-A- Applicants filed an application pleading that respondents/revisionists had intentionally and voluntarily violated the interim order of Court –respondents denied these allegations- when the case was listed for the evidence of the respondents, name of 'S' an Advocate was mentioned as witness- 'S' refused to accept the summons on the ground that he is an Advocate for the applicant- when the Advocate was present, he was not examined on the ground that he is counsel for the applicant- aggrieved from the order, a revision was preferred- held, that a person who intends to summon a witness should state the purpose for which the witness is proposed to be summoned – respondent had not mentioned the purpose of examining the Advocate- it was stated in the Revision that the Advocate was being examined to prove the pleading filed in the Court- the pleadings signed and filed in Courts are not privileged communications- provision of privileged communication is not applicable to the pleadings- revision allowed and the respondent permitted to examine the advocate for proving the pleadings. Title: Chaman Lal son of Bhikham and others Vs. Sunder Lal son of Chander Mani Page-468

Code of Civil Procedure, 1908- Order 39 Rules 1 and 2- Plaintiff, a private limited Company took on lease the suit property along with building on yearly rent of Rs.1,60,000/- for a period of 20 years w.e.f. 1.5.2011 till 30.4.2031- plaintiff paid amount of Rs.4,80,000/- in advance by cheque and also paid Rs.1,80,000/- in cash – plaintiff also agreed that in future rent amount will be paid on or before 31st of every month of May when due- defendants threatened the plaintiff to vacate the premises on which the plaintiff filed the civil suit for seeking injunction- defendant No.1 pleaded that the premises was leased for a period of three years and plaintiff had handed over the possession to defendant No. 1- defendant No. 1 had alienated the suit land in favour of defendant No. 2- defendant No. 2 pleaded that he had purchased the suit property and possession was delivered to him- application filed by the plaintiff was dismissed by the trial Court- an appeal was preferred in which a Local Commissioner was appointed -Appellate Court allowed the appeal and granted the injunction- held, that the lease for more than one year is required to be compulsorily registered- lease deed in the present case was not registered but same can be used for collateral purpose- lease deed shows that possession was delivered to the plaintiff- no evidence was produced by the defendants to show that the lease was for three years and possession was handed over by the plaintiff after the expiry of three years- report of Local Commissioner shows that the plaintiff is in possession of suit land and defendant No. 2 had broken locks recently- a person in settled possession cannot be dispossessed except in accordance with law- hence, order modified and parties directed to maintain status quo qua nature and possession of the suit land till the disposal of the suit. Title: Sunil Kumar son of Shri Hira Lal Vs. Big Apple Berry Hospitality Pvt. Ltd Page-451

Constitution of India, 1950- Article 226- A direction was issued by the Single Judge to examine the case of the petitioners in the light of the orders of the appointment, which were contrary to the appointment policy- it was conceded by the petitioner that direction to examine the case of the petitioners in accordance with the offer of the appointment is not legally correct – he prayed that direction be issued to examine the case of the petitioners in the light of the policy which was prevailing at the time when the writ petitioners approached the writ respondents for appointment on compassionate ground - LPA disposed of with the direction to examine the case of the petitioners in the light of the decision of the Court in ***Surinder Kumar vs. State of H.P. and others, ILR 2015 HP (VI) 842 (DB).*** Title: Himachal Road Transport Corporation Vs. Lekh Ram (D.B.) Page-535

Constitution of India, 1950- Article 226- Deaths caused due to the jaundice outbreak in Shimla and Solan –- jaundice outbreak was the outcome of the inaction of the officers/officials/authorities and other concerned persons- earlier directions were issued to submit the compliance report and it was found that Lift Water Supply Scheme Ashwani Khad was not upto the mark- a suo moto cognizance was taken by the Court - Government had appointed a Special Investigating Team (SIT) for investigating into the matter- Investigating Agency and the State Government have virtually admitted that water from LWSS Ashwani Khad was polluted, contaminated, dirty and a cause for jaundice outbreak- direction issued for creation of post and statutory body, to be manned by a competent authority and members to deal with entire water supply system of Shimla and to submit compliance report after every two weeks- Investigating Officer has reported that only class-IV employees were checking the water supply from LWSS Ashwani Khad and the higher authorities had not taken any interest- they had not even inspected Ashwani Khad and the officers of the Municipal Corporation were also negligent/careless because they had not properly managed the Sewage Treatment Plants at Malyana and Dhalli- contractor for operation and maintenance of the STPs at Lal Pani, Dhalli, Sanjauli-Malyana, Summerhill and North Disposal had not taken any steps for the proper operation and maintenance of STPs- direction issued to the SIT to take investigation to its logical end by pinpointing responsible/involved officers from the year 2007- Secretary (IPH) had filed contradictory affidavit- District Magistrates, Superintendents of Police and the authorities concerned directed to implement the provisions of Food Safety and Standards Act- Principal Secretary (Education) commanded to direct all the educational institutions to follow the provisions of The Food Safety and Standards Act- Chief Medical Officers directed to furnish the details of all the persons, who are/were admitted in the hospitals, are/were under treatment because of jaundice along with the details of all those persons who had succumbed to the jaundice outbreak- Engineers of IPH, Department directed to show cause as to why they should not be dealt with in terms of the mandate of Contempt of Courts Act and prosecuted for filing false affidavits before the Court and for misleading the Court- interim compensation of Rs. 2 lacs awarded to the legal representatives of each of the deceased. Title: Court on its own motion Vs. State of Himachal Pradesh and others (D.B.) Page-471

Constitution of India, 1950- Article 226- Directions were issued to the respondents to take action in terms of the judgment titled ***Gauri Dutt & others vs. State of H.P.,*** reported in ***Latest HLJ 2008 (HP) 366***- held, that judgment was passed on the basis consent and LPA does not lie against the consent judgment – appeal dismissed. Title: The State of H.P. & another Vs. Kehar Singh & another (D.B.) Page-537

Constitution of India, 1950- Article 226- Judgment passed by the Court was cryptic- cases of the writ petitioners are squarely covered by the judgment passed by this Court in ***Paras Ram versus State of Himachal Pradesh and another CWP(T) No. 7712 of 2008,*** decided on 19.5.2009 – respondent directed to examine the case of the petitioner in the light of the judgment and to take the decision within six weeks. Title: State of H.P. and another Vs. Rewa Shankar Kaushik Shastri and others (D.B.) Page-538

Constitution of India, 1950- Article 226- Petitioner claimed that non-petitioners be directed to enhance the subsistence allowance along with admissible interest- case was registered against the petitioner for the murder of his wife for which he was arrested- he was suspended due to pendency of the criminal case- subsistence allowance at the rate of 50% of the total salary had been granted to the petitioner, whereas he claims subsistence allowance at the rate of 75%- respondent pleaded that subsistence allowance was not

enhanced by Review Committee in view of allegations of moral turpitude- held, that there is provision of review after three months and Review Committee had passed an order granting subsistence allowance at the rate of 50%- petitioner was suspended on account of grave criminal offence- there was no delay on the part of non-petitioner- hence, subsistence allowance @ 75% cannot be allowed- petition dismissed. Title: Parat Singh son of Shri Hari Ram Vs. The Regional Director Employees State Insurance Corporation & others Page-489

Constitution of India, 1950- Article 226- Petitioner was appointed as TGT in cantonment board against JBT post- School was upgraded from elementary to middle school- work was divided between the petitioner and non-petitioner No. 4- Govt. of H.P. issued a notification that where elementary school is part of middle school, Head Master of the School would be TGT- Board of Directors proposed the name of non-petitioner No. 4 for the post of head master- petitioner made representation but representation was not decided – it was resolved by the Board of Directors that non-petitioner No. 4 will be promoted for the post of Head Master- petitioner contended that non-petitioner No. 4 is not qualified and the promotion of non-petitioner No. 4 is in violation of promotion rules- respondent pleaded that non-petitioner No. 4 is the senior most teacher and is looking after the administrative duties - petitioner is JBT teacher and is the junior most- representation of the petitioner was rejected- held, that Departmental Promotion Committee had not recommended the name of the petitioner and, therefore, the petitioner cannot claim the promotion to the post of head master- non-petitioner No. 4 has been appointed on adhoc basis and a stop gap arrangement- writ petition dismissed and direction issued to non-petitioner No. 2 and 3 to fill up the regular post of head master in accordance with law. Title: Ashutosh Garg son of Sh Adesh Kumar Garg Vs. State of HP and others Page-439

Constitution of India, 1950- Article 226- Petitioners have called in question the scheme for lifting the water supply, namely, LWSS-Malwar and LWSS-Bhatoli-Baih, Dhamaan- held, that it was a policy decision made by the Government in public interest – policy decision cannot be made subject matter of a writ petition, unless arbitrariness is shown- the State has examined all the aspects and had taken the decision thereafter- the Court cannot sit in appeal over the decision of the Government, therefore, petition dismissed. Title: Jagdish Kumar Dhiman & others Vs. State of H.P. & others (D.B.) Page-484

Constitution of India, 1950- Article 226- Writ Petition has become infructuous in view of subsequent developments and by the efflux of time- hence, same is dismissed as infructuous. Title: Parveen Kumar Vs. State Election Commission and others Page-537

Constitution of India, 1950- Article 226- Writ petitioner approached the Court to seek direction against the respondent to regularize his services with 1996 with all consequential benefits and release the arrears of payment- prior to this, writ petitioner had approached the Administrative Tribunal vide OA No. 143 of 1991 decided on 3.12.1996- OA was disposed of with the observations that the writ petitioner had already completed 10 years of the services on December 31, 1995 as Pump Operator and as per the statement of learned Additional Advocate General, his services for regularization will be considered from 1996- relying upon the order of the Administrative Tribunal, the writ petition was dismissed by the Court- held, that the Writ petitioner could not have claimed any relief which was not prayed in that lis as the relief claimed was hit by Order 2 Rule 2 CPC read with Section 11 CPC- Writ Petition was rightly dismissed- appeal also dismissed. Title: Ghan Shayam Vs. State of Himachal Pradesh and another (D.B.) Page-539

'H'

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlady filed an application pleading that premises had become unsafe for human habitation- it required repair which cannot be carried out without vacating the premises- premises was required bonafide by the landlady as her son got married and second son is also going to marry- tenant denied these allegations- it was contended that landlady had not pleaded that she was not occupying another residential premises and that she had not vacated any such building without any sufficient cause- held, that there was no evidence to prove that landlady had another residential building in Urban area and that she had vacated the residential building within five years from the date of filing of the Eviction Petition- other tenants had agreed to vacate the premises on demand- mere fact that eviction petition has not been filed against them is not sufficient to dismiss the eviction petition- non examination of the expert is not material in view of the admission of the tenant that retaining wall had collapsed- petition cannot be dismissed on the ground that site plan was not filed by the landlady- it was duly proved that one son had married and other was going to marry- hence, plea of the landlady that she had insufficient accommodation is acceptable- Revision petition dismissed. Title: Vijender Sharma son of Parkash Sharma Vs. Uma Devi W/o Bhajan Lal Page-531

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlord filed an eviction petition against the tenant claiming that tenant is in arrears of rent, tenant had damaged the premises due to which the premises had become unfit and unsafe for human habitation- landlord required the premises bonafidely for the purpose of rebuilding which cannot be carried out without evicting the tenant- tenant denied all these allegations- petition was allowed on the ground of arrears of rent and that premises was bonafide required by the landlord for the purpose of rebuilding- an appeal was preferred before the Appellate Authority which was dismissed- a revision was preferred against the order of the Appellate Authority- held that the Architect had specifically stated in his report that premises would fall at any time and would cause injury to the public- even the court witness had stated that there were cracks in the building, beams had fallen and the premises was in deteriorating stage- tenant had not placed any evidence to counter the report of the expert- merely because approved site plan had not been placed on record, eviction cannot be declined - landlord can evict the tenant for rebuilding the premises to increase its economic utility - held, that in these circumstances, the order of the Appellate Court cannot be faulted, however, right of re-entry granted to the tenant. Title: Ramesh Chand Jaswal son of Sh. Mulakh Raj Vs. Roshan Lal Sharma son of Shri Lala Ram Page-492

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Rent Controller ordered the eviction of the tenant on account of arrears of rent- tenant failed to pay/tender the rent to the landlord and instead deposited it with the Rent Controller vide cheque dated 13.8.2009- held, that tenant in order to escape from the eviction has to pay the amount to the landlord - deposit with the Rent Controller will not help the tenant- application filed by the landlord allowed. Title: Hans Raj Khimta Vs. Kanwaljeet Kaur alias Sardarni Babli Page-541

Hindu Marriage Act, 1955- Section 13- Husband filed a petition for divorce pleading that the wife started torturing him mentally by not obeying his commands- she was also taken to Dharamshala and thereafter, she refused to join the company of the husband- wife denied the allegations- held, that allegations made by the appellant against the respondent are vague and sketchy – no specific incidence of defiance by wife was quoted – husband had not permitted the wife to live with him and he has deserted the wife- two years had also not

elapsed from the date of filing of the petition of divorce- District Judge had rightly dismissed the petition- appeal dismissed. Title: Ajay Singh Vs. Anubala Page-459

Hindu Marriage Act, 1955- Section 24- Husband filed a petition for divorce pleading that wife did not perform any marital obligations and used to become violent- she had also filed a criminal proceedings against the husband- wife pleaded that husband had subjected her to cruelty and he cannot be allowed to take advantage of his own wrong- a petition for maintenance pendente lite allowance and expenses was filed which was allowed- aggrieved from the order, present revision has been filed- held, that the purpose of providing maintenance is to provide financial assistance to the indigent spouse to maintain herself and to have sufficient funds to carry on litigation expenses- husband had admitted his income as Rs.15,000/- per month and it was not proved that wife was earning anything- hence, maintenance enhanced to Rs.5,000/- per month. Title: Payal wife of Shri Manish Chaudhary Vs. Manish Chaudhary son of Sh.Raghuvir Singh Chaudhary Page-486

'I'

Indian Evidence Act, 1872- Sections 45 and 112- Plaintiff pleaded that defendant No. 1 is not his legally wedded wife and defendants No. 2 to 4 are not his children and they have been born through the loins of defendant No. 5- plaintiff filed an application for subjecting defendants No. 2 to 5 to DNA test- the application was rejected- held, that Court had erred in dismissing the application- the paternity of the defendant was in issue, hence, application allowed. Title: Ram Gopal Vs. Vidya Devi & others Page-449

Industrial Disputes Act, 1947- Section 25- Petitioner was engaged on daily wage basis- his services were terminated in violation of mandatory provisions of Industrial Disputes Act- petitioner submitted demand notice for reconciliation of matter but conciliation failed- Labour Court dismissed the reference- respondent pleaded that petitioner was appointed as Driver on casual basis till the joining of new driver- petitioner was not ready to serve on daily wages and thereafter H was engaged- services of the petitioner were terminated in the year 2006- hence, no work was available for the driver - appointment of petitioner was stop gap arrangement- petitioner had not impleaded H and no order can be passed against him- petitioner was appointed as driver on daily wages for 89 days only or till the joining of the new driver- petitioner never completed 240 days in a calendar year- appointment on public post is always made through selection process and through recommendation of selection committee in accordance with law- there is no evidence on record that petitioner was appointed by proper advertisement, by adopting the proper selection process - regularization by way of back door entry is not permissible- Labour Court had rightly appreciated the evidence – petition dismissed. Title: Surender Kumar son of Girdhari Lal Vs. State of HP and others Page-525

Industrial Disputes Act, 1947- Section 25- Petitioners were engaged as workers- they were superannuated at the age of 57 years without complying with the certified and model standing orders- an industrial dispute was raised – conciliation was attempted but could not be effected- Labour Commissioner did not refer the matter to Labour Court- hence, a writ petition was filed- respondent pleaded that age of superannuation was enhanced to 60 years from 55 years - an appeal was filed before the Labour Court which was accepted and it was held that raising the age of the retirement ignoring the existing settlement between the parties is illegal- a writ petition was filed in which interim order was passed that company will not retire a person on the basis of new certified standing orders- held, that in view of interim order passed by Hon'ble High Court, the Labour Commissioner had rightly declined

to make the reference to the Labour Court- petition dismissed. Title: Joginder Singh son of Diwan Singh and others Vs. State of HP and another Page-444

'L'

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Title: HPPWD through Land Acquisition Collector HPPWD Winter Field Shimla and others Vs. Atma Ram son of Shri Thakur Dass & others Page-503

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Title: HPPWD through Land Acquisition Collector HPPWD Winter Field Shimla and others Vs. Balbir Singh son of Sh. Bhim Singh & others Page-505

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Title: HPPWD through Land Acquisition Collector HPPWD Winter Field Shimla and others Vs. Uma Dutt son of Shri Mata Ram & others Page-507

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Bakhalag Bapdoon Tal Behli road – compensation @ Rs.39,000/- per bigha regarding the cultivated land and Rs.6,000/- per bigha for non-cultivated land was awarded by Commissioner- a reference was sought- Reference Court enhanced the compensation @ Rs.31,000/- per bigha for cultivated land and Rs.64,000/- per bigha for non-cultivated land- interest and compensation were also awarded- aggrieved by the award, the present appeal has been preferred- separate appeals were preferred against the award made in favour of the some of the co-owners which were dismissed observing that amount involved is a petty amount-therefore, the present appeal is liable to be dismissed on the principle of the equality- appeal dismissed. Title: Land Acquisition Collector HP PWD and another Vs. Boru D/o Sh. Rama Page-447

Land Acquisition Act, 1894- Section 18- Land was acquired for the construction of Parbati Hydro Electric Project – award was pronounced and a reference was sought to District Court who enhanced the compensation to Rs. 20,000/- per biswa (Rs.4 lacs per bigha) irrespective of classification - interest @ 12% per annum and 30% compulsory acquisition charges were also awarded- aggrieved from the award, appeals were preferred- held, that 17 reference petition were disposed of by one award- some of the appeals filed against this award were dismissed, therefore, the present appeal is to be dismissed on the principle of equality- appeal dismissed. Title: Collector Land Acquisition National Hydro Electric Power Corporation Parbati Hydro Electric Project Vs. Tej Ram son of Dot Ram & others Page-443

'M'

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver of the vehicle was not having valid and effective driving licence- vehicle was being plied in contravention of the terms and conditions of the insurance policy- however, no evidence was led by Insurer to prove this fact- hence, Insurance Company was rightly made liable to pay compensation. Title: The New India Assurance Company Vs. Pratap Singh and others Page-513

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver did not have a valid driving licence- insurer had not led any evidence to prove that the driver did not have a valid and effective driving licence to drive the vehicle and that the owner had committed willful breach or had not exercised due care and caution- appeal dismissed. Title: United India Insurance Company Vs. Rakesh Kumar and others Page-529

Motor Vehicles Act, 1988- Section 149- Tribunal had awarded compensation of Rs.4.38 lacs, along with interest at the rate of 9% per annum from the date of filing of the claim petition till deposit- Tribunal had saddled the insurer with the right of recovery- once the Tribunal had recorded the findings the deceased was traveling in the vehicle as gratuitous passenger, the Insurer was rightly saddled with liability with the right of recovery- appeal dismissed. Title: United India Insurance Co.Ltd. Vs. Sabra Bibi and others Page-528

Motor Vehicles Act, 1988- Section 166- Claimant had sustained grievous injuries- she had lost her tooth and suffered fracture in the jaw- Tribunal had awarded compensation of Rs.50,000/- which is too meager- claimant had not questioned the award, hence, same was reluctantly upheld- appeal dismissed. Title: Hans Raj Thakur and another Vs. Leela Wati and another Page-502

Motor Vehicles Act, 1988- Section 166- Claimant had sustained permanent disability to the extent of 75%- keeping in view, all the factors and decision made by the Tribunal amount of Rs.2 lacs awarded in favour of the claimant along with interest @ 7.5% per annum from the date of the award. Title: Ankit Vs. Sanjeev Kumar and others Page-497

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that accident had taken place due to the negligence of the respondent No.1- respondents No.1 to 5 stated that accident was the result of rash and negligent driving of the deceased who was driving the motorcycle and could not control the same- claimants examined the witnesses to prove this fact- however, no evidence was led by the respondent to prove the contrary- held, that it was prima facie proved that Tractor was being driven rashly and negligently by respondent No.1- the income of the deceased can be taken as Rs.4,000/- per month by guess work - after deducting 1/3rd amount towards personal expenses, claimants have lost source of

dependency to the extent of Rs.2,500/- per month- multiplier of '16' applicable- thus, claimants are entitled to Rs. 4,80,000 (2500/- x 12 x 16) under the head loss of dependency – amount of Rs.10,000/- each awarded under the heads 'loss of love and affection', 'loss of consortium', 'loss of estate' and 'funeral expenses' along with interest @ 7.5% per annum from the date of the filing of the petition. Title: Sitara Begum Vs. Mohd Nawab & others Page-522

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that monthly income of the deceased was Rs.3,000/- per month- deceased was bachelor and his age was 22 years at the time of accident- held, that Tribunal had fallen in error in deducting 1/3rd of the amount towards personal expenses of the deceased- 50% of the amount was to be deducted towards personal expenses- thus, claimants had lost source of dependency to the extent of Rs.1,500/- per month, applying multiplier of '16' – Claimants are entitled to Rs. 2,88,000/- (1500/- x 12 x 16) under the head loss of dependency- amount of Rs.10,000/- each awarded under the head loss of 'love and affection', 'loss of estate' and 'funeral expenses'- thus, total amount of Rs. 3,18,000/- awarded with interest at the rate of 7.5% per annum from the date of filing of the claim petition. Title: Laxmi Devi & others Vs. Brij Raj & others Page-509

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Versus

State of HP and others. ....Non-petitioners

CWP No. 11745 of 2011.
Order reserved on: 30.12.2015.
Date of Order: February 24, 2016

Constitution of India, 1950- Article 226- Petitioner was appointed as TGT in cantonment board against JBT post- School was upgraded from elementary to middle school- work was divided between the petitioner and non-petitioner No. 4- Govt. of H.P. issued a notification that where elementary school is part of middle school, Head Master of the School would be TGT- Board of Directors proposed the name of non-petitioner No. 4 for the post of head master- petitioner made representation but representation was not decided – it was resolved by the Board of Directors that non-petitioner No. 4 will be promoted for the post of Head Master- petitioner contended that non-petitioner No. 4 is not qualified and the promotion of non-petitioner No. 4 is in violation of promotion rules- respondent pleaded that non-petitioner No. 4 is the senior most teacher and is looking after the administrative duties - petitioner is JBT teacher and is the junior most- representation of the petitioner was rejected- held, that Departmental Promotion Committee had not recommended the name of the petitioner and, therefore, the petitioner cannot claim the promotion to the post of head master- non-petitioner No. 4 has been appointed on adhoc basis and a stop gap arrangement- writ petition dismissed and direction issued to non-petitioner No. 2 and 3 to fill up the regular post of head master in accordance with law. (Para-6 to 11)

For the petitioner	:	Mr.S.D.Gill, Advocate.
For non-petitioner-1	:	Mr.Rupinder S.Thakur, Addl. Advocate General with Mr. J.S.Rana Asstt. Advocate General.
For non-petitioners-2&3:		Ms.Ritta Goswami, CGC.
For non-petitioner-4:		Mr.Bimal Gupta, Sr. Advocate with Mr. Vaneet Advocate.

The following order of the Court was delivered.

P.S.Rana Judge.

Present civil writ petition is filed under Article 226/227 of the Constitution of India with relief to issue direction to non-petitioners No. 2 and 3 Chief Executive Officer Kasaulit Cantt and G.O.C-in-command Chandi Temple Panchkula Haryana not to promote non-petitioner No.4 namely Smt. Paramjeet Kaur as headmaster of cantonment board middle school Kasauli District Solan HP. Additional relief also sought that resolution No. 104 passed in the meeting by board of directors dated 23.12.2011 be quashed and set aside. Further additional relief also sought that non-petitioners No. 1 to 3 be directed to promote petitioner as headmaster of cantonment board middle school Kasauli HP.

Brief facts of the case:

2. It is pleaded that on dated 16.2.2001 petitioner was appointed as TGT teacher in cantonment board school Kasauli Tehsil Kasauli District Solan HP against JBT post. It is pleaded that on dated 25.2.2003 cantonment board school was upgraded from elementary school to middle school and supervision work was divided between the petitioner and non-petitioner No. 4. It is further pleaded that non-petitioner No.4 was given classes 1st to 5th standard and petitioner was given classes 5th to 8th standard. It is further pleaded that on dated 20.4.2005 government of HP issued notification that where elementary school is part of middle school and is being run within building of middle school then the headmaster of school would be TGT or must be having academic qualification of minimum graduation. It is further pleaded that on dated 29.5.2007 meeting of Board of Directors of management of school was convened and name of non-petitioner No.4 was proposed for the post of headmaster but the same was deferred. It is further pleaded that on dated 27.6.2007 the meeting of Board of Directors of management of school convened again and resolution No. 27 was passed. According to resolution the post of TGT was to be created for appointment of headmaster. It is further pleaded that on dated 27.12.2008 and 30.10.2009 petitioner represented to non-petitioners No. 2 and 3 Chief Executive Officer Kasaulit and G.O.C-in-Command Western Command Chandi Temple Paunchkula for redressal of his grievance but till date representation not decided. It is further pleaded that thereafter on dated 29.12.2008 block primary education officer inspected the school and had given inspection report that headmaster should be graduate or TGT. It is further pleaded that on dated 23.12.2011 Board of Directors passed resolution No. 104 vide which Board of Directors resolved that non-petitioner No.4 would be promoted to the post of headmistress. It is further pleaded that non-petitioner No.4 is not qualified for the post of headmistress as the qualification of non-petitioner No.4 is matric with JBT. It is further pleaded that promotion of non-petitioner No.4 is in violation of promotion rules. It is further pleaded that promotion of non-petitioner No.4 effected the promotion avenue of petitioner. Prayer for acceptance of writ petition sought.

3. Per contra response filed on behalf of non-petitioners pleaded therein that civil writ petition is not maintainable. It is pleaded that petitioner was appointed as JBT teacher in cantonment board school Kasauli HP during the year 2000. It is further pleaded that thereafter school was upgraded into middle school. It is further pleaded that middle school is running by way of engaging teachers on contract basis every year with prior approval of GOC-in-Command in the interest of general public. It is further pleaded that there is no permanent sanctioned strength of teachers in the section of middle school. It is further pleaded that in the primary section there is sanctioned strength of seven JBT teachers including headmistress. It is further pleaded that post of headmistress was lying vacant since 2006 due to retirement of headmistress of school. It is further pleaded that non-petitioner No.4 Smt. Paramjeet Kaur is senior most teachers in school and also looking after the duties of officiating headmistress of school since 2006. It is further pleaded that petitioner is JBT teacher in cantonment board school and is junior most teacher than non-petitioner No.4. It is further pleaded that two other JBT teachers are senior most teacher than petitioner. It is further pleaded that being junior teacher in school the claim of petitioner for promotion as headmaster is not correct. It is further pleaded that behaviour of petitioner with his superior and other teachers is not satisfactory. It is further pleaded that explanation was called from petitioner to maintain decorum in the school and warning was also given to petitioner by disciplinary authority. It is further pleaded that there is no regular post of TGT teacher in middle school. It is further pleaded that middle section is run by engaging teachers on contract basis. It is further pleaded that sanction to fill up the vacant post of headmistress in cantonment board primary school by promotion was accorded by

Directorate DEWC. It is further pleaded that post of headmaster was given to senior most JBT teacher. It is further pleaded that representation filed by petitioner for promotion to the post of head teacher in cantonment board school was considered and rejected. It is further pleaded that although qualification of petitioner is B.Sc B.Ed but he was appointed in regular post of JBT teacher. It is further pleaded that there is no regular post of TGT in middle school. It is further pleaded that non-petitioner No.4 has been promoted as headmistress in primary section of school only. It is further pleaded that petitioner being JBT and junior most teacher amongst other JBT teachers petitioner has no right to file present civil writ petition. Prayer for dismissal of writ petition sought.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Advocate appearing on behalf of non-petitioners and also perused entire record carefully

5. Following points arise for determination in the present writ petition:

(1) Whether civil writ petition filed under Articles 226/227 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?

(2) Relief.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner be promoted as headmaster of cantonment board school Kasauli in middle section automatically on the basis of higher qualification of B.Sc. B.Ed. is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that promotion is always given as per recommendation of departmental promotion committee and there is no evidence on record in order to prove that departmental promotion committee has recommended the name of petitioner for the post of headmaster in middle section of school. It is held that unless there is recommendation of departmental promotion committee in favour of petitioner non-petitioners cannot be directed to promote the petitioner automatically as headmaster of middle school wing.

7. Submission of learned Advocate appearing on behalf of petitioner that qualification of non-petitioner No.4 Smt. Paramjeet Kaur is matric with JBT and she was not eligible to be appointed as headmistress of middle school wing as of today is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that as of today no regular post has been created in the middle wing of school. It is also proved on record that only teachers on contract basis are attached in middle wing of school. As per instruction of HP Board of School Education Dharamshala following teachers should be appointed in middle school:

(i) Headmaster-I(TGT/PGT)

(ii) TGT-2 (Science & Arts)

(iii) Shastri/LT-I

(iv) Arts & Craft Teacher-I

(v) Pet-I

(vi) Peon-I

It is proved on record that no regular appointment has been conducted as of today in the middle wing of school. It is well settled law that all regular appointments are conducted on the basis of merits after advertisement of regular post in accordance with law. There is no evidence on record that advertisement was issued relating to middle wing of school for the regular post.

8. It is proved on record that Smt. Paramjeet Kaur has been appointed as headmistress of school on adhoc basis only and as a stop gap arrangement. It is proved on record that Smt. Paramjeet Kaur is senior most teacher in school and petitioner is not senior most teacher in the school and there are also two other teachers who are senior to petitioner in school. As per notification No. EDN-C.A(1)-2/2004 dated 31.10.2005 all existing primary and middle schools operating from the same building will merge into single elementary school and their separate identity will cease to exist. As per notification dated 31.10.2005 staff both teaching and non-teaching working in these primary and middle schools will merge and formulate a common time table mark attendance on a single register and work as a single unit.

9. As per notification of government of Himachal Pradesh September 2006 the promotion quota from JBT and C&V cadres to the post of TGT would be as follows:

1 Direct recruitment	25%
2 Batchwise recruitment	25%
3 By promotion from JBT	30%
4 By promotion from C&V	20%

It is prima facie proved on record that cantonment board school Kasauli was upgraded from primary section to middle section w.e.f. February 2003. It is proved on record that block primary education officer Dharampur District Solan HP has conducted inspection of the school on dated 29.12.2008 and submitted inspection report. Block primary education officer Dharampur has specifically mentioned in his inspection report that number of TGT teaches are not sufficient for the classes of middle section and post of headmaster is vacant since 2006. Block primary education officer has specifically mentioned in his report that presently Smt. Paramjeet Kaur is officiating as headmistress and her qualification is matric with JBT. Block primary education officer Dharampur has further mentioned in his inspection report that lacuna should be filled up at the earliest possible because headmaster in the middle wing should be graduate.

10. It is prima facie proved on record that Smt. Paramjeet Kaur, Smt. Pratima Kalyani, Smt. Mamta, Sh. Pardeep Kumar, Sh. Rakesh Kashyap, Sh. Krishan Pal, Smt. Suman, Smt. Sapna Mehta and Surekha Sharma have filed complaint against petitioner Ashutosh Garg before Chief Executive Officer cantonment board Kasauli relating to his mis-behaviour. It is prima facie proved on record that thereafter Chief Executive Officer has sought explanation of petitioner Ashutosh Garg on dated 17.8.2007 vide explanation No. CBK/Estt/23737. It is proved on record that thereafter on dated 23.8.2007 warning was given to petitioner Ashutosh Garg to be careful in future and warning was also given that such type of act should not be repeated. In view of the fact that departmental promotion committee did not recommend the name of petitioner for the post of headmaster in middle wing of school and warning was also given to petitioner by competent authority of law as per complaint given by nine persons against petitioner and in view of fact that petitioner did not challenge warning order before any competent authority of law and in view of fact that Smt. Paramjeet Kaur has been appointed as headmistress only as officiating headmistress and as a stop gap arrangement court is of the opinion that it is not expedient in the ends of justice to allow writ petition filed by petitioner Ashutosh Garg. Hence point No.1 is answered accordingly.

Point No.2 (Relief).

11. In view of finding upon point No.1 writ petition filed by petitioner is dismissed. However non-petitioners No.2 and 3 Chief Executive Officer Kasaulit Cantt and G.O.C-in- Command Chandi Temple Panchkula Haryana are directed to fill up regular post

of headmaster/ headmistress in the middle wing of school expeditiously in accordance with law within three months in view of deficiency pointed out by Block Primary Education Officer Dharampur District Solan HP in his inspection report dated 29.12.2008 placed on record. No order as to costs. Writ petition is disposed of. All miscellaneous application(s) are also disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Collector Land Acquisition National Hydro
Electric Power Corporation Parbati Hydro Electric Project. ....Appellant

Versus

Tej Ram son of Dot Ram & others ....Respondents

RFA No. 7 of 2008
Order Reserved on 22nd January 2016
Date of Order 24th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for the construction of Parbati Hydro Electric Project – award was pronounced and a reference was sought to District Court who enhanced the compensation to Rs. 20,000/- per biswa (Rs.4 lacs per bigha) irrespective of classification - interest @ 12% per annum and 30% compulsory acquisition charges were also awarded- aggrieved from the award, appeals were preferred- held, that 17 reference petition were disposed of by one award- some of the appeals filed against this award were dismissed, therefore, the present appeal is to be dismissed on the principle of equality- appeal dismissed.

For the Appellant: Mr. Rajnish Maniktala Advocate.
For Respondent No.1: Mr. Sanjeev Kuthiala, Advocate.
For Respondents Nos. 2 & 3: Mr.M.L. Chauhan Additional Advocates General.

The following order of the Court was delivered:

P.S. Rana, Judge

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned Additional District Judge Fast Track Court Kullu (H.P.) on 29.9.2007 in land reference case No. Tej Ram and others vs. Collector Land Acquisition and others.

Brief facts of the case

2. Notification under Section 4 of Land Acquisition Act 1894 was issued on 5.12.2000 whereby it was proposed to acquire land situated in Phati Dhaugi Sub Tehsil Sainj for construction of Parbati Hydro Electric Project. After completing all formalities Land Acquisition Officer Sub Divisional Officer (Civil) Kullu announced the award on 4.1.2002. Thereafter respondents preferred reference petitions under Section 18 of Land Acquisition Act 1894 before learned Court below pleaded therein that land is situated near Sainj market which is central market of the area and land is potential of raising orchard, growing vegetables, construction of commercial buildings and hotels. It is pleaded that market value of land was not adequately assessed.

3. Learned Additional District Judge Fast Track Court Kullu H.P. passed the award on 29.9.2007 and enhanced the compensation at the rate of Rs.20,000/- (Rupees twenty thousand only) per biswa (Rs.4 lacs per bigha) irrespective of nature, kind and classification of land. Learned Additional District Judge Kullu further granted interest @ 12% per annum on enhanced amount of compensation and also awarded 30% compulsory acquisition charges on enhanced amount of compensation. Learned Additional District Judge further directed that owners will be entitled to the interest on enhanced amount of compensation at the rate of 9% for first year from the date of notification under Section 4 of Act and thereafter 15% per annum till the amount is deposited in Court. Learned Additional District Judge further directed that Collector would pay interest as specified under Section 34 of Act to owners if not paid as a whole or any part thereof after due calculation.

4. Court heard learned Advocate appearing on behalf of appellant and learned Advocate appearing on behalf of respondent No. 1 and learned Additional Advocate General appearing on behalf of respondents Nos. 2 and 3 and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 7 of 2008:-

1. Whether RFA No. 7 of 2008 is covered matter as per award announced by Hon'ble High Court on 26.11.2014 in RFA Nos. 6 of 2008, 8 of 2008 to 15 of 2008 and 17 of 2008 to 22 of 2008?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that learned Additional District Judge (Fast Track Court) Kullu H.P. disposed of 17 reference petitions vide one award dated 29.9.2007. It is proved on record that Hon'ble High Court of H.P. on 26.11.2014 dismissed similar nature RFA Nos. 6 of 2008, 8 of 2008 to 15 of 2008 and 17 of 2008 to 22 of 2008 filed against the same award passed by learned Additional District Judge (Fast Track Court) Kullu (H.P.). While applying the concept of Article 14 of Constitution of India i.e. equality before law Court is of the opinion that it is expedient in the ends of justice to dismiss the present RFA also. Order passed by Hon'ble High Court in aforesaid RFA's will apply mutatis mutandis in present RFA No. 7 of 2008. Point No. 1 is answered accordingly.

Point No. 2 (Relief)

7. In view of findings on point No.1 present RFA No. 7 of 2008 is dismissed. No order as to costs. RFA No. 7 of 2008 is disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Joginder Singh son of Diwan Singh and others. .....Petitioners.

Vs.

State of HP and another. ....Non-petitioners

CWP No. 6672 of 2010.
Order reserved on: 30.12.2015.
Date of Order: February 24, 2016

Industrial Disputes Act, 1947- Section 25- Petitioners were engaged as workers- they were superannuated at the age of 57 years without complying with the certified and model

standing orders- an industrial dispute was raised – conciliation was attempted but could not be effected- Labour Commissioner did not refer the matter to Labour Court- hence, a writ petition was filed- respondent pleaded that age of superannuation was enhanced to 60 years from 55 years - an appeal was filed before the Labour Court which was accepted and it was held that raising the age of the retirement ignoring the existing settlement between the parties is illegal- a writ petition was filed in which interim order was passed that company will not retire a person on the basis of new certified standing orders- held, that in view of interim order passed by Hon'ble High Court, the Labour Commissioner had rightly declined to make the reference to the Labour Court- petition dismissed. (Para-6 to 9)

For the petitioner :Mr. V.D.Khidtta, Advocate.
For non-petitioners :Mr.Rupinder S.Thakur, Addl. Advocate General with Mr. J.S.Rana, Asstt. Advocate General.

The following order of the Court was delivered:

P.S.Rana Judge.

Present civil writ petition is filed under Article 226 of the Constitution of India with prayer that impugned order dated 18.9.2009 passed by non-petitioner No. 2 Labour Commissioner HP be quashed and set aside. Further prayer sought that non-petitioner No.2 Labour Commissioner HP be directed to send reference of petitioners to learned Labour Court for adjudication on merits.

BRIEF FACTS OF THE CASE:

2. It is pleaded that in the year 1978 petitioners were engaged as workers in M/s Purolator India Limited Company at Parwanoo and were working as skilled workers till 24.9.2007. It is further pleaded that on dated 24.9.2007 all petitioners were superannuated at the age of 57 years without complying certified standing orders and model standing orders. It is further pleaded that on dated 15.12.2007 all petitioners submitted demand notices to management as well as to Labour Inspector-cum-Conciliation Officer Solan for conciliation of matter. It is further pleaded that conciliation could not be effected and thereafter Labour Commissioner HP in the month of September 2009 did not refer the matter to learned Labour Court for adjudication. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners No.1 and 2 pleaded therein that superannuation age was enhanced from 55 years to 66 years. It is further pleaded that after enhancement of retirement age from 55 years to 60 years management of M/s Purolator India Limited Parwanoo District Solan HP filed appeal before learned Labour Court Shimla which was accepted by learned Labour Court and learned Labour Court held that raising the age of retirement from 55 to 60 years ignoring the existing settlement entered into between the parties is illegal. It is further pleaded that thereafter civil writ petition filed before Hon'ble High Court of HP against the order of learned Labour Commissioner. It is further pleaded that during the pendency of civil writ petition before Hon'ble High Court of HP petitioners retired at the age of 55 years. It is further pleaded that during the pendency of civil writ petition Hon'ble Division Bench High Court of HP passed order that Company would not retire the employee on the basis of new certified standing orders till further orders in view of the fact that matter is subjudice before Hon'ble Apex Court of India. It is further pleaded that present writ petition is bad for non-joinder of necessary party i.e. the management of M/s Purolator India Limited Parwanoo District Solan HP. Petitioner filed re-joinder and re-asserted the allegations mentioned in writ petition.

4. Court heard learned counsel appearing on behalf of petitioners and learned counsel appearing on behalf of non-petitioners and also perused entire record carefully.

5. Following points arise for determination in the present writ petition:

(1) Whether civil writ petition is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?

(2) Relief.

Finding upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner be retired at the age of 60 years in view of latest certified standing order and middle standing order and matter be referred to learned Labour Court for adjudication is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that M/s Purolator India Limited Parwanoo filed appeal under Section 6 of Industrial Employment (Standing orders) Act 1946 against the order of Joint Labour Commissioner dated 15.11.2003 titled M/s Purolator India Ltd. Vs. Purolator Workers Union and another. It is proved on record that Industrial Tribunal-cum-Labour Court Shimla HP in appeal No.1 of 2004 decided on 22.9.2007 held in similar nature case that M/s Purolator Workers Union and another is debarred from agitating any demand in view of existing settlement entered between M/s Purolator India Ltd. Vs. Purolator Workers Union and another relating to raising the age of retirement from 55 years to 60 years. It is proved on record that learned Labour Court set aside order dated 15.11.2003 passed by Joint Labour Commissioner. It is also proved on record that thereafter Purolator Workers Union filed CWP No. 1645 of 2007 before Hon'ble High Court of HP. It is prima facie proved on record that on dated 13.3.2008 Hon'ble Division Bench High Court of HP passed following orders which is quoted in toto:

13.3.2008 Present: Mr.V.D.Khidta, counsel for the petitioner.
Mr.Dushyant Dadwal, counsel for Respondent No.1.
Mr.R.K.Bawa, Advocate General with Mr.J.K.Verma, Deputy General for respondents No. 2 and 3.

Mr.Dushyant Dadwal submits that this case is more or less covered by the judgment of this Court in LPA No. 73 of 2007. However he submits that the company in that case has approached the Supreme Court and the matter is fixed for 24th March 2008. He requests that the matter be taken up thereafter. This request is accepted.

It is however made clear that the respondent-company shall not retire the employee on the basis of new certified standing orders till further orders of this Court.

Sd/-
Judge
Judge

March 13 2008.

Hon'ble Division Bench High Court of HP on dated 13.3.2008 in CWP No. 1645 of 2007 held that order passed in LPA No. 73 of 2007 is challenged before Hon'ble Apex Court of India and matter of similar nature is subjudice before Hon'ble Apex Court of India. Court is of the opinion that as similar nature of matter is subjudice before Hon'ble Apex Court of India against the order passed by High Court of HP in LPA No. 73 of 2007 the case of the petitioner will also be covered as per decision of Hon'ble Apex Court of India relating to LPA No. 73 of 2007.

7. Submission of learned Advocate appearing on behalf of petitioner that learned Labour Commissioner was under legal obligation to refer the matter to learned Labour Court for adjudication is rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused order of learned Labour Commissioner. Learned Labour Commissioner has specifically mentioned in his order dated 18.9.2009 that Purolator Workers Union filed an application before Certifying Officer for amendment the age of retirement from 55 years to 60 years and thereafter Joint Labour Commissioner –cum-Certifying Officer vide order dated 15.11.2003 amended the age of retirement from 55 years to 60 years. Learned Labour Commissioner has further mentioned in his order dated 18.9.2009 that thereafter company filed an appeal against the order dated 15.11.2003 before learned Labour Court and the appeal was allowed by learned Labour Court Shimla on dated 22.9.2007. Learned Labour Commissioner has specifically mentioned in his order that the workers Union has filed CWP No. 1645 of 2007 before Hon'ble Division Bench High Court of HP and High Court of HP directed that company would not retire the employee on the basis of new certified standing orders till further orders of Court. It is proved on record that learned Labour Commissioner has declined to send reference to learned Labour Court for adjudication in view of the direction of Hon'ble Division Bench High Court of HP passed in CWP No. 1645 of 2007 dated 13.3.2008. It is prima facie proved on record that learned Labour Commissioner has simply comply interim order of Hon'ble Division Bench High Court of HP passed in CWP No. 1645 of 2007 dated 13.3.2008.

8. In view of the fact that interim order was passed by Hon'ble Division Bench High Court of HP on dated 13.3.2008 in CWP No. 1645 of 2007 quoted supra and in view of the fact that judgment passed in LPA No. 73 of 2007 was challanged before Hon'ble Apex Court of India and in view of fact that matter is subjudice before Hon'ble Apex Court of India it is held that it is not expedient in the ends of justice to allow civil writ petition. Petitioner did not place on record any final decision of Hon'ble Apex Court of India relating to LPA No. 73 of 2007. Hence point No.1 is answered accordingly.

Point No.2 (Relief).

9. In view of finding upon point No.1 it is held that final decision of Hon'ble Apex Court of India relating to LPA No. 73 of 2007 will be followed in CWP No. 6672 of 2010 titled Joginder Singh and others Vs. State of HP and another. No order as to costs. Writ petition is disposed of. All miscellaneous application(s) are also disposed of.

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BEFORE HON'BLE MR. P.S.RANA,J.

Land Acquisition Collector HP PWD and another ....Appellants.

Versus

Smt. Boru D/o Sh. Rama ...Respondent.

RFA No. 373 of 2004.
Order reserved on: 22.1.2016.
Date of order: February 24, 2016.

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Bakhalag Bapdoon Tal Behli road – compensation @ Rs.39,000/- per bigha regarding the cultivated

land and Rs.6,000/- per bigha for non-cultivated land was awarded by Commissioner- a reference was sought- Reference Court enhanced the compensation @ Rs.31,000/- per bigha for cultivated land and Rs.64,000/- per bigha for non-cultivated land- interest and compensation were also awarded- aggrieved by the award, the present appeal has been preferred- separate appeals were preferred against the award made in favour of the some of the co-owners which were dismissed observing that amount involved is a petty amount- therefore, the present appeal is liable to be dismissed on the principle of the equality- appeal dismissed. (Para-7 to 9)

For the appellants: Mr. M.L.Chauhan, Addl. Advocate General .
For respondent-1: Mr. V.S.Chauhan, Advocate
For respondent-2: None.

The following order of the Court was delivered:

P.S.Rana, Judge.

Present appeal is filed under Section 54 of the Land Acquisition Act against the award dated 1.7.2004 passed by learned District Judge Solan in land reference case No. 36-S/4 of 2003.

Brief facts of the case:

2. Land Acquisition Collector HP PWD Solan and Sirmour HP issued notification for acquisition of land for construction of Bakhalag Bapdoon Tal Behli road in village Bapdon Tehsil Arki District Solan HP. Notification under Section 4 of Land Acquisition Act was issued on 6.6.1994 and thereafter award No.9/97 was passed by Land Acquisition Collector HP PWD Solan and Sirmour Districts at Solan. On dated 5.11.1997 learned Land Acquisition Collector awarded compensation @ 39000/- (Thirty nine thousand) per bigha qua cultivated land and awarded compensation @ 6000/- (Six thousand) per bigha for non-cultivated land.

3. Feeling aggrieved against award No.9 of 1997 dated 5.11.1997 passed by learned Land Acquisition Collector 23 reference petitions filed before learned District Judge Solan and learned District Judge Solan disposed of all 23 reference petitions vide same award passed on 1.7.2004 and enhanced compensation amount @ 31000/- (Thirty one thousand) per bigha for cultivated land and Rs.64000/- (Sixty four thousand) per bigha for un-cultivated land. Learned District Judge further directed that petitioner would be entitled for additional compensation @ 12% per annum from the date of publication of notification i.e. 18.6.1994 to the date of award of the Land Acquisition Collector. Learned District Judge further directed that petitioner would also entitle for solatium @ 30%. Learned District Judge further directed that petitioner would be entitled for interest @ 9% per annum for the first year and thereafter 15% per annum for the remaining period on the amount of excess compensation from the date of publication of notification under Section 4 of Land Acquisition Act to the date of deposit of the award amount in Court.

4. Feeling aggrieved against the award passed by learned District Judge present RFA No. 373 of 2004 titled LAC and another Vs. Smt. Boru and another filed.

5. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and also perused entire record carefully.

6. Following points arise for determination in present appeal.

(1) Whether present RFA is liable to be accepted as mentioned in memorandum of grounds of appeal?.

(2) Relief.

Finding on point No.1 with reasons:

7. It is proved on record as per statement showing compensation for each co-owner placed on record that Sh. Ram Sawroop son of late Rama and Smt. Boru daughter of late Rama were owners of 2/15 shares in khasra No. 78/4 measuring 3-3 bighas and nature of acquired land in khasra No. 78/4 is grassy land. Sh Ram Swaroop and Smt. Boru are real brother and sister. It is proved on record that only Rs.18900/-(Eighteen thousand nine hundred) total compensation amount was awarded to all co-owners in khasra No. 78/4. It is proved on record that RFA No. 364 of 2004 titled LAC and another Vs. Ram Swaroop and another was filed in which Smt. Boru was co-respondent No.2. Hon'ble High Court of HP on dated 16.5.2005 dismissed RFA No. 364 of 2004 in which Smt. Boru was co party observing that amount involved is only a petty amount. There is no evidence on record that order of Hon'ble High Court of HP is set aside by competent court of law.

8. In view of the fact that RFA No. 364 of 2004 titled LAC and another Vs. Ram Swaroop and another was dismissed by Hon'ble High Court of HP on 16.5.2005 in which Smt. Boru daughter of Rama was co-respondent No.2 Court is of the opinion that on the concept of equality before law under Article 14 of Constitution of India it is expedient in the ends of justice to dismiss present RFA No. 373 of 2004. Point No.1 is decided accordingly.

Point No.2 (Relief).

9. In view of finding on point No.1 RFA No. 373 of 2004 titled LAC and another Vs. Smt. Boru and another is dismissed. It is held that similar matter against Smt. Boru cannot be agitated twice before Hon'ble High Court of HP in RFA No. 364 of 2004 and in RFA No. 373 of 2004. No order as to costs. RFA No. 373 of 2004 is disposed of. Pending applications if any also disposed of.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Sh. Ram Gopal ... Petitioner

Versus

Smt. Vidya Devi & others. ... Respondents

CMPMO No. 75 of 2015

Date of Decision: February 24, 2016

Indian Evidence Act, 1872- Sections 45 and 112- Plaintiff pleaded that defendant No. 1 is not his legally wedded wife and defendants No. 2 to 4 are not his children and they have been born through the loins of defendant No. 5- plaintiff filed an application for subjecting defendants No. 2 to 5 to DNA test- the application was rejected- held, that Court had erred in dismissing the application- the paternity of the defendant was in issue, hence, application allowed. (Para-6 to 9)

Cases referred:

Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik & another, (2014) 2 SCC 576

Dipanwita Roy vs. Ronobroto Roy, (2015) 1 SCC 365

For the petitioner : Mr. Suneet Goel, Advocate, for the petitioner.
For the respondent : Mr. Karan Singh Kanwar, Advocate, for respondents No. 1 to 4.

The following judgment of the Court was delivered:

Sanjay Karol, J. (oral)

Plaintiff – petitioner herein filed a suit praying for the following reliefs:

"(a) That the defendants No. 1 is not the legally wedded wife of plaintiff and the defendants No. 2 to 4 are not daughter and sons of plaintiff and they are wife, daughter and sons of defendant No. 5 and as such are not entitled to get maintenance amount @ Rs. 500/- P.M. each from the plaintiff in any manner whatsoever as per the order of Ld. C.J.M., Nahan, H.P. and the order in Criminal Petition No. Cr-25/4 of 2000 decided on 5/12/2002 titled Vidya Devi etc. v/s Ram Gopal and orders passed by Hon'ble Sessions Judge in Criminal Revision No. 1-Cr-10 of 2003 titled Ram Gopal v/s Vidya Devi etc. decided on 27/12/2003 and order passed by the Hon'ble High Court in Revision No. Cr-M.M.O. No. 12/4 decided on 1/12/2008 are not binding over the rights of plaintiff and the claim of the defendants 1 to 4 in criminal proceedings U/S 125 Cr.P.C. be declared based on false facts.

(b) With a consequential relief of permanent injunction restraining the defendants No. 1 to 4 getting maintenance of Rs. 500/- P.M. each from the plaintiff in future in any manner whatsoever on the basis of above said order/orders in the interest of justice."

2. Whether in a civil suit, judgment rendered by this Court can be set aside or not is an issue which is left open to be decided by the trial Court, not being subject matter of the present petition. In proceedings arising under the provisions of Section 125 of the Code of Criminal Procedure, which are summary in nature, this Court has only affirmed the order of payment of maintenance, prima facie holding the petitioner to be husband of respondent No. 1.

3. Petitioner who is the plaintiff, is aggrieved of the order dated 19.2.2015 passed by Civil Judge, (Jr. Divn.), Nahan, District Sirmaur, H.P. in Application No. 38/6 of 2015, titled as Ram Gopal vs. Vidya Devi etc., whereby his application filed under Sections 45 and 112 of the Indian Evidence Act read with Section 151 CPC stands rejected. Plaintiff pleads defendant No. 1 not to be his legally wedded wife and defendants No. 2, 3 and 4 not being his children having been born through the loins of defendant No. 5.

4. In order to substantiate his case, plaintiff filed the application in question, desiring defendants No. 2 to 4 as also defendant No. 5 through whom the children are alleged to have been born, being subjected to the DNA test.

5. Having heard learned counsel for the parties as also perused the record, I am of the considered view that the trial court seriously erred in rejecting the application. The order being perverse and not in consonance with the law of the land, needs to be quashed and set aside.

6. Question of paternity of defendants No. 2 to 4 is a fact in issue, being the subject matter of the suit.

7. The apex Court in *Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik & another,* (2014) 2 SCC 576 has held that:-

> "17. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.
>
> 18. We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption."

8. The aforesaid principle came up to be reiterated in *Dipanwita Roy vs. Ronobroto Roy,* (2015) 1 SCC 365 wherein, under somewhat similar circumstances, the Court allowed the prayer of the husband in getting the respondent/wife and the children subjected to the DNA test.

9. Under these circumstances, petition as also the application filed by the plaintiff is allowed. It stands clarified that in the event of the defendants not agreeing to be subjected to the test, to be conducted in accordance with law, presumptions and inferences contemplated under the Evidence Act would arise.

10. Parties are directed to appear before the trial Court on 23rd March, 2016.

11. Registrar (Judicial) is directed to ensure that the record is remitted immediately. Pending application(s), if any, also stand disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Sunil Kumar son of Shri Hira Lal ...Petitioner/Co-defendant No.2

Versus

(1) Big Apple Berry Hospitality Pvt. Ltd ....Non-petitioner/Plaintiff

(2) Rakesh son of Dile Ram ...Proforma Non-petitioner/Co-defendant No.1

CMPMO No. 393 of 2015
Order Reserved on 8.1.2016
Date of Order 24th February 2016

Code of Civil Procedure, 1908- Order 39 Rules 1 and 2- Plaintiff, a private limited Company took on lease the suit property along with building on yearly rent of Rs.1,60,000/- for a period of 20 years w.e.f. 1.5.2011 till 30.4.2031- plaintiff paid amount of Rs.4,80,000/- in advance by cheque and also paid Rs.1,80,000/- in cash – plaintiff also agreed that in future rent amount will be paid on or before 31st of every month of May when due- defendants threatened the plaintiff to vacate the premises on which the plaintiff filed the civil suit for seeking injunction- defendant No.1 pleaded that the premises was leased for a period of three years and plaintiff had handed over the possession to defendant No. 1- defendant No. 1 had alienated the suit land in favour of defendant No. 2- defendant No. 2 pleaded that he had purchased the suit property and possession was delivered to him- application filed by the plaintiff was dismissed by the trial Court- an appeal was preferred in which a Local Commissioner was appointed -Appellate Court allowed the appeal and granted the injunction- held, that the lease for more than one year is required to be compulsorily registered- lease deed in the present case was not registered but same can be used for collateral purpose- lease deed shows that possession was delivered to the plaintiff- no evidence was produced by the defendants to show that the lease was for three years and possession was handed over by the plaintiff after the expiry of three years- report of Local Commissioner shows that the plaintiff is in possession of suit land and defendant No. 2 had broken locks recently- a person in settled possession cannot be dispossessed except in accordance with law- hence, order modified and parties directed to maintain status quo qua nature and possession of the suit land till the disposal of the suit. (Para-12 to 28)

Cases referred:

Neelam Kumari vs. Temple of Devi Ambika, 1994(1) SLC 238 (HP)

Dalip Singh vs. State of H.P., 1992(1) SLC 320

Krishan Ram Mahale vs. Mrs. Shobha Venkat Rao, JT 1989(3) SC 489 (DB)

For the Petitioner:	Mr. Sunil Mohan Goel Advocate.
For Non-petitioner No.1:	Mr.R.L.Sood, Sr. Advocate with Mr.Arjun Lall, Advocate.
For Non-petitioner No.2:	Mr. Neeraj Gupta, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge

Present petition is filed under Article 227 of Constitution of India against order passed by learned Additional District Judge Kullu in Civil Miscellaneous Appeal No. 12 of 2015 decided on 8.9.2015 titled Big Apple Berry Hospitality Pvt. Ltd. vs. Rakesh Kumar and others.

Brief facts of the case

2. Big Apple Berry Hospitality Pvt. Ltd. through its director filed civil suit for perpetual and prohibitory injunction restraining the defendants their agents etc. from dispossessing the plaintiffs from suit property comprised Khasra Nos. 251, 252, 253 measuring 0-0-89 Hectares known as Manu Samriti Home situated at Muhal and Phati Manali Tehsil Manali District Kullu H.P. Additional relief also sought that if during the pendency of suit defendants would succeed in dispossessing the plaintiff from suit property and if would succeed in removing the structure from suit property then same be ordered to be restored to its original position and possession be also granted in favour of plaintiff. Additional relief also sought that decree be passed for permanent prohibitory injunction

restraining the defendants from leasing out/renting out the suit property to some other person in any other way. Plaintiff also prayed that any other relief which the Court deems fit as per facts and circumstances of case be also granted.

3. It is pleaded by plaintiff that plaintiff Big Apple Berry Hospitality is a private limited company and Shri Gursimaran S. Bhullar is its Director. It is pleaded that plaintiff took on lease the suit property along with building on yearly rent of Rs.160000/- (Rupees one lac sixty thousand only) from co-defendant No.1 on 6.5.2011. It is pleaded that lease was for a period of twenty years w.e.f. 1.5.2011 to 30.4.2031. It is pleaded that on execution of lease plaintiff paid a sum of Rs. 480000/- (Rupees four lacs eighty thousand only) in advance by way of cheque and also paid Rs. 180000/- (Rupees one lac eighty thousand only) in cash and agreed that in future rent amount would be paid on or before 31st of every month of May when due. It is pleaded that plaintiff did not default in payment of yearly lease amount to defendant and co-defendant No.1 threatened the plaintiff with dire consequences and asked the plaintiff to leave the suit property and threatened the plaintiff that defendants would dispossess the plaintiff from suit property forcibly.

4. It is pleaded that on 23.11.2014 defendants along with some other persons constituted an unlawful assembly and threatened the plaintiff and his servants to vacate the premises otherwise plaintiff would face dire consequences. It is pleaded that plaintiff came in settled possession of suit property on 6.5.2011 and did not default in payment of yearly lease rent and plaintiff has right to protect his settled possession from unlawful aggression. Prayer for decree of civil suit sought.

5. Per contra written statement filed on behalf of co-defendant No.1 pleaded therein that plaintiff did not approach the Court with clean hands and supressed the material facts. It is pleaded that suit has not been properly valued for the purpose of Court fee and jurisdiction and plaintiff filed the present suit to grab the property in illegal manner. It is pleaded that co-defendant No.1 had leased the premises in dispute to plaintiff for a period of three years w.e.f. May 2010 to May 2013 at the rate of Rs. 160000/- (Rupees one lac sixty thousand only) per annum on oral agreement and no written document was executed. It is pleaded that thereafter plaintiff voluntarily surrendered the premises and handed over the peaceful and vacant possession of premises to co-defendant No.1. It is pleaded that thereafter co-defendant No.1 has alienated the suit property to co-defendant No.2 and further pleaded that after execution of sale deed in favour of co-defendant No.2 co-defendant No.2 is in open hostile and peaceful possession of suit property. Prayer for dismissal of civil suit sought.

6. Per contra separate written statement filed on behalf of co-defendant No. 2 pleaded therein that plaintiff has got no title and locus standi to file present suit and suit of plaintiff is not maintainable. It is pleaded that plaintiff has no cause of action to file the suit and plaintiff is estopped to file the present suit by his act and conduct. It is pleaded that plaintiff did not approach the Court with clean hands and suppressed the material facts from Court. It is pleaded that plaintiff is not in possession of suit property and he is not entitled to any relief as sought. It is pleaded that possession of suit property is with co-defendant No.2 and further pleaded that co-defendant No. 2 has purchased the suit property by way of sale deed No. 287 of 2013 dated 15.5.2013 from co-defendant No.1. It is pleaded that plaintiff is not in settled possession of suit property and co-defendant No.2 is in settled possession of suit property. Prayer for dismissal of civil suit sought.

7. Plaintiff filed replication and re-asserted the alelgations mentioned in plaint. During the pendency of civil suit plaintiff filed application under Order 39 Rules 1 and 2 CPC and sought the interim relief till disposal of civil suit to the effect that defendants be

restrained from dispossessing the plaintiff from suit property except in due course of law. Plaintiff also sought ad-interim relief to restrain co-defendant No.1 from leasing out and renting out the suit property to some other person till disposal of civil suit.

8. Defendants filed response to application filed under Order 39 Rules 1 and 2 CPC pleaded therein that plaintiff is not in settled possession of suit property and suit property is sold by co-defendant No.1 to co-defendant No. 2 by way of registered sale deed No. 287 of 2013 dated 15.5.2013 before the Sub Registrar Manali. It is pleaded that possession was also delivered to co-defendant No. 2 and prayer for dismissal of ad-interim application filed under Order 39 Rules 1 and 2 CPC sought.

9. Learned trial Court dismissed application filed under Order 39 Rules 1 and 2 CPC on 13.8.2015. Thereafter plaintiff filed civil miscellaneous appeal No. 12 of 2015 under Order 43 Rule 1 of Code of Civil Procedure against order dated 13.8.2015 passed by learned Civil Judge (Junior Divison) Manali. On 27.8.2015 learned Additional District Judge Kullu H.P. appointed Mr. D.S. Thakur Advocate as Local Commissioner under Order 39 Rule 7 CPC with the consent of both the parties and directed the Local Commissioner to visit the spot and report about nature and possession and articles found inside the house in question existing on suit land with details in Court. Thereafter Local Commissioner submitted the report. No objections filed on Local Commissioner' report by any of the party. Thereafter learned Additional District Judge disposed of CMA No. 12 of 2015 on 8.9.2015. Learned Additional District Judge Kullu allowed the appeal and set aside the order of learned trial Court. Learned first appellant Court restrained the defendants, their agents from interfering and forcibly dispossessing the plaintiff from suit property till disposal of main civil suit.

10. Thereafter Sunil Kumar co-defendant No. 2 filed present petition under Article 227 of Constitution of India. Court heard learned Advocate appearing on behalf of petitioner and learned Advocate appearing on behalf of non-petitioners and Court also perused the entire record carefully.

11. Following points arise for determination in this petition:-

1. Whether petition filed under Article 227 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of petition?
2. Relief.

Findings upon point No.1 with reasons

12. Submission of learned Advocate appearing on behalf of the petitioner that lease deed dated 6.5.2011 is not registered instrument under Section 107 of Transfer of Property Act 1882 and same cannot be looked into for any purpose is partly answered in yes and is partly answered in no. It is prima facie proved on record that lease deed dated 6.5.2011 was executed for a period of twenty years w.e.f. 1.5.2011 to 30.4.2031. There is recital in lease deed that lease deed would be irrevocable for a period of twenty years. As per Section 107 of Transfer of Property Act 1882 lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent could be made only by a registered instrument. It is well settled law that if the lease for more than one year is not registered then same can be used for collateral purpose only i.e. possession. As per Section 105 of Transfer of Property Act 1882 lease of immovable property is transfer of right to enjoy such property for a certain time express or implied or in perpetuity in consideration of a price. As per Section 105 of Transfer of Property Act the transferor would be called lessor and transferee would be called lessee and price would be called premium and money, share, service or other thing would be called rent.

13. As per proviso of Section 49 of Registration Act 1908 unregistered document affecting immovable property can be looked for collateral purpose. Admittedly alleged lease deed placed on record is dated 6.5.2011 and period of lease is 20 years w.e.f. May 2011 to May 2031. There is recital in lease deed placed on record that possession of demised premises is already handed over to lessee by lessor.

14. Plea of co-defendant No.1 that lessee handed over the peaceful vacant possession of premises to co-defendant No. 1 is disputed by plaintiff. The fact whether possession of demised premises was handed over by lessee to lessor is conflicting issue of facts inter se the parties which cannot be decided at this stage of case. Same fact will be decided by learned trial Court after giving due opportunities to both the parties to lead evidence in support of their case by way of affirmative evidence and rebuttal evidence.

15. Submission of learned Advocate appearing on behalf of petitioner that after registration of sale deed No. 287 dated 15.5.2013 in consideration of ` 10 lacs (Rupees ten lacs only) co-defendant No. 2 namely Sunil Kumar is in settled possession of suit property and on this ground petition be accepted as a whole is partly answered in yes and partly in no. In written statement co-defendant No. 1 has admitted that lease was given to plaintiff for three years. There is no document placed on record in order to prove that plaintiff/lessee has voluntarily surrendered the possession of demised premises in favour of co-defendant No.1/lessor. There is no prima facie evidence on record that lessor had issued quit notice to the plaintiff/lessee relating to demised premises. On contrary lessee has pleaded that he is in settled possession of demised premises as of today in pleadings as well as affidavit filed by lessee. Alleged unregistered lease deed was executed on 6.5.2011 prior to sale deed in favour of co-defendant No.2.

16. Submission of learned Advocate appearing on behalf of petitioner that learned first Appellate Court has committed illegality by appointing the local commissioner under Order 39 Rule 7 CPC is also rejected being devoid of any force for the reasons hereinafter mentioned. There is recital in order sheet of learned first Appellate Court dated 27.8.2015 that local commissioner was appointed with consent of Advocates appeared on behalf of both parties. It is not expedient in the ends of justice to allow the petitioner to raise the objection before High Court for the first time contrary to consent given by learned Advocate appeared on behalf of petitioner before first appellate Court.

17. Even as per Order 39 Rule 7 CPC the Court may on application of any party to suit may appoint local commissioner for inspection in the ends of justice as Court thinks fit.

18. Submission of learned Advocate appearing on behalf of petitioner that lessee is not resident of Himachal Pradesh and he did not obtain prior permission under Section 118 of H.P. Tenancy and Land Reforms Act 1972 for execution of lease situated in Himachal Pradesh and on this ground this petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. As per proviso of Section 118(3) of H.P. Tenancy and Land Reforms Act 1972 lease can be executed in relation to part or whole of building without previous sanction of State Government. In the present case dispute inter se parties is relating to building only and dispute inter se parties is not relating to agricultural immovable property.

19. Submission of learned Advocate appearing on behalf of petitioner that there is no prima facie evidence on record in order to prove that lessee/plaintiff namely Big Apple Berry Hospitality is in settled possession of suit property and on this ground petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is

prima facie proved on record that with consent of parties learned first Appellate Court appointed local commissioner under Order 39 Rule 7 CPC on 27.8.2015. It is also proved on record that thereafter Local Commissioner submitted report placed on record. Court has carefully perused report of Local Commissioner placed on record which is quoted:-

Report of Local Commissioner

A. **Articles found in the premises:**

1. The Main Gate by the side of road was locked from inside and it was opened by Sunil Kumar.
2. The house in question is single storied concrete structure having four rooms and over the slab there is about 12 feet x 10 feet wooden open structure covered with metal sheets. Photo Mark(A)
3. The first Room was opened by Sunil Kumar and inside this first room there was a double bed with pair of mattresses, bed sheet and pair of pillows on it. There is attached bath room and a geyser was installed therein (Mark-B)
4. The second Room was opened by Sunil Kumar and inside this second room there was also a double bed with pair of mattresses, bed sheet and pair of pillows on it and six shirts were on the hanger. There is also an almirah wherein the lady purse and traveling bag were kept. There is attached bath room and a geyser was installed therein. (Mark C & D)
5. The third Room was opened by Sunil Kumar and inside this third room there was a sofa set and Tandur (Chimani) fixed with wall. There is attached bath room and a geyser was installed therein. (Mark E)
6. The forth room was opened by Sunil Kumar and inside this forth room there were two sofa chair, steel box and on a almirah there were give boilers and twelve pieces of steel glass and there is also attached kitchen wherein the LPG Gas stand along with gas cylinder with two boilers on it and cooker by the side of the gas stand were found. There was also a refrigerator unlocked and was found empty. There was also an almirah where empty bottles, plates and one baby feed box were placed in the shelf of the almirah. (Mark F,G,H,I & J)
7. Towards outside the forth room the dining table, four chairs and one wooden stand with box at the base filled with badminton racquets, glucose bottles and some medicines were found. On the back of the house there is one washing machine and two Nos of syntax water tank. (Mark K,L,M,N, and O)
8. On the room there is Gym articles i.e. one multipurpose exercise machine and one tread mill. (Mark P & Q)

Possession

On the date of visit at the spot i.e. on 27.8.2015 Sh. Gursimran S. Bhullar was standing outside the Main Gate by the side of the road and Sh.Sunil Kumar alongwith his family members and twelve Nos of young friends were inside the said main Gate, some of whom were standing, sitting and laying on the lawn. Sunil Kumar had also parked his car in front of the suit premises. Since the keys of all the aforesaid four rooms of the suit premises were with Sunil Kumar who

opened all the locks respectively as such it appears that Shri Sunil Kumar is in possession/occupation of the suit premises.

Nature :

All the locks in all the four rooms in the suit premises seems to have been replaced recently as the fresh marks of empty spaces qua the previous locks were visible at the spot. (Mark R, S, T & U). In room No. 3 Sh.Gursimran S Bhullar pointed out and identified where the LCD was installed and where the locker was fixed which were found missing. The stand of LCD on the wall was intact and the mark of locker in the almirah were also found at the spot (Mark V & W) In the kitchen there was no cooking material and Sh. Gursimran S Bhullar told that microwave oven was kept on shelf but the same was found missing. Sh. Gursimran S Bhullar produced the photostat copies of Bills qua the articles purchased and kept in the said house such as geysers, refrigerator, gym articles i.e. multipurpose exercise machine and tread mill, which were got tallied by me on the spot with the said articles and found to be in order. (Mark X, Y and Z).

Since all the four locks of said four rooms of suit premises seems to have been replaced recently as submitted above and the fact that articles like geyser, refrigerator, multipurpose exercise machine and tread mill purchased by Sh. Gursimran S Bhullar referred herein above found in the suit premises and the fact that the articles such as badminton racquets, glucose bottles and some medicines were found inside one wooden stand with box at the base adjoining to the dining table were found the same which Sh. Gursimran S Bhullar deposed/told before opening the same and the fact that no cooking material was found in the kitchen and the fact that the stand of LCD was intact in the wall of the room as submitted above and the fact that Sh. Gursimran S Bhullar pointed out and identified the location of articles kept in the suit premises as such in view of the aforesaid facts besides others it appears that Sh. Gursimran S Bhullar has definitely been in occupation/possession of the suit premises.

Sd/-
Local Commssioner
Dt.31/8/2015 (D.S. Thakur)
Advocate
Distt. Courts Kullu HP

20. Local Commissioner has specifically framed para of possession in local commissioner report. Court has carefully perused para of possession mentioned in local commissioner report. There is recital in the para of possession mentioned in local commissioner report that when local commissioner visited the spot on 27.8.2015 plainitff Big Apple Berry Hospitality through Gursimran S Bhullar was standing outside main gate by side of road and co-defendant No. 2 Sunil Kumar along with his family members and twelve numbers of young friends were inside the main gate. Local Commissioner has specifically mentioned that out of twelve young persons some of them were sitting, standing and some of them were laying on lawn. Local Commissioner has specifically mentioned in report that co-defendant No.2 Sunil Kumar also parked his car in front of suit premises. Local

Commissioner has further submitted in report that all keys of four rooms of suit premises were in possession of co-defendant No. 2 Sunil Kumar. Local Commissioner has further submitted in report that co-defendant No. 2 Sunil Kumar opened all locks and it appears that co-defendant No. 2 Sunil Kumar is in possession and occupation of suit premises.

21. Local Commissioner has further submitted in his report that all locks of four rooms of suit premises were replaced recently as there were fresh marks of empty spaces qua the previous locks visible at the spot. Local Commissioner has specifically mentioned in report that plaintiff produced photocopy of bill qua the articles against geysers, refrigerator, gym articles i.e. multipurpose exercise machine and tread mill which tallied by him at the spot and found to be in order.

22. Local Commissioner has further submitted in report that locks of four rooms of suit premises were replaced recently and fact that articles like geyser, refrigerator, multipurpose exercise machine and tread mill were found in suit premises. There is further recital in local commissioner report that articles such as badminton racquets, glucose bottles and some medicines were found inside one wooden stand with box adjoining the dining table and fact that no cooking material was found in kitchen and the fact that LCD was intact in wall of room. It appears that plaintiff Gursimran S Bhullar has definitely been in occupation/possession of suit premises.

23. As per local commissioner report placed on record it is prima facie proved on record that co-defendant No. 2 Sunil Kumar is in possession/occupation of suit premises because he opened all locks of rooms. As per local commissioner's report it is also prima facie proved on record that Gursimran S Bhullar plaintiff is in constructive possession of demised premises by way of geysers, refrigerator, gym articles, multiple exercise machines, tread mill, badminton racquets, glucose bottles and medicines etc.

24. No objections filed by any party upon local commissioner's report and none of the parties challenged the local commissioner's report by way of filing objections before first appellate Court prior to the disposal of civil miscellaneous appeal No.12 of 2015 by learned first Appellate Court on dated 8.9.2015. Report of Local Commissioner has attained stage of finality.

25. It is well settled law that at the time of disposing of application filed under Order 39 Rules 1 and 2 CPC Court is to decide following factors. (1) Prima facie case. (2) Balance of convenience. (3) Irreparable loss which cannot be compensated in terms of money. In present case both parties have claimed their settled possession over suit premises. As per report of local commissioner it is prima facie proved on record that co-defendant No. 2 Sunil Kumar is in possession of suit premises and as per local commissioner's report it is also prima facie proved on record that Big Apple Berry Hospitality Pvt. Ltd. through its Director Gursimran S Bhullar is also in constructive possession of demised premises by way of articles mentioned in local commissioner report. it is expedient in the ends of justice to direct both the parties to maintain status quo as of today as mentioned in local commissioner's report till disposal of civil suit by learned trial Court on merits.

26. Judicial findings that locks of room changed by defendant after institution of civil suit in absence of plaintiff cannot be given at this stage because same is issue of fact and it is well settled law that issue of facts cannot be decided in judicial proceedings unless opportunity is not granted to parties to adduce evidence in affirmative and rebuttal.

27. It is well settled law that person who is in settled possession can be evicted only in due course of law. ***See 1994(1) SLC 238 (HP) titled Neelam Kumari vs. Temple of Devi Ambika. See 1992(1) SLC 320 titled Dalip Singh vs. State of H.P. See JT 1989(3)***

SC 489 (DB) titled Krishan Ram Mahale vs. Mrs. Shobha Venkat Rao. In view of above stated facts point No.1 is answered partly in yes and partly in no.

Point No.2 (Relief)

28. In view of findings on point No. 1 above petition filed under Article 227 of Constitution of India is partly allowed and order of learned first Appellate Court is modified to the extent that both parties will maintain status quo qua nature and possession of suit premises known as Manu Samriti Home comprised in Khata No. 147 Khatauni No. 517 Khasra Nos. 251, 252 and 253 situated in Muhal Manali as per jamabandi for the year 2001-2002 till the disposal of civil suit No. 106 of 2014 titled Big Apple Berry Hospitality Pvt. Ltd. vs. Rakesh Kumar and another by learned trial Court. Local Commissioner' report placed in CMA No. 12 of 2015 titled Big Apple Berry Hospitality Pvt. Ltd. vs. Rakesh Kumar and another decided on 8.9.2015 will form part and parcel of order. Learned trial Court will dispose of civil suit No. 106 of 2014 expeditiously within three months after receipt of case file. No order as to costs. Files of learned trial Court and learned first Appellate Court be sent back forthwith along with certified copy of order. Parties are directed to appear before learned trial Court on 18.3.2016. Observations will not effect the merits of civil suit in any manner and will be strictly confined for disposal of present petition filed under Article 227 of Constitution of India. CMPMO No. 393 of 2015 stands disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Ajay Singh ...Appellant.
Versus
Anubala ...Respondent.

FAO (HMA) No. : 499 of 2015
Reserved on : 24.2.2016
Decided on: 25.2.2016

Hindu Marriage Act, 1955- Section 13- Husband filed a petition for divorce pleading that the wife started torturing him mentally by not obeying his commands- she was also taken to Dharamshala and thereafter, she refused to join the company of the husband- wife denied the allegations- held, that allegations made by the appellant against the respondent are vague and sketchy – no specific incidence of defiance by wife was quoted – husband had not permitted the wife to live with him and he has deserted the wife- two years had also not elapsed from the date of filing of the petition of divorce- District Judge had rightly dismissed the petition- appeal dismissed. (Para-12 to 19)

Cases referred:

Bipinchandra Jaisinghbai Shah versus Prabhavati, AIR 1957 SC 176
Lachman Utamchand Kirpalani versus Meena alias Mota, AIR 1964 SC 40
Rohini Kumari versus Narendra Singh, AIR 1972 SC 459
Shobha Rani v. Madhukar Reddi AIR 1988 SC 121
Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511
Ashok Kumar Jain vs. Sumati Jain, AIR 2013 SC 2916

For the Appellant : Mr. Ramakant Sharma, Advocate.
For the Respondent : Nemo.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge:

This appeal is instituted against the judgment dated 3.7.2015 rendered by the learned District Judge, Hamirpur in HMA No. 96 of 2012.

2. "Key facts" necessary for the adjudication of this appeal are that the appellant has filed a petition under section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955. The marriage between the parties was solemnized on 29.4.2004 as per Hindu rites and ceremonies. Appellant is serving in the Indian Army. He had taken the respondent to Jammu. Respondent became defiant and her behaviour was indifferent towards him. Respondent started torturing the appellant mentally by not obeying his commands. She was also taken to Dharamshala. Thereafter, she refused to join the company of the appellant. The petition was filed seeking divorce on the ground of cruelty and desertion.

3. The petition was contested by the respondent. Respondent has denied the allegations made in the petition. The allegations of mis-behaviour and defiant conduct were specifically denied.

4. Issues were framed by the District Judge on 8.3.2013. The District Judge dismissed the petition on 3.7.2015. Hence, the present appeal.

5. PW-1 Pritam Chand has deposed that the matter was brought before the Pradhan Gram Panchayat, Bajuri vide Ex.PW-1/A. Statements were recorded. However, the matter was dropped as the proceedings were pending before the learned District Judge under section 13 (1) (ia) (ib) of the Hindu Marriage Act.

6. PW-2 Anurag is the landlord of the appellant at Dharamshala. According to him, the relations between the parties were not cordial.

7. Appellant has appeared as PW-3. According to him, respondent proclaimed that she would not conceive a child. Respondent stayed at Dharamshala and they used to go to Kathua to take medicine. His mother has undergone bypass surgery. Respondent used to say that she would consume poison and falsely implicate the appellant.

8. RW-1 Surinder Kumar has deposed that respondent and her uncle, maternal uncle and mother had come with a prayer that she wanted to live in her in-laws house but the appellant was not ready to accept her. Thus, she was forced to live with her parents since June, 2012.

9. RW-2 Soma Devi has deposed that respondent used to visit her in-laws house. She used to say that her parents-in-law used to harass her. She had assured her to talk to the appellant.

10. RW-3 Meera Devi has deposed that respondent used to weep and the appellant had left her in her parental house. He has not tried to take her back.

11. Respondent has appeared as RW-6. According to her, she has never left the company of the appellant. Appellant has exchanged letters vide Ex.R-2 to Ex.R-7. They had physical relations till 2012. She has never refused to cohabit with the appellant. She was ready to join the company of the appellant.

12. Allegations made by the appellant against the respondent are vague and sketchy. The only allegation against the respondent is that she was not obeying his commands. No specific instance has been quoted by the appellant of any incident whereby the respondent has defied the appellant. It has come on record that the relations between the parties were cordial till 2012. It has also come on record that in fact it is the appellant who is not permitting the respondent to live with him and he has deserted the respondent. It has come in the statement of RW-6 Anubala that she was ready and willing to live with the appellant at the time of recording of her statement. The appellant cannot be permitted to take advantage of his own wrongs.

13. Now, as far as the plea of desertion is concerned, according to the appellant, respondent has deserted him in the year 2012, but the petition was filed on 12.6.2012. There was no question of desertion since two years had not elapsed from the date of filing of petition for divorce. Learned District Judge has come to a right conclusion that respondent was being harassed for not conceiving a child. As per the statement of PW-4 Dr. Sanjay Bhat, respondent was capable to conceive a child since her uterus and ovaries were normal.

14. Their Lordships of the Hon'ble Supreme Court in ***Bipinchandra Jaisinghbai Shah*** *versus* ***Prabhavati***, AIR 1957 SC 176 have held that two essential conditions must be there to prove the desertion: (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Their Lordships have held that desertion is a matter of inference to be drawn from the facts and circumstances of each case. Their Lordships have held as under:

> "What is desertion? "Rayden on Divorce" which is a standard work on the subject at p.128 (6th Edn.) has summarized the case-law on the subject in these terms:-
>
> "Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party".
>
> The legal position has been admirably summarized in paras 453 and 454 at pp. 241. to 243 of Halsbury's Laws of England (3rd Edn.), VoL 12, in the following words:-
>
> "In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases. Desertion is not the withdrawal from a place but from the state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.
>
> The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least three years immediately preceding the presentation of the petition where the

offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. Desertion is a continuing offence".

Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances to each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co- exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the (animus deserendi) coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied of bringing cohabitation permanently to a close. The law in England has prescribed a three years period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decides to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end, and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial

offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court. In this connection the following observations of Lord Goddard CJ. in the case of Lawson v. Lawson, 1955-1 All E R 341 at p. 342(A), may be referred to :-

"These cases are not cases in which corroboration is required as a matter of law. It is required as a matter of precaution..... "

With these preliminary observations we now proceed to examine the evidence led on behalf of the parties to find out whether desertion has been proved in this case and, if so, whether there was a bona fide offer by the wife to return to her matrimonial home with a view to discharging marital duties and, if so, whether there was an unreasonable refusal on the part of the husband to take her back.

15. Their Lordships of the Hon'ble Supreme Court in ***Lachman Utamchand Kirpalani*** *versus* ***Meena alias Mota***, AIR 1964 SC 40 have held that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. Their Lordships have further held that the burden of proving desertion - the 'factum' as well as the 'animus deserendi' is on the petitioner and he or she has to establish beyond reasonable doubt to the satisfaction of the Court, the desertion throughout the entire period of two years before the petition as well as that such desertion was without just cause. Their Lordships have held as under:

"The question as to what precisely constitutes "desertion" came up for consideration before this Court in an appeal for Bombay where the Court had to consider the provisions of S. 3(1) of the Bombay Hindu Divorce Act, 1947 whose language is in pari materia with that of S. 10(1) of the Act. In the judgment of this Court in Bipin Chandra v. Prabhavati, 1956 SCR 838; ((S) AIR 1957 SC 176) there is an elaborate consideration of the several English decisions in which the question of the ingredients of desertion were considered and the following summary of the law in Halsbury's Laws of England (3rd Edn.) Vol. 12 was cited with approval :

"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the order without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases." The position was thus further explained by this Court. "If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently the cease cohabitation, it will not amount to desertion. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there, (1) the factum of separation, and (2) the intention of bring cohabitation permanently to an end (animus deserndi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.. . . . . Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same

inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time." Two more matters which have a bearing on the points in dispute in this appeal might also be mentioned. The first relates to the burden of proof in these cases, and this is a point to which we have already made a passing reference. It is settled Law that the burden of proving desertion -

the "factum" as well as the "animus deserendi" - is on the petitioner; and he or she has to establish beyond reasonable doubt, to the satisfaction of the Court, the desertion throughout the entire period of two years before the petition as well as that such desertion was without just cause. In other words, even if the wife, where she is the deserting spouse, does not prove just cause for her living apart, the petitioner-husband has still to satisfy the Court that the desertion was without just cause. As Dunning, L. observed : (Dunn v. Dunn (1948) 2 All ER 822 at p. 823) :

"The burden he (Counsel for the husband) said was on her to prove just cause (for living apart). The argument contains a fallacy which has been put forward from time to time in many branches of the law. The fallacy lies in a failure to distinguish between a legal burden of proof laid down by law and a provisional, burden raised by the state of the evidence . . . . . The legal burden throughout this case is on the husband, as petitioner, to prove that this wife deserted him without cause. To discharge that burden, he relies on the fact that he asked her to join him and she refused. That is a fact from which the court may infer that she deserted him without cause, but it is not bound to do so. Once he proves the fact of refusal, she may seek to rebut the inference of desertion by proving that she had just cause for her refusal; and, indeed, it is usually wise for her to do so, but there is no legal burden on her to do so. Even if she does not affirmatively prove just cause, the Court has still, at the end of the case, to ask itself: Is the legal burden discharged? Has the husband proved that she deserted him without cause? Take this case. The wife was very deaf, and for that reason could not explain to the Court her reasons for refusal. The judge thereupon considered reasons for her refusal which appeared from the facts in evidence, though she had not herself stated that they operated on her mind. Counsel for the husband says that the judge ought not to have done that. If there were a legal burden on the wife he would be right, but there was none. The legal burden was on the husband to prove desertion without cause, and the judge was right to ask himself at the end of the case: Has that burden been discharged?"

16. Their Lordships of the Hon'ble Supreme Court in ***Smt. Rohini Kumari versus Narendra Singh***, AIR 1972 SC 459 have explained the expression 'desertion' to mean the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage.

"Under Section 10 (1) (a) a decree for judicial separation can be granted on the ground that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. According to the Explanation the expression "desertion" with its grammatical variation and cognate expression means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage. The argument raised on behalf of the wife is that the husband had contracted a second marriage on May 17, 1955. The petition for judicial separation was filed on August 8, 1955 under the Act which came into force on May 18, 1955. The burden under the section was on the husband to establish that the wife had deserted him for a continuous period of not less than two years immediately preceding the presentation of the petition. In the presence of the Explanation it could not be said on the date on which the petition was filed that the wife had deserted the husband without reasonable cause because the latter had married Countess Rita and that must be regarded as a reasonable cause for her staying away from him. Our attention has been invited to the statement in Rayden on Divorce, 11th Edn. Page 223 with regard to the elements of desertion According to that statement for the offence of desertion there must be two elements present on the side of the deserting spouse namely, the factum, i.e. physical separation and the animus deserendi i.e. the intention to bring cohabitation permanently to an end. The two elements present on the side of the deserted spouse should be absence of consent and absence of conduct reasonably causing the deserting spouse to form his or her intention to bring cohabitation to an end. The requirement that the deserting spouse must intend to bring cohabitation to an end must be understood to be subject to the qualification that if without just cause or excuse a man persists in doing things which he knows his wife probably will not tolerate and which no ordinary woman would tolerate and then she leaves, he has deserted her whatever his desire or intention may have been. The doctrine of "constructive desertion" is discussed at page 229. It is stated that desertion is not to be tested by merely ascertaining which party left the matrimonial home first. If one spouse is forced by the conduct of the other to leave home, it may be that the spouse responsible for the driving out is guilty of desertion. There is no substantial difference between the case of a man who intends to cease cohabitation and leaves the wife and the case of a man who with the same intention compels his wife by his conduct to leave him."

17. Their Lordships of the Hon'ble Supreme Court in the case of **Shobha Rani v. Madhukar Reddi** reported in **AIR 1988 SC 121** have explained the term "cruelty" as under:

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel

treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. Insuch cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon, [1966] 2 All E.R. 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty."

18. Their Lordships of the Hon'ble Supreme Court in **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511**, have enumerated some instances of human behaviour, which may be important in dealing with the cases of mental cruelty, as under:

"98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture

through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where

the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

19. Their Lordships of the Hon'ble Supreme Court in ***Ashok Kumar Jain*** vs. ***Sumati Jain***, AIR 2013 SC 2916 have held that it is always open to the Court to examine whether the person seeking divorce "is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief." On such examination if it is so found that the person is taking advantage of his or her wrong or disability it is open to the Court to refuse to grant relief.

20. Accordingly, in view of observation and discussion made hereinabove, there is no merit in the appeal and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Chaman Lal son of Bhikham and others ....Revisionists/Contemnor

Versus

Sunder Lal son of Chander Mani ....Non-Revisionist/non-contemnor

Civil Revision No. 19 of 2015
Order Reserved on 24thDecember 2015
Date of Order 25th February 2016

Code of Civil Procedure, 1908- Order 16 Rule 1- Order 39 Rule 2-A- Applicants filed an application pleading that respondents/revisionists had intentionally and voluntarily violated the interim order of Court –respondents denied these allegations- when the case was listed for the evidence of the respondents, name of 'S' an Advocate was mentioned as witness- 'S' refused to accept the summons on the ground that he is an Advocate for the applicant-

when the Advocate was present, he was not examined on the ground that he is counsel for the applicant- aggrieved from the order, a revision was preferred- held, that a person who intends to summon a witness should state the purpose for which the witness is proposed to be summoned – respondent had not mentioned the purpose of examining the Advocate- it was stated in the Revision that the Advocate was being examined to prove the pleading filed in the Court- the pleadings signed and filed in Courts are not privileged communications- provision of privileged communication is not applicable to the pleadings- revision allowed and the respondent permitted to examine the advocate for proving the pleadings.

(Para9 to 13)

For the Revisionists: Ms. Ritta Goswami, Advocate.
For the Non-Revisionist: Mr. Sanjeev Kuthiala Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present civil revision petition is filed against the order dated 19.7.2013 passed by learned Civil Judge (Junior Division) Mandi H.P. whereby learned trial Court refused to examine Shri Shailesh Sharma Advocate as witness.

Brief facts of the case

2. Sunder Lal non-revisionist filed application under Order 39 Rule 2-A of Code of Civil Procedure pleaded therein that revisionists have intentionally and voluntarily violated the interim order of Court dated 24.4.2004 passed in CMA No. 46-IV of 2014. Non-revisionist sought the relief that property of revisionists be attached and sold and revisionists be also detained in civil imprisonment.

3. Per contra response filed on behalf of revisionists pleaded therein that revisionists did not violate the order of Court as alleged and further pleaded that petition under Order 39 Rule 2-A CPC filed without any cause of action.

4. Learned trial Court as per pleadings of parties framed following issues on 14.9.2007:-

1. Whether revisionists have willfully disobeyed order dated 24.4.2004? OPA
2. Relief.

5. Thereafter learned trial Court listed the case for non-revisionist evidence. Learned trial Court closed the evidence of non-revisionist on 13.3.2013. Thereafter learned trial Court listed the case for revisionists evidence. Thereafter revisionists filed application for depositing TA and DM of witnesses of revisionists in which the name of Shailesh Kumar Advocate District Court Mandi was mentioned as witness. Learned trial Court directed Civil Nazir to deposit the TA and DM and thereafter TA and DM to the tune of Rs. 200/-(Rupees two hundred only) was deposited on 30.5.2015. Thereafter summon was issued to learned Advocate Shri Shailesh Kumar Sharma by learned trial Court. Sailesh Kumar Sharma learned Advocate District Court complex Mandi refused to accept the summon on the ground that he is Advocate for non-revisionist. Thereafter on dated 19.7.2013 Shri Sailesh Kumar learned Advocate was present before the trial Court but learned trial Court did not examine the witness on the ground that witness Shri Sailesh Kumar is counsel of non-revisionist.

6. Feeling aggrieved against the order dated 19.7.2013 present civil revision petition is filed.

7. Court heard learned Advocate appearing on behalf of revisionists and learned Advocate appearing on behalf of non-revisionist and Court also perused entire record carefuly.

8. Following points arise for determination in civil revision petition:-

1. Whether civil revision is liable to be accepted as mentioned in memorandum of grounds of revision petition?

2. Relief.

Findings upon point No.1 with reasons

9. It is proved on record that revisionists want to examine learned Advocate Shailesh Sharma engaged by non-revisionist before learned trial Court in proceedings filed under Order 39 Rule 2-A CPC. It is well settled law that as per Order XVI of Code of Civil Procedure 1908 a party who intends to summon a witness should state the purpose for which the witness is proposed to be summoned. Court has carefully perused the application filed by revisionists for summoning learned Advocate namely Sailesh Kumar Sharma. In application revisionists did not mention the purpose for which they intend to examine learned Advocate Shailesh Sharma. However, in revision petition the revisionists have stated that revisionists intend to examine the learned Advocate Shailesh Sharma of non-revisionist for the limited purpose only i.e. to prove the pleadings filed in Court.

10. Court is of the opinion that pleadings signed and filed in Courts are not privileged professional communications under Section 126 of Indian Evidence Act 1872. Revisionists intend to prove only pleadings signed by learned Advocate Shri Shailesh Sharma and filed in Court.

11. The protection of disclosing professional communication is given relating to any professional communication which falls within definition of Section 126 of Indian Evidence Act 1872. It is held that privilege of pforessional communication to the Advocate is not given relating to signed pleadings filed in Court.

12. At the time of issuing summon learned trial Court although permitted the revisionists to file the diet money and travelling allowance for learned Advocate Shailesh Sharma but learned trial Court did not direct revisionists to mention specific purpose for which learned Advocate was to be summoned in Court as per mandatory requirement of order XVI of Code of Civil Procedure 1908. It is well settled law that party cannot be penalized for procedural irregularity of Court. In view of above stated facts point No.1 is answered partly in yes.

Point No. 2 (Relief)

13. In view of findings on point No.1 above revision petition is partly allowed and revisionists are permitted to examine learned Advocate namely Shailesh Kumar Sharma before learned trial Court only for limited purpose i.e. to prove the pleadings signed by Mr. Sailesh Kumar Sharma Advocate filed in Court. It is further ordered that no question will be asked from learned Advocate namely Mr. Sailesh Kumar Sharma which is prohibited as professional communications under Section 126 of Indian Evidence Act 1872. Parties are directed to appear before learned trial Court on ***18th March 2016.*** Observations will not effect the merits of case in any manner and will be strictly confined to disposal of civil revision petition. File of learned trial Court along with certified copy of order be sent back forthwith. No order as to costs. Civil revision petition is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

CWPIL No. 10 of 2015
a/w CWP No. 3511 of 2015
and CWPIL No. 1 of 2016
Order reserved on: 23.02.2016
Date of order: 25.02.2016

CWPIL No. 10 of 2015

Court on its own motion ...Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents.

.....

CWP No. 3511 of 2015

Smt. Namita Maniktala ...Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents.

.....

CWPIL No. 1 of 2016

Court on its own motion ...Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents.

Constitution of India, 1950- Article 226- Deaths caused due to the jaundice outbreak in Shimla and Solan –- jaundice outbreak was the outcome of the inaction of the officers/officials/authorities and other concerned persons- earlier directions were issued to submit the compliance report and it was found that Lift Water Supply Scheme Ashwani Khad was not upto the mark- a suo moto cognizance was taken by the Court - Government had appointed a Special Investigating Team (SIT) for investigating into the matter- Investigating Agency and the State Government have virtually admitted that water from LWSS Ashwani Khad was polluted, contaminated, dirty and a cause for jaundice outbreak- direction issued for creation of post and statutory body, to be manned by a competent authority and members to deal with entire water supply system of Shimla and to submit compliance report after every two weeks- Investigating Officer has reported that only class-IV employees were checking the water supply from LWSS Ashwani Khad and the higher authorities had not taken any interest- they had not even inspected Ashwani Khad and the officers of the Municipal Corporation were also negligent/careless because they had not properly managed the Sewage Treatment Plants at Malyana and Dhalli- contractor for operation and maintenance of the STPs at Lal Pani, Dhalli, Sanjauli-Malyana, Summerhill and North Disposal had not taken any steps for the proper operation and maintenance of STPs- direction issued to the SIT to take investigation to its logical end by pinpointing responsible/involved officers from the year 2007- Secretary (IPH) had filed contradictory affidavit- District Magistrates, Superintendents of Police and the authorities concerned directed to implement the provisions of Food Safety and Standards Act- Principal Secretary (Education) commanded to direct all the educational institutions to follow the provisions of The Food Safety and Standards Act- Chief Medical Officers directed to furnish the details of all the persons, who are/were admitted in the hospitals, are/were under treatment because of jaundice along with the details of all those persons who had succumbed to the jaundice outbreak- Engineers of IPH, Department directed to show cause as to why they should not be dealt with in terms of the mandate of Contempt of Courts Act and prosecuted for filing

false affidavits before the Court and for misleading the Court- interim compensation of Rs. 2 lacs awarded to the legal representatives of each of the deceased. (Para-1 to 72)

Cases referred:
Delhi Water Supply & Sewage Disposal Undertaking and another versus State of Haryana and others, (1996) 2 Supreme Court Cases 572
State of Orissa versus Government of India & Anr., AIR 2009 SC (Supp) 261
U.P. Pollution Control Board versus Dr. Bhupendra Kumar Modi and another, (2009) 2 Supreme Court Cases 147
Chief Engineer & Ors. versus Mst. Zeba, II (2005) ACC 705

CWPIL No. 10 of 2015

Present: Mr. Bipin C. Negi, Senior Advocate, as Amicus Curiae, with Mr. Pranay Pratap Singh, Advocate.
Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General, for respondent No. 1.
Mr. Hamender Chandel, Advocate, for respondent No. 2.
Mr. Satyen Vaidya, Senior Advocate, with Mr. Vivek Sharma, Advocate, for respondent No. 3.

CWP No. 3511 of 2015

Mr. Surender Thakur, proxy counsel for the petitioner.
Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1, 2 and 5.
Mr. Hamender Chandel, Advocate, for respondent No. 3.
Mr. Naresh K. Sood, Senior Advocate, with Ms. Charu Gupta, Advocate, for respondent No. 4.

CWPIL No. 1 of 2016

Mr. Ramakant Sharma, Senior Advocate, as Amicus Curiae, with Ms. Soma Thakur, Advocate.
M/s. R.L. Sood & Ms. Jyotsna Rewal Dua, Senior Advocates, with Mr. Surender Thakur, Advocate.
Mr. Ajay Mohan Goel, Advocate, for the intervener.
Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General, for the respondents-State.
Mr. Hamender Chandel, Advocate, for respondent No. 5.
Mr. Naresh K. Sood, Senior Advocate, with Ms. Charu Gupta, Advocate, for respondent-State Pollution Control Board.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Water is a gift of God and it is the duty of everyone to maintain its sanctity. It is unfortunate that some persons/ officers/officials are playing with the gift of God and

because of their negligence, carelessness and other ulterior motives, the water became dirty, contaminated and polluted, which has affected public in general.

2. The Apex Court in the case titled as **Delhi Water Supply & Sewage Disposal Undertaking and another versus State of Haryana and others,** reported in **(1996) 2 Supreme Court Cases 572,** held as under:

> *"1. Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed to an advantageous position are allowed to use the water for non-drinking purposes. A river has to flow through some territory; and it would be travesty of justice if the upper-riparian States were to use its water for purposes like irrigation, denying the lower riparian States the benefit of using the water even for quenching the thirst of its residents."*

3. The Apex Court has also held that right of water is a part of Right of Life guaranteed by Article 21 of the Constitution of India in the case titled as **State of Orissa versus Government of India & Anr.,** reported in **AIR 2009 SC (Supp) 261.** It would be profitable to reproduce relevant portion of para 43 of the judgment herein:

> *"43. In my opinion the right to get water is a part of right to life guaranteed by Article 21 of the Constitution....."*

4. Keeping in view the alarming circumstances prevailing in the entire State of Himachal Pradesh in general and particularly, in Shimla & Solan Districts coupled with the deaths caused due to the jaundice outbreak, which is outcome of the inaction of the officers/officials/authorities and other concerned persons, the Court has to come down heavily and to pass appropriate orders, as it may deem fit and proper.

5. In the case titled as **U.P. Pollution Control Board versus Dr. Bhupendra Kumar Modi and another,** reported in **(2009) 2 Supreme Court Cases 147,** the Apex Court held as under:

> *"In the case on hand which is also similar to Mohan Meakins Ltd. had commenced its journey in the year 1985, nonetheless lapse of such long period cannot be a reason to absolve the respondents from the trial. In a matter of this nature, particularly, when it affects public health if it is ultimately proved, courts cannot afford to deal lightly with cases involving pollution of air and water. The message must go to all concerned persons whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts on the public health at large, should be dealt with strictly de hors to the technical objections. Since escalating pollution level of our environment affects on the life and health of human beings as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a causal or routine manner."*

6. This Court has taken cognizance of the issue earlier in the year 2007 in **CWP No. 441 of 2007,** titled as **Tarsem Bharti and another versus State of Himachal Pradesh**

and another, has passed interim directions from time to time and finally disposed of the writ petition vide judgment and order, dated 2nd December, 2011. It is apt to reproduce the operative portion (para 2) of the judgment herein:

> *"2. It is submitted by the learned counsel for the petitioners that in view of the orders passed by this Court in this writ petition and the steps taken by the duty holders, this writ petition can be disposed of reserving liberty to the petitioners or such other persons to approach this Court if required at later stage. Ordered accordingly. The writ petition is disposed of. Interlocutory applications are also disposed of. All the interim orders will form part of the judgment."*

7. In the year 2014, fresh writ petition, being **CWP No. 4122 of 2014,** titled as **Ravinder Makhaik versus State of H.P. & others,** came to be filed by the affected persons after noticing the failure of the officials/ officers/agencies and other concerned persons, was disposed of vide judgment and order, dated 18th September, 2014. It is apt to reproduce para 5 of the judgment herein:

> *"5. Keeping in view the judgment (supra) read with the reply filed on behalf of the respondents, we deem it proper to direct the respondents to do the needful. The learned Advocate General has filed a communication, dated 11.07.2014, across the Board, made part of the file. The respondents to do the needful in terms of the communication (supra) and the reply, after every three months ad report compliance before the Registrar (Judicial)."*

8. It appears that the respondents have not filed the status/compliance reports, as directed and required in terms of the directions contained in the judgment.

9. On 11th June, 2015, this Court took *suo motu* cognizance of the scarcity of water in Shimla town, was diarized as CWPIL No. 10 of 2015 and the respondents were directed to file compliance report. Detailed orders have been made in CWPIL No. 10 of 2015. Mr. Bipin C. Negi, learned Senior Counsel, was appointed as Amicus Curiae, who gave suggestions how to ensure proper supply of water, that too, pure and without any contamination.

10. The Municipal Corporation has already filed the response to the suggestions, has virtually accepted the suggestions and is ready to do the needful.

11. Ms. Anuradha Thakur, present Secretary (IPH) to the Government of Himachal Pradesh, has filed the status report/response to the suggestions, which is composite one, relating to both the Public Interest Litigations i.e. CWPILs No. 10 of 2015 and 1 of 2016, in the open Court on 23rd February, 2016.

12. A writ petition, being CWP No. 3511 of 2015 also came to be filed by Mr. Rajnish Maniktala, Advocate, and, after noticing that by and large, the issues involved were same, CWP No. 3511 of 2015 was ordered to be clubbed with CWPIL No. 10 of 2015.

13. Unfortunately, in the month of December, 2015, there was jaundice outbreak and after going for the tests, it was found that the Lift Water Supply Scheme Ashwani Khad (for short "LWSS Ashwani Khad") was not upto the mark, due to which the residents of Shimla and Solan were/are affected/suffering.

14. On 4th January, 2016, the Court took *suo motu* cognizance, came to be diarized as CWPIL No. 1 of 2016, Mr. Ramakant Sharma, learned Senior Counsel, was

appointed as Amicus Curiae and the respondents were directed to file status/compliance reports.

15. The respondents have filed two sets of status reports. Learned Amicus Curiae responded to the same and filed suggestions. Learned Advocate General sought time to file fresh status report and also to respond to the suggestions made by the learned Amicus Curiae. The matter was ordered to be listed on 22nd February, 2016.

16. The Court was on winter recess/winter vacation and on the very first day of the opening of the Court, the matter was taken up. It was stated that so many persons have died including two practicing Advocates and wife of an Advocate leaving behind four days' old baby.

17. It was also stated that a number of people are suffering and are admitted in hospitals. Further stated that some have died in the hospitals at Himachal Pradesh and some have died at PGI Chandigarh.

18. It was also stated that the Government has taken serious note of the issue and appointed a Special Investigating Team (for short "SIT") headed by Additional Superintendent of Police (Rural) Shimla.

19. Learned Advocate General was directed to file details of the investigation with a command to cause presence of the Investigating Officer heading the SIT. The parties were also requested to furnish the details of the persons, who have died due to jaundice and the matter was posted for 23rd February, 2016.

20. On 23rd February, 2016, learned Advocate General, filed the status report, dated 22nd February, 2016, in the case FIR No. 03/16, dated 6th January, 2016, registered under Sections 269, 270, 277, 336, 326, 420, 120-B of the Indian Penal Code (for short "IPC") and Sections 43 & 44 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "Act of 1974") at Police Station Dhalli, District Shimla. He has also filed the compliance report made by the present Secretary (IPH) to the Government of Himachal Pradesh, which is reply to the status report in CWPIL No. 1 of 2016 and also response to the suggestions made by Mr. Bipin C. Negi, learned Amicus Curiae in CWPIL No. 10 of 2015 and Mr. Ramakant Sharma, learned Amicus Curiae in CWPIL No. 1 of 2016.

21. While going through the response, it appears that the Investigating Agency and the State Government, i.e. the present Secretary (IPH), have virtually admitted that the water from LWSS Ashwani Khad was polluted, contaminated, dirty and a cause for jaundice outbreak.

22. Before we pass appropriate orders in CWPIL No. 1 of 2016, we deem it proper to deal with CWPIL No. 10 of 2015 and CWP No. 3511 of 2015.

CWPIL No. 10 of 2015 & CWP No. 3511 of 2015

23. Virtually, the State Government and the Municipal Corporation have accepted the suggestions and in the open Court, learned Advocate General has stated that the suggestions made in writing by Mr. Ajay Mohan Goel, Advocate, will also be considered.

24. In view of the above, we deem it proper to dispose of both these writ petitions commanding the State Government for creation of a post/statutory body, to be manned by a competent authority and members alongwith requisite staff in order to deal with entire water supply system of Shimla town, also to deal with the entire water crisis relating to the State of Himachal Pradesh and to submit compliance reports to this Court every after two weeks in CWPIL No. 1 of 2016.

25. It is apt to record herein that we are disposing of these writ petitions while keeping in view the fact that the relief sought in these writ petitions has to flow from the outcome of CWPIL No. 1 of 2016. The orders have to be passed in the said CWPIL relating to the directions viz-a-viz adequate water supply for the reason that the LWSS Ashwani Khad has been closed.

26. In view of the above, the officers of the State Government and other authorities have to find out a solution how to provide sufficient water supply to the inhabitants of the Shimla and the entire State of Himachal Pradesh. Therefore, requisite orders are to be passed in CWPIL No. 1 of 2016.

27. The respondents in CWPIL No. 10 of 2015 have to file status reports/compliance reports relating to the steps taken in terms of their status reports, suggestions and the initiatives drawn every after two weeks till the post/statutory body/competent authority will be in place and thereafter even, they have to file the status reports/compliance reports, as directed, if required.

28. Accordingly, both these writ petitions are disposed of alongwith all pending applications.

CWPIL No. 1 of 2016

29. While going through the report of the SIT and the status report filed by the present Secretary (IPH) to the Government of Himachal Pradesh) read with the directions (supra), it is necessary to array the Chief Secretary to the Government of Himachal Pradesh; Secretary (Urban Local Bodies) to the Government of Himachal Pradesh; Principal Secretary (Health) to the Government of Himachal Pradesh; Principal Secretary (Education) to the Government of Himachal Pradesh; Director, Public Relations, Himachal Pradesh; and District Magistrates, Superintendents of Police and the Chief Medical Officers of all Districts in the State of Himachal Pradesh, as party-respondents in the array of respondents. Issue notice to the said newly added respondents. Mr. J.K. Verma, learned Deputy Advocate General, waives notice on behalf of the said respondents.

30. It would also be apt to array the Member Secretary, H.P. State Pollution Control Board, Shimla, as party-respondent in the array of respondents. Issue notice. Ms. Charu Gupta, Advocate, waives notice on behalf of the said respondent. Registry to carry out necessary entries in the cause title.

31. The Investigating Officer has reported that only class-IV employees were checking the water supply from LWSS Ashwani Khad and the higher authorities have not taken any interest. Further reported that the SIT has found that all officers, who were manning the posts from time to time, have not taken any interest and even have not inspected the Ashwani Khad and the officers of the Municipal Corporation, were also found negligent/careless because they have not properly managed the Sewage Treatment Plants (for short "STP") at Malyana and Dhalli.

32. It is profitable to reproduce paras 1, 4, 5, 7 and 9 of the status report filed by the SIT herein:

> *"1. That the case was registered on 06.01.2016 on the application of Sh. Tikender Singh Panwar, Dy. Mayor MC Shimla, which was, "the SHO Police Station Chhota Shimla, Subject:- Registration a FIR against the Contractor of STP of Malyana and Dhalli. Sir, I being the Deputy Mayor and a Citizen of Shimla would like to bring the following facts to your notice:- (1) The MC Shimla house held on 29th*

December was chaired by me it discuss the rise in cases of jaundice in Shimla city. (2) There after a committee was constituted to ascertain the reasons. The committee comprised of our Hon'ble councilors and experts including of CHO. (3) The committee visited the site of STP which eventually leads to Ashwani Khad from where water is lifted for drinking purpose. (4) The committee found that the STP at Malyana is not been run properly and contains large quantity of effluents which causes rise in Hepatitis cases. (5) The STP's at Malyana and Dhalli are run by some private individual and it is because of his negligence that the sewerage is not treated properly. This seems to be a case of criminal negligence that wishfully or otherwise is not discharging his duties that are extremely important for a healthy system. Yours truly, Sd/- Tikender Panwar.

xxx xxx xxx

4. .....

- *The parameters for water quality analysis tests were not strictly adhere to.*
- *Neither the essential water quality analysis test like microbiological viz. E. coli nor Total Count was performed nor there any set up for such tests in the laboratory.*
- *That in STP Dhalli water water was directly flowing to the outlet without being treated at clariflocculator. It was found that bleaching powder used was made in the year 2014-15.*

5. That during investigation it was also revealed that STP contractor Akshay Dogar and his Supervisor Manoj Verma were not supplying chemicals in time. Neither they were conducting tests as per the manual. JE, SDO & Executive Engineer of IPH Deptt. who were responsible for proper functioning of this STP, did not properly performed their duties with regard to proper use of bleaching powder, or the leakage at STP Dhalli, and non performing of laboratory test. Neither had they taken any action against contractor or supervisor.

6. .....

7.That SFSL Team Junga also inspected I&PH Drinking Water Testing Lab. at Dhalli and Municipal Corp. at the Ridge Shimla. Its observation with respect to MC lab. Were:

- *Water quality analysis was being carried out without any Laboratory Procedure Manual.*
- *The two parameters performed for water quality analysis were insufficient.*
- *Neither the essential water quality analysis tests like microbiological viz. E. coli and Total Colony Count were performed nor there was any set up for such tests, qualified professional (Microbiologist) in the laboratory.*

8. .....

9. That SIT in its investigation also found that SDO, IPH and JE, IPH were not visiting these Lift Water Supply Scheme (LWS) Ashwani Khand and were not inspected these LWSS Ashwani Khad. As a

> *result the whole management of LWSS Ashwani Khad was left to the call of Class-IV employees, i.e. Beldars and Pump Operators and all the entries made in the registers mantained at LWSS Ashwani Khad were made by these Baldars and Pump Operator. They were never cross checked by Asstt. Engineer. Whereas JE had only done one inspection in the last 3 months."*

33. The report is silent as to who were the officers manning the posts right from the year 2007 till the jaundice outbreak, what action has been taken against them, whether the mandate of the Act of 1974 has been taken into consideration, whether the officers/officials have followed the mandate and who are the officers/officials responsible.

34. While going through the status report filed by the present Secretary (IPH), *prima facie,* it appears that the State Government has also come to the conclusion that the officers, who were manning the posts from time to time, have not taken any steps to maintain the purification of the water supply from LWSS Ashwani Khad and that is the reason they have closed LWSS Ashwani Khad. Whether any departmental proceedings/inquiry/action have been taken against the said officers is also not forthcoming.

35. The respondents in CWP No. 4122 of 2014 are, *prima facie,* in contempt for the reason that they have not submitted the required status reports/compliance reports right from 18th September, 2014. However, two Engineers of I&PH Department have filed four status reports and the Member Secretary, H.P. State Pollution Control Board has filed compliance report, which are not in tune with the orders passed by this Court and in fact, are running contrary to the reports made by the Deputy Mayor, Municipal Corporation, the present Secretary (IPH), report of the Forensic Science Laboratory (for short "FSL") and the status report of the SIT, as mentioned hereinabove.

36. What is the procedure which the officers were following while making payments to the contractor, i.e. M/s. Akshay Doegar, for operation and maintenance of the STPs at Lal Pani, Dhalli, Sanjauli-Malyana, Summerhill and North Disposal. The reports do suggest that he has not taken any steps for proper operation and maintenance of the STPs. Even he has not followed the basics, not to speak of taking all precautions, which he was supposed to take in order to receive the payments.

37. It is stated that the Additional Superintendent of Police, who was the head of the SIT, stands promoted as Superintendent of Police and is posted at Shimla. We direct him to be the head of the SIT and to conduct the investigation.

38. The SIT is directed to take the investigation to its logical end by pinpointing who are the officers right from the year 2007 till today responsible/involved. It shall also examine the role of all the officers, who were supposed to maintain the mandate of the penal laws, other laws applicable in general and particularly, the Act of 1974.

39. It is made clear that we are not making any opinion that the said officers are involved. It is for the SIT to investigate and determine and submit the compliance reports every after one week.

40. The Chief Secretary and the Secretary (IPH) to the Government of Himachal Pradesh are directed to furnish:

> (i) details of all those officers who were manning the posts from the year 2007 right from the Chief Engineer upto the Peon;

(ii) details of the amount released in favour of the contractor and the procedure followed and names of the officers, who have passed those bills;

(iii) details of the steps, which they have to take in terms of the status reports filed before the Court on 23rd February, 2016, i.e. fresh status report, within one week;

(iv) details of the persons who have died due to jaundice and who are under treatment, as on today; and

(v) Whether any departmental inquiry/proceedings have been initiated and what is the stage?

41. Ms. Anuradha Thakur, present Secretary (IPH) to the Government of Himachal Pradesh, has stated that the department has complied with the directions made by this Court in CWPs No. 441 of 2007 and 4122 of 2014, which is not correct. In one breath, the Secretary (IPH) has stated that the LWSS Ashwani Khad was not properly maintained and the Government has issued orders for closing down the same in terms of Annexure R-1 and in the second breath, she has stated that the directions (supra) have been complied with.

42. It is apt to reproduce relevant portion of para 1 of the response filed by the Secretary (IPH) herein:

"1. .....Further it is submitted that the IPH Department in compliance to the various directions and recommendations of the committees appointed by the Hon'ble High Court of HP in CWPIL No. 441 of 2007, CWP No. 4122 of 2014, the department has complied some of the directions and recommendations as elaborated in the reply submitted to the Hon'ble High Court earlier. However, for implementing balance directions and recommendations requiring substantial funds, provisions have been made in the DPR amounting to Rs. 643.05 crores submitted to the World Bank for funding of USD 85.18 Million on dated 09.07.2015 after approval from the Ministry of Urban Development and Ministry of Finance (Department of Economic Affairs), Government of India Annexure R-3....."

43. The Secretary (IPH) to the Government of Himachal Pradesh is asked as to why action shall not be drawn against her for making incorrect/contradictory statements. Is she trying to shield her predecessors and subordinate officers or is trying to carve out a case for them or rather is trying to mislead the Court.

44. The Chief Secretary and the Secretary (Urban Local Bodies) to the Government of Himachal Pradesh were supposed to have a vigilance being the Head of the institutions and to ascertain whether the STPs were being maintained properly. Further, they were supposed to see and ascertain whether the officers concerned were discharging their duties properly and whether the directions have been complied with. *Prima facie,* it appears that they have failed to do so. Had they passed the requisite orders, there would not have been jaundice outbreak. Their failure can be seen in terms of the orders made by them whereby LWSS Ashwani Khad stands closed. They are directed to explain by filing affidavits.

45. The District Magistrates and Superintendents of Police in the entire State of Himachal Pradesh are directed to take all steps to make the public aware about the jaundice outbreak and the precautions to prevent such disease.

46. The District Magistrates, Superintendents of Police and the authorities concerned are directed to implement the provisions of The Food Safety and Standards Act, 2006 (for short "Act of 2006") in letter and spirit. Any deviation shall be seriously viewed.

47. The Principal Secretary (Education) to the Government of Himachal Pradesh is commanded to direct all the educational institutions, right from Primary Schools upto the Universities, for following the provisions of the Act of 2006 and also to ensure providing pure mineral water to the students in terms of the Act of 1974.

48. The Director, Public Relations, is directed to make aware the public in general by using press media, social media and other methods. Any deviation shall be seriously viewed.

49. The Chief Medical Officers in the entire State of Himachal Pradesh are directed to furnish the details of all the persons, who are/were admitted in the hospitals, are/were under treatment because of jaundice alongwith the details of all those persons who have succumbed to the said outbreak.

50. All the Courts in the State of Himachal Pradesh are directed not to take up any matter, which is directly or indirectly connected with CWPIL No. 10 of 2015, CWP No. 3511 of 2015 and CWPIL No. 1 of 2016. Any person, who is aggrieved or wants clarification, is at liberty to approach this Court.

51. It is made clear that SIT, police agencies, accused persons and other affected persons are at liberty to approach the Court(s) of competent jurisdiction for redressal of their grievances in FIR No. 03/16, dated 6th January, 2016, registered at P.S. Dhalli, which is being investigated by SIT, as discussed hereinabove.

52. Learned Advocate General was asked to give details as to whether any amount was due to the Contractor. He, after inquiring from the authorities concerned, stated that ` 99,45,831/- is due to the Contractor till 31st January, 2016. He has furnished the information across the Board, made part of the file. The concerned authority is directed not to release the amount in favour of the Contractor.

53. *Prima facie,* it appears that the respondents in CWP No. 4122 of 2014 are in contempt. Learned Advocate General is directed to furnish the particulars of the officers, who are/were manning the posts w.e.f. 19th September, 2014, till today, within three days. Registry is directed to frame Rule against the said respondents in CWP No. 4122 of 2014 and ask them to show cause as to why they should not be punished for breach/violation of the Court orders in terms of the Contempt of the Courts Act.

54. The record of CWP No. 4122 of 2014 does disclose that four reports have been filed by I&PH Department, one by Er. Suman Vikrant and three by Er. Sunil Justa. All these reports are not in tune with the judgment. Not only this, these reports are misleading and have made the Court to believe that the respondents have complied with the Court directions, which is not factually correct in view of the latest reports, outbreak of jaundice and shutting down of LWSS Ashwani Khad.

55. They are asked to show cause as to why they should not be: (i) dealt with in terms of the mandate of Contempt of Courts Act, and (ii) prosecuted for filing false affidavits before this Court and for misleading the Court.

56. Mr. Vineet Kumar, Member Secretary, Pollution Control Board has filed status report on 3rd March, 2015, has failed to file compliance report right from 18th September, 2014 till 3rd March, 2015 and thereafter till today, has been asked to show cause

hereinabove, but the report submitted by him on 3rd March, 2015, is, *prima facie,* incorrect, rather false, in view of the latest reports of the concerned authorities, as discussed hereinabove. He is further asked to show cause as to why he should not be prosecuted for filing false affidavit in addition to the contempt proceedings already drawn against him.

57. In response to the orders made by this Court, the Senior Administrative Officer (H), PGI, Chandigarh, has furnished the information, in terms of which seven persons have died at PGI Chandigarh due to the said disease, made part of the file.

58. The question is – how to reach to the victims/ legal representatives of the deceased?

59. The concept of grant of interim compensation, based on no fault liability, is outcome of the pronouncements of judgments made by the Apex Court. The purpose is to offer prompt financial relief to the sufferers. The niceties of law and facts have no role to play.

60. It is the duty of the Courts to make such interim orders which are required at the relevant point of time in view of the facts and circumstances of the case read with development of law from time to time.

61. In order to achieve the purpose of grant of interim or final relief promptly and spurn any attempt at procrastination in view of the facts and circumstances of the case, which are crying for the same, the Courts should not succumb to niceties, technicalities and mystic maybe's.

62. We are of the considered view that the Writ Court can exercise powers in terms of the mandate of the Constitution read with the inherent powers and can grant interim relief, even though it is not specifically provided for.

63. We have laid our hands on a judgment which is delivered by one of us (Justice Mansoor Ahmad Mir, Chief Justice) as a Judge of Jammu and Kashmir High Court, wherein interim compensation was granted in a First Civil Appeal, titled as **Chief Engineer & Ors. versus Mst. Zeba,** reported in **II (2005) ACC 705.** It is apt to reproduce paras 10 to 17 of the said judgment herein:

> *"10. While going through the provisions of Section 151, C.P.C., this Court can exercise inherent powers in order to do justice in between the parties and can pass such orders which are warranted in the interests of justice.*
>
> *11. Section 140 of Motor Vehicles Act mandates how to grant interim compensation. This remedy stands introduced in terms of the recommendations made by the Apex Court in the judgments reported in 1977 ACJ 134 (SC), 1980 ACJ 435 (SC) and 1981 ACJ 507 (SC). In terms of the said judgments the legislation was made. The aim and object of the said provision is to save the victims/sufferers from starvation, destitution and from other social evils. It is just to ameliorate the sufferings of the victims.*
>
> *12. The Apex Court has passed a judgment reported in AIR 1996 SC 922, titled Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, wherein Their Lordships have granted interim compensation to the victims of a rape case. In terms of the said judgment the Court is not powerless to come to the rescue of victims and save them from social*

evils as discussed above. It is profitable to reproduce para-18 of the said judgment herein:

> *"18. This decision recognizes the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalization of scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the scheme. On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life."*

13. The Apex Court has also held in the judgment reported in AIR 1986 SC 984, Smt. Savitri v. Govind Singh Rawat, that the Courts can grant interim maintenance in the proceedings under Section 488 (Section 125, Cr.P.C.), Cr.P.C. It is profitable to reproduce relevant portion of para-6 herein:

> *".....if a Civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the pending final disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under Section 125 of the Code to the Family Court constituted under the said Act."*

14. While going through the said provisions of law and while keeping in view of the above discussion, I am of the considered view that Civil Court can exercise inherent powers and can grant interim compensation at any stage even though not provided by any other provision of law. It is profitable to reproduce relevant portion of para-4 of the judgment of Apex Court reported in AIR 1995 SC 350, State of Maharashtra and others v. Admane Anita Moti and Others.

> *".....Interim orders are granted by the Court as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated upon. Even where it is not provided in the*

statute this Court has held that the Courts have inherent power to grant it……"

15. It is also profitable to reproduce paras 9 & 10 of the Apex Court judgment reported in AIR 2004 SC 3992, Vareed Jacob v. Sosamma Geevarghese and Others, herein:

"9. In the case of M/s. Ram Chand and Sons Sugar Mills Pvt. Ltd. v. Kanhayalal Bhargava, reported in AIR 1966 SC 1899, it has been held by this Court that the inherent power of the Court under Section 151 C.P.C. is in addition to and complimentary to the powers expressly conferred under C.P.C., but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of C.P.C. If there is express provision covering a particular topic, then Section 151, C.P.C. cannot be applied. Therefore, Section 151, C.P.C. recognizes inherent power of the Court by virtue of its duty to do justice and which inherent power is in addition to and complimentary to powers conferred under C.P.C. expressly or by implication.

10. In the case of Jagjit Singh Khanna v. Rakhal Das Mullick, reported in AIR 1988 Cal. 95, it has been held that temporary injunction may be granted under Section 94(c) only if a case satisfies Order 39 Rule 1 and Rule 2. It is not correct to say that the Court has two powers, one to grant temporary injunction under Section 94 (c) and the other under Order 39 Rule 1 and Rule 2. That Section 94 (C), C.P.C. shows that the Court may grant a temporary injunction thereunder only if it is so prescribed by Rule 1 and Rule 2 of Order 39. The Court can also grant temporary injunction in exercise of its inherent powers under Section 151, but in that case, it does not grant temporary injunction under any of the powers conferred by C.P.C. but under powers inherent in the constitution of the Court, which is saved by Section 151, C.P.C."

16. In terms of the said judgments, the Civil Court can exercise inherent powers and grant interim compensation in order to do justice, save victims from social evils and just to ameliorate their sufferings.

17. Thus, I am of the considered view that Civil Court can grant interim compensation in the cases, where the claimants/plaintiffs have lost their bread earner, son or daughter due to the negligence of the defendant/s and even in the cases where the plaintiff has sustained injuries due to the negligence of the defendant/s which has rendered the plaintiff permanently disabled."

64. At the cost of repetition, we have lost so many lives because of the fault of the State authorities/officers, who were/are manning the posts, including the Contractor because they have failed to maintain the purification of water, which they were supposed to do in view of the Acts of 1974 and 2006.

65. This Court in **CWP No. 318 of 2015,** titled as **Roshi Devi and others versus Himachal Pradesh State Electricity Board Ltd. and others; CWPIL No. 7 of 2014,** titled as **Court on its own motion versus State of Himachal Pradesh & others;** and **CWP No.**

4524 of 2015, titled as **Sheetal Thakur versus State of Himachal Pradesh and others,** has also awarded interim compensation.

66. In view of the above, we deem it proper to award Rs. two lacs as interim compensation to the legal representatives of each of the deceased.

67. The State is directed to deposit the amount of interim compensation before this Court within four weeks.

68. It is made clear that the observations made hereinabove are only *prima facie* and cannot be read and held that the said officers/persons are liable for criminal prosecution or departmental inquiry. It is for the concerned investigating agency/Court(s) and department(s) to thrash out. Any observations and expressions made hereinabove shall not cause prejudice to anyone.

69. All the respondents are directed to file status reports weekly in terms of the directions passed in this order read with the directions already passed in CWPIL No. 10 of 2015 and CWP No. 3511 of 2015.

70. Registry is directed to consign the record of CWP No. 441 of 2007, CWPIL No. 10 of 2015 and CWP No. 3511 of 2015. The record of CWP No. 4122 of 2014 be made available with the contempt proceedings.

71. List on **2nd March, 2016.**

72. Registry is directed to supply **dasti** copy of this order to learned counsel appearing on behalf of all the parties.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Jagdish Kumar Dhiman & others .....Petitioner.

Versus

State of H.P. & others .....Respondents.

CWP No. 7995 of 2010
Date of decision: 25.02.2016

Constitution of India, 1950- Article 226- Petitioners have called in question the scheme for lifting the water supply, namely, LWSS-Malwar and LWSS-Bhatoli-Baih, Dhamaan- held, that it was a policy decision made by the Government in public interest – policy decision cannot be made subject matter of a writ petition, unless arbitrariness is shown- the State has examined all the aspects and had taken the decision thereafter- the Court cannot sit in appeal over the decision of the Government, therefore, petition dismissed. (Para-2 to 9)

Cases referred:

Sidheshwar Sahakari Sakhar Karkhana Ltd. Vs. Union of India and others, 2005 AIR SCW 1399

Manohar Lal Sharma Vs. Union of India and another, (2013) 6 SCC 616

Asha Sharma versus Chandigarh Administration and others, 2011 AIR SCW 5636

Bhubaneswar Development Authority and another versus Adikanda Biswal and others, (2012) 11 SCC 731

For the petitioners :	Mr. Umesh Kanwar, Advocate.
For the respondents:	Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals with Mr. J.K. Verma, Deputy Advocate General.

The following judgment of the Court was delivered.

Mansoor Ahmad Mir, Chief Justice

By the medium of this writ petition, the petitioners have called in question the scheme for lifting the water supply, namely, LWSS-Malwar and LWSS-Bhatoli-Baih, Dhamaan, framed by the Government, which is a policy decision made by the Government. The policy appears to be in the public interest.

2. It is beaten law of the land that policy decision of the Government cannot be made subject matter of a writ petition, unless arbitrariness is shown in the decision making process.

3. The Apex Court in **Sidheshwar Sahakari Sakhar Karkhana Ltd. Vs. Union of India and others, 2005 AIR SCW 1399**, has laid down the guidelines and held that Courts should not interfere in the policy decision of the Government, unless there is arbitrariness on the face of it.

4. The Apex Court in a latest decision reported in **Manohar Lal Sharma Vs. Union of India and another, (2013) 6 SCC 616,** also held that interference by the Court on the ground of efficacy of the policy is not permissible. It is apt to reproduce paragraph 14 of the said decision as under:

> "***14. On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned policy that allows FDI up to 51% in multi-brand retail trading does not appear to suffer from any of these vices.***"

5. The Apex Court in the case titled as **Mrs. Asha Sharma versus Chandigarh Administration and others,** reported in **2011 AIR SCW 5636** has held that policy decision cannot be quashed on the ground that another decision would have been more fair, wise, scientific or logical and in the interest of society. It is apt to reproduce para 10 of the aforesaid judgment herein:

> ***"10. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logic. The principle of reasonableness and nonarbitrariness in governmental action is the core of our constitutional scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be made to Netai Bag v. State of West Bengal [(2000) 8 SCC 262 : (AIR 2000 SC 3313)]."***

6. It appears that the respondents-State Government have examined all aspects and made the decision. Thus, it cannot be said that the decision making process is bad. The Court cannot sit in appeal and examine the correctness of the policy decision.

7. The Apex Court in the case titled as **Bhubaneswar Development Authority and another versus Adikanda Biswal and others,** reported in **(2012) 11 SCC 731** has laid down the same principle. It is apt to reproduce para 19 of the judgment, *supra*, herein:

> ***"19. We are of the view that the High Court was not justified in sitting in appeal over the decision taken by the statutory authority under Article 226 of the Constitution of India. It is trite law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is confined to the decision making process. The judicial review is not an appeal from a decision, but a review of the manner in which the decision is made and the Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. The Court confines itself to the question of legality and is concerned only with, whether the decision making authority exceeded its power, committed an error of law, committed a breach of the rules of natural justice, reached an unreasonable decision or abused its powers."***

8. This Court in the judgments delivered in **CWP No. 621 of 2014,** titled as ***Nand Lal & another* versus *State of H.P. & others*** and **CWP No. 4625 of 2012, ,** titled as **Gurbachan versus State of Himachal Pradesh & others,** decided on 15.07.2014, has also laid down the same proposition of law.

9. Applying the test to the instant case, the writ petition merits to be dismissed. Accordingly, it is dismissed alongwith pending applications.

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BEFORE HON'BLE MR JUSTICE P.S.RANA, J.

Smt. Payal wife of Shri Manish Chaudhary ....Revisionist

Versus

Manish Chaudhary son of Sh.Raghuvir Singh Chaudhary ....Non-Revisionist

Civil Revision No. 175 of 2014
Order Reserved on 3rd December 2015
Date of Order 25th February 2016

Hindu Marriage Act, 1955- Section 24- Husband filed a petition for divorce pleading that wife did not perform any marital obligations and used to become violent- she had also filed a criminal proceedings against the husband- wife pleaded that husband had subjected her to cruelty and he cannot be allowed to take advantage of his own wrong- a petition for maintenance pendente lite allowance and expenses was filed which was allowed- aggrieved from the order, present revision has been filed- held, that the purpose of providing maintenance is to provide financial assistance to the indigent spouse to maintain herself and to have sufficient funds to carry on litigation expenses- husband had admitted his income as Rs.15,000/- per month and it was not proved that wife was earning anything- hence, maintenance enhanced to Rs.5,000/- per month. (Para-8 to 12)

For the Revisionist: Mr. S.C.Sharma, Advocate.
For the Non-Revisionist: Mr. Peeyush Verma, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present civil revision petition is filed against the order dated 15.10.2014 passed by learned Additional District Judge-II Shimla in maintenance pendente lite application No. 83-S/6 of 2014 filed in divorce petition No. HMA 71-S/3 of 2014 titled Manish Chaudhary vs. Payal Sharma.

Brief facts of the case

2. Shri Manish Chaudhary filed divorce petition No. HMA 71-S/3 of 2014 titled Manish Chaudhary vs. Payal Sharma under Section 13 of Hindu Marriage Act 1955 on account of cruelty and desertion. It is pleaded that marriage between the parties was solemnised at Shimla on 27.11.2010 as per Hindu rites and customs. It is pleaded that on 19.5.2011 Smt. Payal Sharma without consent and knowledge of Manish Chaudhary shifted to her parents house at Shimla and refused to return to her matrimonial house. It is pleaded that Smt. Payal Sharma did not perform any marital obligations and also used to become violent. It is pleaded that behaviour of Smt. Payal Sharma did not improve despite best efforts on the part of Manish Chaudhary. It is pleaded that Smt. Payal Sharma also took her entire clothes and entire jewellery worth Rs.10 lacs (Rupees ten lacs only). It is pleaded that thereafter Shri Manish Chauhdary requested Smt. Payal Sharma to come to her matrimonial house but she refused to return to her matrimonial house. It is also pleaded that Smt. Payal Sharma also instituted criminal proceedings under Section 498-A of Indian Penal Code.

3. Per contra response filed on behalf of Payal Sharma pleaded therein that Shri Manish Chaudhary is estopped to file divorce petition on account of his own act conduct and acquiescence. It is pleaded that Manish Chaudhary has himself committed crulety upon Smt. Payal Sharma and further pleaded that Manish Chaudhary himself deserted Smt. Payal Sharma. It is pleaded that Manish Chaudhary cannot be allowed to take advantage of his own wrong. It is pleaded that Manish Chaudhary and his family members pressurised Smt.Payal Sharma to bring dowry. It is pleaded that Shri Manish Chaudhary always humiliated Smt. Payal Sharma in her matrimonial house. It is pleaded that Manish Chaudhary has also levelled false allegations upon the character of Smt. Payal Sharma. It is pleaded that Manish Chaudhary is dead drunkard and is womeniser. It is pleaded that Manish Chaudhary has also given beatings to Payal Sharma in her matrimonial house mercilessly without any cause of action during night period in intoxicated condition. It is pleaded that Smt. Payal Sharma also filed separate application under Section 12 of Protection of Women from Domestic Violence Act 2005. It is pleaded that Manish Chaudhary and his family members have taken forcibly Istridhan of Smt. Payal Sharma.

4. During the pendency of petition Smt. Payal filed petition under Section 24 of Hindu Marriage Act for grant of maintenance pendente lite allowance and expenses of proceedings. Learned trial Court granted maintenance pendente lite allowance to the tune of Rs. 2000/- (Rupees two thousand only) to Smt. Payal Sharma till disposal of divorce petition and also granted Rs. 5000/- (Rupees five thousand only) per month as litigation expenses from the date of filing of petition.

5. Feeling aggrieved against the order passed by learned Additional District Judge-II Shimla Smt. Payal filed the present civil revision petition.

6. Court heard learned Advocate appearing on behalf of revisionist and learned Advocate appearing on behalf of non-revisionist and Court also perused entire record carefuly.

7. Following points arise for determination in civil revision petition:-

1. Whether civil revision is liable to be accepted as mentioned in memorandum of grounds of revision petition?

2. Relief.

Findings upon point No.1 with reasons

8. It is well settled law that object behind Section 24 of Hindu Marriage Act providing maintenance pendente lite to a party in matrimonial proceedings is obviously to provide financial assistance to the indigent spouse to maintain herself during the pendency of proceedings and also to have sufficient funds to carry on litigation expenses so that indigent spouse would not suffer due to lack of funds. It is well settled law that a spouse unable to maintain herself is entitled to claim maintenance allowance on the principle of equal status and respect. Provision of Section 24 is beneficial in nature and such power is exercised by Court not only out of compassion but by way of judicial duty so that indigent spouse should not suffer. While granting maintenance pendente lite Court is under legal obligation to evaluate the income of parties.

9. In present case in response to application filed under Section 24 of Hindu Marriage Act before learned trial Court for grant of maintenance pendente lite Manish Chaudhary has admitted his monthly income at the rate of Rs.15000/- (Rupees fifteen thousand only). Court is of the opinion that one third income is sufficient for maintenance allowance keeping in view the status of parties.

10. There is no evidence on record in order to prove that revisionist Payal is earning from other sources also. Although learned trial Court has mentioned in para 10 of order announced in application No. 83-S/6 of 2014 that income of Manish Chaudhary is Rs. 50,000/- (Rupees fifty thousand only) per month as salary but Court is of the opinion that mistake in para No. 10 of order is purely clerical in nature. There is no admission on behalf of Manish Chaudhary that his monthly income is Rs. 50,000/- (Rupees fifty thousand only) per month. On contrary Manish Chaudhary has admitted in response that his monthly income is Rs.15000/- (Rupees fifteen thousand only). It is well settled law that facts admitted need not be proved under Section 58 of Indian Evidence Act 1872.

11. In view of the fact that Manish Chaudhary has admitted his monthly income as Rs.15000/- (Rupees fifteen thousand only) per month when he filed response to petition under Section 24 of Hindu Marriage Act Court is of the opinion that learned trial Court has granted pentente lite maintenance allowance to Smt. Payal on lesser side. Court is of the opinion that enhancement of maintenance allowance to the extent of 1/3rd salary of Manish Chaudhary is essential in the ends of justice in present case keeping in view the status of parties. There is no material on record that Smt. Payal is gainfully employed somewhere. There is no material on record that Smt. Payal has other source of income. In view of above stated facts point No. 1 is answered partly in yes and partly in no.

Point No. 2 (Relief)

12. In view of findings on point No.1 above revision petition is partly allowed. Maintenance pendente lite allowance granted by learned trial Court to the extent of Rs. 2000/- (Rupees two thousand only) is enhanced to Rs. 5000/- (Rupees five thousand only) w.e.f. from the date of filing of application under Section 24 of Hindu Marriage Act till disposal of divorce petition by learned trial Court. Order of learned trial Court is modified to

this extent only. File of learned trial Court along with certified copy of this order be sent back for compliance. Civil revision petition is disposed of. Parties are directed to appear before learned trial Court on ***15.3.2016.*** Pending miscellaneous application(s) if any stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Parat Singh son of Shri Hari Ram ....Petitioner
Versus
The Regional Director Employees
State Insurance Corporation & others ....Non-petitioners

CWP No. 4644 of 2014
Order Reserved on 11th December 2015
Date of Order 25th February 2016.

Constitution of India, 1950- Article 226- Petitioner claimed that non-petitioners be directed to enhance the subsistence allowance along with admissible interest- case was registered against the petitioner for the murder of his wife for which he was arrested- he was suspended due to pendency of the criminal case- subsistence allowance at the rate of 50% of the total salary had been granted to the petitioner, whereas he claims subsistence allowance at the rate of 75%- respondent pleaded that subsistence allowance was not enhanced by Review Committee in view of allegations of moral turpitude- held, that there is provision of review after three months and Review Committee had passed an order granting subsistence allowance at the rate of 50%- petitioner was suspended on account of grave criminal offence- there was no delay on the part of non-petitioner- hence, subsistence allowance @ 75% cannot be allowed- petition dismissed. (Para-6 to 10)

For the Petitioner : Mr. Vinod K. Sharma, Advocate.
For the Non-petitioners : Mr. S.R. Sharma, Advocate.

The following order of the Court was delivered.

P.S. Rana, Judge

Present civil writ petition is filed under Article 226 of the Constitution of India with a prayer that non-petitioners be directed to increase the subsistence allowance along with interest as admissible w.e.f. 20.11.2004 to 28.8.2008 at the rate of 25% and w.e.f. 29.5.2008 to 26.2.2009 at the rate of 75%..

2. Brief facts of the case as pleaded are that on 6.12.1990 petitioner was appointed as Branch Manager and was posted in Branch office at Paonta Sahib. It is pleaded that petitioner was working against the regular post and thereafter he was involved in criminal case and FIR No. 193 dated 20.5.2004 was registered under Section 302 IPC. It is pleaded that petitioner was arrested on 20.5.2004 for the murder of his wife. It is further pleaded that petitioner was convicted by Sessions Court under Section 302 IPC. It is pleaded that petitioner was suspended on account of pendency of criminal case under Section 302 IPC and subsistence allowance was granted to the petitioner. It is also pleaded that

petitioner was paid subsistence allowance at the rate of 50% of the total salary whereas petitioner is entitled for subsistence allowance at the rate of 75% because suspension exceeded six months. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners pleaded therein that petitioner has no cause of action to file present civil writ petition. It is pleaded that petitioner was suspended because there were allegations against the petitioner that petitioner has burnt his wife Smt. Bimla Devi. It is pleaded that petitioner was paid subsistence allowance strictly in accordance with law at the rate of 50%. It is pleaded that review committee did not enhance the subsistence allowance to petitioner in view of allegations of moral turpitude and in view of the fact that petitioner was convicted under Section 302 IPC by the competent Criminal Court of law. Prayer for dismissal of civil writ petition sought.

4. Court heard learned Advocate appearing on behalf of the petitioner and learned Advocate appearing on behalf of non-petitioners and Court also perused the entire record carefully.

5. Following points arise for determination in this civil writ petition:-

Point No.1

Whether civil writ petition filed by petitioner under Article 226 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?

Point No.2

Relief.

Findings upon point No.1 with reasons

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner was entitled to enhancement of subsistence allowance firstly w.e.f. 20.11.2004 to 28.5.2008 at the rate of 25% and secondly w.e.f. 29.5.2008 to 26.2.2009 at the rate of 75% as per CCS and CCA Rules is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that 50% subsistence allowance was granted to petitioner when petitioner was suspended because petitioner was arrested in criminal case punishable under Section 302 IPC for murder of his wife by way of burn injuries. As per Fundamental Rule 53 Government servant under suspension is entitled upto first three months of the period of suspension the subsistence allowance at an amount equal to leave salary which he would have drawn if he had been on leave on half pay. It is also well settled law that fixation of the quantum of subsistence allowance for the initial period of first three months is automatic.

7. Thereafter there is provision of first review after the expiry of three months from competent authority of law relating to enhancement of subsistence allowance of suspended employee. It is proved on record that on 25.5.2004 order was passed by Regional Director Employees State Insurance Corporation Sector 19-A Madhya Marg Chandigarh qua suspension of petitioner w.e.f. date of detention i.e. 20.5.2004. It is also proved on record that on 7.3.2005 Regional Director Employees State Insurance Corporation Sector 19-A Madhya Marg Chandigarh also passed the subsistence allownace order w.e.f. 20.5.2004. Subsistence allowance order dated 7.3.2005 is quoted in toto:-

ORDER

Shri Parat Singh Manager Branch Office Paonta Sahib who is under deemed suspension w.e.f. 20.5.2004 vide order of even no. dt. 25.5.2004 shall be entitled to the following payments w.e.f. the date of deemed suspension till further orders:

(1) A subsistence allowance at an amount equal to the leave salary which the Government servant could have drawn if he had been on leave on half average pay or on half pay and inaddition Dearness Allowance if admissible on the basis of such leave salary.

(2) Any other Compensary Allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to fulfillment of other conditions laid down for the drawal of such allowances.

(3) The payment under Items (1) & (2) above shall be made subject to production of a certificate (Specimen enclosed) to the effect that he is not engaged in any other employment, business, profession or vocation.

The recoveries to be made from the subsistence allowance shall be regulated in accordance with the Headquarters Office orders issued from to time.

Sd/-
(T.R.Gautam)
Regional Director……

8. It is proved on record that thereafter on 7.8.2008 Deputy Director (Vigilance) Employees State Insurance Corporation Panchdeep Bhawan CIG road New Delhi had issued order that committee relating to subsistence allowance on review of suspension cases decided not to enhance subsistence allowance from 50% which was initially granted to the petitioner and thereafter information was communicated to the petitioner through Superintendent Jail Model Central Jail Nahan H.P.

9. It is proved on record that petitioner was suspended on account of grave criminal offence committed by petitioner relating to murder of his wife. In view of the fact that there was no delay on part of non-petitioners in any manner and in view of the fact that non-petitioners did not delay the disposal of any inquiry proceeding and in view of the fact that delay occurred due to judicial proceedings pending before competent criminal Court it is not expedient in the ends of justice to enhance the subsistence allowance because delay was caused due to pendency of criminal case under Section 302 IPC before competent Court of law and delay was not caused due to the pendency of any departmental proceedings. In view of the fact that petitioner has committed criminal offence of moral turpitude and in view of the fact that allegations against the petitioner are grave and heinous in nature regarding murder of his wife and in view of the fact that petitioner stood convicted by competent criminal Court of law under Section 302 IPC and in view of the fact that there is no evidence on record in order to prove that conviction of petitioner under Section 302 IPC has been set aside by any competent Court of law as of today Court is of the opinion that it is not expedient in the ends of justice to enhance the subsistence allowance of the petitioner. It is well settled law that after conviction of employee by competent Court of law fundamental rights of convicted are suspended. Even in jail custody subsistence allowance is paid by jail authorities to jail inmates. Hence point No.1 is answered in negative.

Point No. 2 (Relief)

10. In view of findings upon point No.1 civil writ petition is dismissed. No order as to costs. Civil writ petition is disposed of. Pending miscellaneous application(s) if any for stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Ramesh Chand Jaswal son of Sh. Mulakh Raj ....Revisionist/Tenant

Versus

Roshan Lal Sharma son of Shri Lala Ram. ....Non-Revisionist/Landlord

Civil Revision No. 151 of 2011
Order Reserved on 30th November 2015
Date of Order 25th February 2016

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlord filed an eviction petition against the tenant claiming that tenant is in arrears of rent, tenant had damaged the premises due to which the premises had become unfit and unsafe for human habitation- landlord required the premises bonafidely for the purpose of rebuilding which cannot be carried out without evicting the tenant- tenant denied all these allegations- petition was allowed on the ground of arrears of rent and that premises was bonafide required by the landlord for the purpose of rebuilding- an appeal was preferred before the Appellate Authority which was dismissed- a revision was preferred against the order of the Appellate Authority- held that the Architect had specifically stated in his report that premises would fall at any time and would cause injury to the public- even the court witness had stated that there were cracks in the building, beams had fallen and the premises was in deteriorating stage- tenant had not placed any evidence to counter the report of the expert- merely because approved site plan had not been placed on record, eviction cannot be declined - landlord can evict the tenant for rebuilding the premises to increase its economic utility - held, that in these circumstances, the order of the Appellate Court cannot be faulted, however, right of re-entry granted to the tenant. (Para-11 to 18)

Cases referred:

Tara Dutt Sharma vs. Sanjeev Pandit, Latest HLJ 2011 (HP) 64
Mangan Lal vs. Nana Saheb 2009(1) Civil Court Cases 102 (SC)
Deep Chand vs. Lajwanti 2008(8) SCC 497
A.K. Jain vs. Prem Kapoor 2008(8) SCC 593
Som Dutt Sharma vs. Sham Lal 2010(1) Him.L.R.442

For the Revisionist : Mr. Rahul Mahajan, Advocate.
For the Non-Revisionist : Mr. K.D. Sood Sr. Adv. with Mr. Dhananjay Singh, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present civil revision petition is filed against the order dated 23.8.2011 passed in Rent Appeal No. 3 of 2010 titled Ramesh Chand Jaswal vs. Roshan Lal Sharma whereby learned first Appellate Authority affirmed the order of learned Rent Controller passed in rent petition No. 4 of 2007 titled Roshan Lal Sharma vs. Ramesh Chand Jaswal.

Brief facts of the case

2. Roshan Lal landlord filed eviction petition against the tenant under Section 14 of H.P. Urban Rent Control Act pleaded therein that premises in question was given to tenant to carry the business of electric work in the month of August 1981 at the rent of

Rs.300/- (Rupees three hundred only) per month plus house tax. It is pleaded that tenant is in arrears of rent w.e.f. 1.7.2003 and tenant has not paid the statutory increased rent to petitioner. It is pleaded that tenant has damaged the beam of roof and walls of premises developed cracks and demised premises has become unfit and unsafe for human habitation. It is pleaded that landlord bonafide required the premises for rebuilding and rebuilding cannot be carried out without eviction of tenant. Prayer for acceptance of eviction petition sought.

3. Per contra response filed on behalf of tenant pleaded therein that rent of demised premises is Rs.300/- (Rupees three hundred only) per month including house tax. It is pleaded that tenant is not in arrears of rent. It is pleaded that tenant offered the rent but landlord refused to accept the rent. It is pleaded that landlord visited the shop in the month of December 2006 and collected Rs.12600/- (Rupees twelve thousand six hundred only) in cash as arrears of rent. It is further pleaded that arrear of rent is barred by law of limitation. Prayer for dismissal of rent petition sought.

4. Landlord filed rejoinder and re-asserted the allegations mentioned in rent petition.

5. On the pleadings of parties learned Rent Controller framed following issues on 3.10.2007:-

1. Whether the respondent is in arrears of rent if so to what extent? OPA
2. Whether the petitioner is entitled for enhancement of 10% of rent as prayed?OPA
3. Whether the premises is bonafidely required for rebuilding which cannot be carried out without the building being vacated as alleged? OPA
4. Relief.

Learned Rent Controller decided issues Nos. 1 to 3 in affirmative and learned Rent Controller passed the eviction order against tenant on account of arrears of rent and on the ground that demised premises is bonafidely required by landlord for rebuilding purpose. Learned Rent Controller held that tenant is in arrears of rent to the tune of Rs. 68196/- (Rupees sixty eight thousand one hundred ninety six only) along with interest w.e.f. 18.8.1997 till 30.11.2010. Learned Rent Controller directed the tenant to deposit the rent within 30 days and learned Rent Controller further directed the tenant to evict the premises and deliver the possession to landlord.

6. Feeling aggrieved against the order of learned Rent Controller tenant filed appeal No. 3 of 2010 titled Ramesh Chand vs. Roshan Lal before first Appellate Authority. Leanred first Appellate Authority dismissed the appeal filed by tenant.

7. Feeling aggrieved against the order of learned first Appellate Authority the tenant filed the present revision petition.

8. Court heard learned Advocate appearing on behalf of revisionist and learned Advocate appearing on behalf of non-revisionist and Court also perused entire record carefuly.

9. Following points arise for determination in civil revision petition:-

1. Whether civil revision is liable to be accepted as mentioned in memorandum of grounds of revision petition?

2. Relief.

10. Findings upon point No.1 with reasons

10.1 AW1 P.L. Bains has stated that since fourteen months he used to prepare the site plan and site plan Ext.AW1/A was prepared by him after visiting the spot. He has stated that site plan Ext.AW1/A is signed by him. In cross examination he has stated that he did not prepare site plan Ext.AW1/A as per revenue record. He has stated that he has prepared site plan as per factual position.

10.2. AW2 Bashlinder Kumar has stated that he took photographs Ext.A-1 to Ext.A-5 from spot which are correct as per factual position. He has stated that he has handed over the negatives of photographs. He has stated that he did not see the negatives of photographs in Court file.

10.3 AW3 Dinesh Sharma Architect has stated that he is performing the work of architecture. He has stated that he personally visited the spot and prepared site plan Ext.AW3/A. He has stated that he prepared report Ext.AW3/B which is correct. In cross examination he has stated that he had qualified the diploma in draftsman. He has stated that he could not state about Khasra numbers. He has stated that he did not spcifically mention the cracks in site plan Ext.AW3/A.

10.4. AW4 Roshan Lal landlord has filed affidavit in his examination in chief. There is recital in affidavit that demised premises was given to tenant in the month of August 1981 at the rate of Rs.300/- (Rupees three hundred only) per month. There is further recital in affidavit that tenant is running the shop of electric items in demised premises. There is further recital in affidavit that tenant did not pay the rent w.e.f. 1.7.2003. There is further recital in affidavit that tenant has caused damage to beams of demised premises. There is also recital in affidavit that walls of demised premises have developed cracks. There is recital in affidavit that demised premises would fall at any point of time. There is further recital in affidavit that deponent also obtained the report from architect and there is recital in affidavit that work of rebuilding cannot be effected without eviction of tenant. Landlord has admitted in cross examination that demised premises was constructed in the year 1970. Landlord has admitted that he did not obtain the damaged report of building from municipal committee. He has denied suggestion that he has received the rent to the tune of Rs.12600/- (Rupees twelve thousand six hundred only) in the month of December 2006. He has denied suggestion that he did not issue the rent receipt.

10.5 RW1 Anil Kumar Nazir office of Civil Judge (Junior Division) Una has stated that he has brought the summoned record of case titled Roshan Lal vs. Kulwant Singh and further stated that he has also seen original rent petition and its certified copy is Ext.RW1/A.

10.6 RW2 Rakesh Kumar has filed affidavit in examination in chief. There is recital in affidavit that RW2 is tenant of landlord. There is recital in affidavit that RW2 is residing in lower portion. There is recital in affidavit that in the month of August 2006 water was collected upon the roof of demised premises and thereafter landlord caused damge to the roof of demised premises for flow of water. He has admitted that landlord has also filed eviction petition against him. He has admitted that he is also tenant of landlord. He has stated that he did not give any notice to landlord and also denied suggestion that he has deposed in Court at the instance of tenant.

10.7 RW3 Ramesh Chand tenant has filed affidavit in examination in chief. There is recital in affidavit that Roshan Lal is landlord of demised premises and deponent is tenant of demised premises. There is recital in affidavit that demised premises was given upon rent

at the rate of Rs. 300/- (Rupees three hundred only) including house tax. There is further recital in affidavit that deponent is running the electric shop. There is recital in affidavit that demised premises was constructed in the year 1970. There is further recital in affidavit that tenant is not in arrears of rent. There is also recital in affidavit that tenant offered the rent to landlord but landlord refused to accept the rent. There is further recital in affidavit that tenant had paid Rs. 12600/- (Rupees twelve thousand six hundred only) to landlord in the last week of December 2006 in cash. There is recital in affidavit that landlord did not issue the receipt. There is also recital in affidavit that demised premises is safe for human habitation. He has stated that he could not produce the receipt of payment of rent. He has stated that he also did not send the money order to landlord. He has denied suggestion that he himself damaged the beam of demised premises. He has denied suggestion that he did not pay the rent w.e.f. 1.7.2003.

10.8 Court witness Satya Vrat Sharma Executive Engineer HPPWD Una Division has stated that he was appointed as local commissioner by Court. He has stated that he inspected the building and submitted report Ext.CW1/A which is signed by him. He has denied suggestion that he has submitted wrong report relating to demised premises.

11. Submission of learned Advocate appearing on behalf of revisionist that orders of learned Rent Controller and learned first Appellate Authority that demised premises has become unsafe and unfit for human habitation are based upon non-appreciation of oral as well as documentary evidence placed on record is rejected being devoid of any force for the reasons hereinafter mentioned. AW3 Dinesh Sharma has submitted his report Ext.AW3/B which is quoted in toto:-

REPORT OF ARCHITECT

> I personally visited the Old construction of shops and I found this construction is in dilapidated condition. This building was very old and cracks are found on surface of the slabs, beam of the slabs was broken, some settlement and cracks developes. The projection of front side was also in dilapidated condition. There were cracks in whole of the side and back walls. Open was made by breaking the side walls A.C. was fixed, some trees were grown in the slabs on the back side of this building. Under these circumstances this old building can fall at any time and cause injury of any type to general public. And it is necessary to dismantle this old building.

Dinesh Sharma AW3 has specifically mentioned in his report that demised premises would fall at any time and would cause injury to general public. AW3 has submitted in his report that it is necessary to dismantle the old building. Report of AW3 is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the report of AW3 Dinesh Sharma. There is no positive evidence on record that AW3 has hostile animus against tenant at any point of time.

12. Submission of learned Advocate appearing on behalf of revisionist that learned Rent Controller and learned first Appellate Authority did not properly appreciate the report of Court witness i.e. Satya Vrat Sharma Executive Engineer Una Division HPPWD is rejected being devoid of any force for the reasons hereinafter mentioned. Executive Enginner Una Division HPPWD has specifically mentioned in his report Ext.CW1/A placed on record that beam has been dismantled in portion of Ramesh Chand tenant. Executive Engineer HPPWD Una Division has specifically mentioned in his report that some seepage of rain water was also seen. Executive Engineer has specifically mentioned in his report that cracks were seen in walls and projection portion. Executive Enginner Una Division HPPWD has mentioned in his report Ext.CW1/A that demised premises is certainly in deteriorating

stage. It is well settled law that report should be read in entirety and should not be read in isolation. After perusal of report of Executive Engineer Una Division HPPWD Ext.CW1/A it is proved on record that demised premises is certainly in deteriorating stage.

13. Submission of learned Advocate appearing on behalf of revisionist that demised premises is in proper condition is rejected being devoid of any force for the reasons hereinafter mentioned. Tenant did not place on record any counter expert report. There are two expert reports on record i.e. Ext.AW3/B and Ext.CW1/A conducted by Dinesh Sharma and Satya Vrat Sharma. Dinesh Sharma architect has specifically mentioned in his report Ext.AW3/B that demised premises is old building and would fall at any time and would cause injury to general public. Dinesh Sharma AW3 has specifically mentioned in his report that it is necessary to dismantle the old building. Report of Dinesh Sharma Ext.AW3/A is corroborated by report of Executive Engineer Una Division HPPWD Ext.CW1/A wherein Executive Engineer has mentioned in his report that certainly the demised premises is in deteriorating stage. Hence it is held that it is proved on record by way of reports of two experts that demised premises is in deteriorating stage.

14. Submission of learned Advocate appearing on behalf of revisionist that there is no evidence on record that landlord has sufficient funds for reconstruction and on this ground revision petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Tenant did not cross examine the landlord on the point that landlord has no sufficient funds to raise new construction. In view of the fact that tenant did not cross examine the landlord when he appeared in witness box on that point that landlord has no sufficient funds to raise new construction it is not expedient in the ends of justice to allow the revision petition on this ground.

15. Submission of learned Advocate appearing on behalf of revisionst that no approved construction site plan is placed on record on behalf of landlord and on this ground revision petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that filing of approved construction site plan is not *sine qua non* for filing eviction petition. ***See Latest HLJ 2011 (HP) 64 titled Tara Dutt Sharma vs. Sanjeev Pandit.***

16. Submission of learned Advocate appearing on behalf of revisionst that learned Rent Controller and learned first Appellate Authority did not properly appreciate the oral as well as documentary evidence placed on record and on this ground revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the order passed by learned Rent Controller and learned first Appellate Authority. It is held that learned Rent Controller and learned first Appellate Authority have properly appreciated the oral as well as documentary evidence placed on record and learned Rent Controller and learned first Appellate Authority did not cause any miscarriage of justice to tenant in any manner.

17. Submission of learned Advocate appearing on behalf of revisionst that building is not required bonafide by landlord for the purpose of rebuilding and on this ground revision petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that landlord can evict the tenant for the purpose of rebuilding in order to increase the economic utility of premises. It is held that reconstruction for increasing the economic utility of premises cannot be effected without eviction of tenant. ***See Mangan Lal vs. Nana Saheb 2009(1) Civil Court Cases 102 (SC). See Deep Chand vs. Lajwanti 2008(8) SCC 497. See A.K. Jain vs. Prem Kapoor 2008(8) SCC 593. See Som Dutt Sharma vs. Sham Lal 2010(1) Him.L.R.442.*** In view of above stated facts point No. 1 is answered in negative.

Point No. 2 (Relief)

18. In view of findings on point No.1 above revision petition filed by tenant is dismissed. However condition imposed by learned first Appellate Authority that Executing Court will execute the eviction order only after production of approved construction plan is vacated in view of ruling of Apex Court of India in ***Civil Appeal No. 4127 of 2013 titled Hari Dass vs. Vikas Sood (Apex Court of India) decided on 29.4.2013*** and in view of ruling of Apex Court of India in ***Civil Appeal No. 4128 of 2013 titled Hari Dass vs. Kesri Devi (Apex Court of India) decided on 29.4.2013*** and in view of ruling given by Apex Court of India in ***Civil Appeal No. 4129 of 2013 titled Hari Dass Sharma vs. Shiv Prasad (Apex Court of India) decided on 29.4.2013.*** It is further held that tenant will have right of re-entry as per Section 14(3) Sub clause (c) Proviso of H.P. Urban Rent Control Act 1987. It is further ordered that landlord will complete the entire construction within six months. Parties are left to bear their own costs. Revision petition is disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Ankit .....Appellant
Versus
Sanjeev Kumar and others .....Respondents

FAO No.425 of 2009.
Decided on: 26.2.2016

Motor Vehicles Act, 1988- Section 166- Claimant had sustained permanent disability to the extent of 75%- keeping in view, all the factors and decision made by the Tribunal amount of Rs.2 lacs awarded in favour of the claimant along with interest @ 7.5% per annum from the date of the award. (Para-9 to 11)

Cases referred:

R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755
Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771

For the appellant: Mr.D.Ghosh, Advocate.
For the respondents: Nemo for respondent No.1.
Mr.B.M. Chauhan, Advocate, for respondent No.2.
Mr.B.S. Chauhan, Senior Advocate, with Mr.Vaibhav Tanwar, Advocate, for respondents No.3 and 5.
Mr.Ramesh Sharma, Proxy Counsel, for respondent No.4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 3rd June, 2009, passed by the Motor Accident Claims Tribunal(II), Shimla, H.P., (for short, the Tribunal), in Claim

Petition No.44-S/2 of 08/2000, titled Ankit vs. Sanjeev Kumar and others, whereby compensation to the tune of Rs.4.61 lacs, alongwith interest at the rate of 9% per annum from the date of the claim petition till realization, came to be awarded in favour of the claimant, and the insurer was saddled with the liability, (for short, the impugned award).

2. The insurer, the driver and the owner/insured have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to them. Only the claimant has questioned the impugned award on the ground of adequacy of compensation.

3. Thus, the question to be determined in the instant appeal is – Whether the amount awarded by the Tribunal is inadequate? The answer is in the affirmative for the following reasons.

4. Admittedly, the claimant/injured suffered permanent disability to the extent of 75%. The Apex Court in series of cases has laid down certain guidelines as to how compensation has to be granted in injury cases.

5. The Apex Court in case titled as **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others,** reported in **AIR 1995 SC 755,** had discussed all aspects and laid down guidelines how a guess work is to be done and how compensation is to be awarded under various heads in the cases where permanent disability is suffered by the victim of a vehicular accident. It is apt to reproduce paras 9 to 14 of the judgment hereinbelow:

> *"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*
>
> *10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.*
>
> *11. In the case Ward v. James, 1965 (1) All ER 563, it was said:*

"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

13. This Court in the case of C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed (at p. 380):

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

14. In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said :-

"Non-pecuniary loss : the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

6. The said judgment was also discussed by the Apex Court in case titled as **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085,** while granting compensation in such a case. It is apt to reproduce paragraph 7 of the judgment hereinbelow:

"7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be

made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

7. The Apex Court in case titled as **Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787,** also laid down guidelines for granting compensation. It is apt to reproduce paras 8 & 9 of the judgment hereinbelow:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

8. The Apex Court in case titled as **Kavita versus Deepak and others, 2012 AIR SCW 4771,** also discussed the entire law and laid down the guidelines how to grant compensation. It is apt to reproduce paras 16 & 18 of the judgment hereinbelow:

"16. In Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. The heads under which compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. .....

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

9. Applying the above tests, the compensation awarded by the Tribunal can be said to be on the lower side and needs to be enhanced.

10. At this stage, learned counsel for the insurer stated at the Bar that the Insurance Company, in the Lok Adalat, had offered Rs.2.00 lacs to the claimant in addition to the amount already awarded by the Tribunal, which offer was not accepted by the claimant.

11. Keeping in view all the factors and the discussion made by the Tribunal in paragraphs 29 to 38 of the impugned award, I am of the considered view that the ends of justice would be met in case a sum of Rs.2.00 lacs is awarded in favour of the claimant/injured, in addition to the amount already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum from the date of the impugned award till deposit. Ordered accordingly.

12. The learned counsel for the insurer stated that the Insurance Company has already deposited the amount awarded by the Tribunal, alongwith interest as granted by the Tribunal, i.e. Rs.8.00 lacs, in the Registry of this Court. The insurer is directed to deposit the enhanced amount alongwith interest, as above, within a period of six weeks. The

Registry is directed to release the entire amount alongwith up-to-date interest in favour of the claimant forthwith/on deposit, after proper identification.

13. The impugned award is modified, as indicated above. The appeal stands disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Hans Raj Thakur and another .....Appellants.
Versus
Leela Wati and another .....Respondents

FAO (MVA) No. 452 of 2009
Date of decision: 26th February, 2016.

Motor Vehicles Act, 1988- Section 166- Claimant had sustained grievous injuries- she had lost her tooth and suffered fracture in the jaw- Tribunal had awarded compensation of Rs.50,000/- which is too meager- claimant had not questioned the award, hence, same was reluctantly upheld- appeal dismissed. (Para-2 to 6)

For the appellants: Mr. Sanjeev Sood, Advocate.
For the respondents: Mr.Baibhav Tanwar, Advocate, for respondent No.1.
Ms. Seema Sood, Advocate, for respondent No.2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral)*

This appeal is directed against the judgment and award dated 25.5.2009, made by the Motor Accident Claims Tribunal Ghumarwin, District Bilaspur, H.P. in MAC No. 19 of 2005/04, titled *Leela Wati versus Hans Raj Thakur and others*, for short "the Tribunal", whereby compensation to the tune of Rs.55,000/- alongwith interest @7.5% per annum came to be awarded in favour of the claimant, hereinafter referred to as "the impugned award", for short.

2. Owner and driver, by the medium of this appeal, have questioned the impugned award on the grounds taken in the memo of appeal.

3. The insurer and claimant have not questioned the impugned award on any ground. Thus, it has attained finality so far as it relates to them.

4. The insured has committed breach of the terms and conditions of the insurance policy read with the mandate of Sections 147 and 149 of the Motor Vehicles Act, for short the "Act". The Tribunal has rightly made the discussion in paras 19 to 21 of the impugned award.

5. It appears that a meager amount has been awarded by the Tribunal in favour of the claimant who has sustained grievous injuries because she has lost her tooth and suffered fracture in the jaw, which is not disputed.

6. The amount awarded is too meager but unfortunately, the claimant has not questioned the same. Thus it is reluctantly upheld.

7. The insurer has to satisfy the impugned award with right of recovery from the owner.

8. Accordingly, the impugned award is upheld and the appeal is dismissed.

9. The insurer is directed to deposit the amount within 8 weeks from today. The Registry on deposit of the same is directed to release the amount in favour of the claimant, strictly as per the terms and conditions contained in the impugned award, through payee's cheque account, or by depositing the same in her bank account, after proper verification.

10. Send down the record forthwith, after placing a copy of this judgment.

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BEFORE HON'BLE MR JUSTICE P.S.RANA, J.

HPPWD through Land Acquisition Collector
HPPWD Winter Field Shimla and others ....Appellants

Versus

Atma Ram son of Shri Thakur Dass & others ....Respondents

RFA No. 2 of 2007
Order Reserved on 20th January 2016
Date of Order 26th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

(Para-6 to 9)

For the Appellants: Mr. M.L. Chauhan Additional Advocate General with Mr.J.S.Rana Assistant Advocate General and Mr.Kusha Sharma Deputy Advocate General.

For the Respondents: Mr. Suneet Goel, Advocate.

The following order of the Court was delivered.

P.S. Rana, Judge.

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned District Judge Sirmaur at Nahan on 30.9.2006 in land reference case No. 03-LAC/4 of 2005 titled Atma Ram and others vs. HPPWD.

Brief facts of the case

2. Appellants for construction of Damaka-Di-Johadi Bagthan road proposed to acquire land situated at two villages i.e. village Thakrow measuring 1.08 bighas and village Tankan measuring 3.08 bighas in Tehsil Pachhad District Sirmaur H.P. It is pleaded that notification under Section 4 of Land Acquisition Act 1894 was issued on 28.12.2002 and was published in official gazette on dated 3.1.2003 and award No. 9 of 2004 dated 22.4.2004 was passed by learned Land Acquisition Officer and market rate of acquired land was assessed at the rate of Rs.3500/- (Rupees three thousand five hundred only) per bigha for all categories of land.

3. Land owners demanded Rs.3 lac (Rupees three lac only) per bigha as value of land and reference petitions under Section 18 of Land Acquisition Act 1894 were filed before learned District Judge Sirmaur at Nahan (H.P.). Learned District Judge framed issues and recorded evidence and after hearing both parties announced the award on 30.9.2006 and enhanced compensation of acquired land to the tune of Rs.1,80,000/- (Rupees one lac eighty thousand only) per bigha irrespective of kind and category of land. Learned District Judge also awarded interest at the rate of 12% per annum w.e.f. 28.12.2002 w.e.f. date of notification under Section 4 of Land Acquisition Act 1894 to 22.4.2004. Learned District Judge also awarded solatium at the rate of 30% per annum on the market value and interest at the rate of 9% per annum w.e.f. 28.12.2002 for one year and thereafter at the rate of 15% per annum till the amount is paid/deposited.

4. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 2 of 2007:-

1. Whether RFA No. 2 of 2007 titled HPPWD through Land Acquisition Collector and others vs. Atma Ram & others is covered by decision given by Hon'ble High Court of H.P. on 5.9.2013 in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that other RFAs i.e. RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 were disposed of by Hon'ble High Court of H.P. on 5.9.2013 qua the same award No. 9 of 2004. It is proved on record that inadvertently present RFA No. 2 of 2007 was not listed before the Bench of Hon'ble High Court of H.P. by Registry and same could not be disposed of by Hon'ble High Court of H.P. on the same date.

7. Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 relating to same award on 5.9.2013 remanded the cases back to the Court below for consideration afresh with direction that limited opportunity of leading evidence would be afforded to parties. Hon'ble High Court of H.P. on 5.9.2013 directed District Judge Sirmaur at Nahan that learned District Judge Sirmaur at Nahan would afford an opportunity to claimants as well as to the State to lead evidence only on question of nature of land acquired and sale transaction so placed on record by State. Hon'ble High Court of H.P. further directed that it would be open to the claimants as well as to the State to lead evidence only on these points. Hon'ble High Court further directed that since the case pertains to the year 2003 learned District Judge would make an endeavour to decide the case expeditiously and preferably within six months. Hon'ble High Court further directed parties to appear before District Judge Sirmaur at Nahan on 23.9.2013 and further directed

Registry to immediately send the record back to the Court concerned. Hon'ble High Court of H.P. disposed of all appeals cited supra relating to award No. 9 of 2004 passed by Land Acquisition Officer.

8. Keeping in view the fact that present appeal is also filed relating to same award i.e. award No. 9 of 2004, in order to avoid conflicting award and in order to avoid multiplicity of judicial proceedings inter se the parties and in the ends of justice it is expedient that present RFA should also be govered with decision of RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Point No. 1 is decided accordingly.

Point No. 2 (Relief)

9. In view of findings on point No.1 and in view of the fact that present RFA is covered by decision given by Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 it is ordered that present RFA No. 2 of 2007 will also be governed by decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 and consequently compensation amount awarded by competent authority in aforsaid RFAs will also be deemed awarded in RFA No. 2 of 2007. Parties are left to bear their own costs. RFA No. 2 of 2007 is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA,J.

HPPWD through Land Acquisition Collector
HPPWD Winter Field Shimla and others ....Appellants
Versus
Balbir Singh son of Sh. Bhim Singh & others ....Respondents

RFA No. 3 of 2007
Order Reserved on 20th January 2016
Date of order 26th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

(Para-6 to 9)

For the Appellants: Mr. M.L. Chauhan Additional Advocate General with Mr.J.S.Rana Assistant Advocate General and Mr.Kush Sharma, Deputy Advocate General.

For the Respondents: Mr. Suneet Goel, Advocate.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned District Judge Sirmaur at Nahan on 30.9.2006 in land reference case No. 06-LAC/4 of 2005 titled Balbir Singh and others vs. HPPWD.

Brief facts of the case

2. Appellants for construction of Damaka-Di-Johadi Bagthan road proposed to acquire land situated at two villages i.e. village Thakrow measuring 1.08 bighas and village Tankan measuring 3.08 bighas in Tehsil Pachhad District Sirmaur H.P. It is pleaded that notification under Section 4 of Land Acquisition Act 1894 was issued on 28.12.2002 and was published in official gazette on dated 3.1.2003 and award No. 9 of 2004 dated 22.4.2004 was passed by learned Land Acquisition Officer and market rate of acquired land was assessed at the rate of Rs. 3500/- (Rupees three thousand five hundred only) per bigha for all categories of land.

3. Land owners demanded Rs.3 lac (Rupees three lac only) per bigha as value of land and reference petitions under Section 18 of Land Acquisition Act 1894 were filed before learned District Judge Sirmaur at Nahan (H.P.). Learned District Judge framed issues and recorded evidence and after hearing both parties announced the award on 30.9.2006 and enhanced compensation of acquired land to the tune of Rs.1,80,000/- (Rupees one lac eighty thousand only) per bigha irrespective of kind and category of land. Learned District Judge also awarded interest at the rate of 12% per annum w.e.f. 28.12.2002 w.e.f. date of notification under Section 4 of Land Acquisition Act 1894 to 22.4.2004. Learned District Judge also awarded solatium at the rate of 30% per annum on the market value and interest at the rate of 9% per annum w.e.f. 28.12.2002 for one year and thereafter at the rate of 15% per annum till the amount is paid/deposited.

4. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 3 of 2007:-

1. Whether RFA No. 3 of 2007 titled HPPWD through Land Acquisition Collector and others vs. Balbir Singh and others is covered by decision given by Hon'ble High Court of H.P. on 5.9.2013 in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that other RFAs i.e. RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 were disposed of by Hon'ble High Court of H.P. on 5.9.2013 qua the same award No. 9 of 2004. It is proved on record that inadvertently present RFA No. 3 of 2007 was not listed before the Bench of Hon'ble High Court of H.P. by Registry and same could not be disposed of by Hon'ble High Court of H.P. on the same date.

7. Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 relating to same award on 5.9.2013 remanded the cases back to the Court below for consideration afresh with direction that limited opportunity of leading evidence would be afforded to parties. Hon'ble High Court of H.P. on 5.9.2013 directed District Judge Sirmaur at Nahan that learned District Judge Sirmaur at Nahan would afford

an opportunity to claimants as well as to the State to lead evidence only on question of nature of land acquired and sale transaction so placed on record by State. Hon'ble High Court of H.P. further directed that it would be open to the claimants as well as to the State to lead evidence only on these points. Hon'ble High Court further directed that since the case pertains to the year 2003 learned District Judge would make an endeavour to decide the case expeditiously and preferably within six months. Hon'ble High Court further directed parties to appear before District Judge Sirmaur at Nahan on 23.9.2013 and further directed Registry to immediately send the record back to the Court concerned. Hon'ble High Court of H.P. disposed of all appeals cited supra relating to award No. 9 of 2004 passed by Land Acquisition Officer.

8. Keeping in view the fact that present appeal is also filed relating to same award i.e. award No. 9 of 2004, in order to avoid conflicting award and in order to avoid multiplicity of judicial proceedings inter se the parties and in the ends of justice it is expedient that present RFA should also be govered with decision of RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Point No. 1 is decided accordingly.

Point No. 2 (Relief)

9. In view of findings on point No.1 and in view of the fact that present RFA is covered by decision given by Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 it is ordered that present RFA No. 3 of 2007 will also be governed by decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 and consequently compensation amount awarded by competent authority in aforsaid RFAs will also be deemed awarded in RFA No. 3 of 2007. Parties are left to bear their own costs. RFA No. 3 of 2007 is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

HPPWD through Land Acquisition Collector
HPPWD Winter Field Shimla and others ....Appellants

Versus

Uma Dutt son of Shri Mata Ram & others ....Respondents

RFA No. 1 of 2007
Order Reserved on 20th January 2016
Date of Order 26th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

(Para-6 to 9)

For the Appellants: Mr. M.L. Chauhan Additional Advocate General with Mr.J.S.Rana Assistant Advocate General and Mr.Kush Sharma, Deputy Advocate General.

For the Respondents: Mr. Suneet Goel, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned District Judge Sirmaur at Nahan on 30.9.2006 in land reference case No. 05-LAC/4 of 2005 titled Uma Dutt vs. HPPWD.

Brief facts of the case

2. Appellants for construction of Damaka-Di-Johadi Bagthan road proposed to acquire land situated at two villages i.e. village Thakrow measuring 1.08 bighas and village Tankan measuring 3.08 bighas in Tehsil Pachhad District Sirmaur H.P. It is pleaded that notification under Section 4 of Land Acquisition Act 1894 was issued on 28.12.2002 and was published in official gazette on dated 3.1.2003 and award No. 9 of 2004 dated 22.4.2004 was passed by learned Land Acquisition Officer and market rate of acquired land was assessed at the rate of Rs.3500/- (Rupees three thousand five hundred only) per bigha for all categories of land.

3. Land owners demanded Rs.3 lac (Rupees three lac only) per bigha as value of land and reference petitions under Section 18 of Land Acquisition Act 1894 were filed before learned District Judge Sirmaur at Nahan (H.P.). Learned District Judge framed issues and recorded evidence and after hearing both parties announced the award on 30.9.2006 and enhanced compensation of acquired land to the tune of Rs. 1,80,000/- (Rupees one lac eighty thousand only) per bigha irrespective of kind and category of land. Learned District Judge also awarded interest at the rate of 12% per annum w.e.f. 28.12.2002 w.e.f. date of notification under Section 4 of Land Acquisition Act 1894 to 22.4.2004. Learned District Judge also awarded solatium at the rate of 30% per annum on the market value and interest at the rate of 9% per annum w.e.f. 28.12.2002 for one year and thereafter at the rate of 15% per annum till the amount is paid/deposited.

4. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 1 of 2007:-

1. Whether RFA No. 1 of 2007 titled HPPWD through Land Acquisition Collector and others vs. Uma Dutt and others is covered by decision given by Hon'ble High Court of H.P. on 5.9.2013 in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that other RFAs i.e. RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 were disposed of by Hon'ble High Court of H.P. on 5.9.2013 qua the same award No. 9 of 2004. It is proved on record that inadvertently present RFA No. 1 of 2007 was not listed before the Bench of Hon'ble High Court of H.P. by Registry and same could not be disposed of by Hon'ble High Court of H.P. on the same date.

7. Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 relating to same award on 5.9.2013 remanded the cases back to the Court below for consideration afresh with direction that limited opportunity of leading evidence would be afforded to parties. Hon'ble High Court of H.P. on 5.9.2013 directed District Judge Sirmaur at Nahan that learned District Judge Sirmaur at Nahan would afford an opportunity to claimants as well as to the State to lead evidence only on question of nature of land acquired and sale transaction so placed on record by State. Hon'ble High Court of H.P. further directed that it would be open to the claimants as well as to the State to lead evidence only on these points. Hon'ble High Court further directed that since the case pertains to the year 2003 learned District Judge would make an endeavour to decide the case expeditiously and preferably within six months. Hon'ble High Court further directed parties to appear before District Judge Sirmaur at Nahan on 23.9.2013 and further directed Registry to immediately send the record back to the Court concerned. Hon'ble High Court of H.P. disposed of all appeals cited supra relating to award No. 9 of 2004 passed by Land Acquisition Officer.

8. Keeping in view the fact that present appeal is also filed relating to same award i.e. award No. 9 of 2004, in order to avoid conflicting award and in order to avoid multiplicity of judicial proceedings inter se the parties and in the ends of justice it is expedient that present RFA should also be govered with decision of RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Point No. 1 is decided accordingly.

Point No. 2 (Relief)

9. In view of findings on point No.1 and in view of the fact that present RFA is covered by decision given by Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 it is ordered that present RFA No. 1 of 2007 will also be governed by decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 and consequently compensation amount awarded by competent authority in aforsaid RFAs will also be deemed awarded in RFA No. 1 of 2007. Parties are left to bear their own costs. RFA No. 1 of 2007 is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Smt. Laxmi Devi & others .....Appellants

Versus

Shri Brij Raj & others .....Respondents

FAO No. 219 of 2009
Decided on : 26.02.2016

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that monthly income of the deceased was Rs.3,000/- per month- deceased was bachelor and his age was 22 years at the time of accident- held, that Tribunal had fallen in error in deducting 1/3rd of the amount towards personal expenses of the deceased- 50% of the amount was to be deducted towards personal expenses- thus, claimants had lost source of dependency to the extent of Rs.1,500/- per month, applying multiplier of '16' – Claimants are entitled to Rs. 2,88,000/- (1500/- x 12 x 16) under the head loss of dependency- amount of Rs.10,000/- each awarded under the head loss of 'love and affection', 'loss of estate' and 'funeral expenses'- thus, total

amount of Rs. 3,18,000/- awarded with interest at the rate of 7.5% per annum from the date of filing of the claim petition. (Para-6 to 13)

Cases referred:
Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others versus Madan Mohan and another, 2013 AIR (SCW) 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105

For the appellants : Mr. Rupinder Singh, Advocate.
For the respondents: Mr. G.N. Verma, Advocate, for respondents No. 1 & 2.
Ms. Monika Shukla, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (oral)

This appeal is directed against the award dated 12th March, 2009, made by the Motor Accident Claims Tribunal-II, Sirmaur, District at Nahan, H.P., (hereinafter referred to as 'the Tribunal') in M.A.C. Petition No. 39-N/2 of 2007, titled Smt. Laxmi Devi & others versus Shri Brij Raj & others, whereby compensation to the tune of Rs.1,96,500/- with interest @ 7.5% per annum from the date of filing of the claim petition, came to be awarded in favour of the claimants-appellants herein and the insurer-the Oriental Insurance Company-respondent No. 3 herein, was saddled with the liability, (hereinafter referred to as 'the impugned award').

2. The owner, driver and insurer have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The claimants have questioned the impugned award on the ground of adequacy of compensation.

4. The only question to be determined in this appeal is – *whether the amount awarded is adequate or inadequate?*

5. On the face of the record, it appears that the amount awarded is inadequate for the following reasons.

6. The claimants have specifically pleaded in para-6 of the claim petition that the monthly income of the deceased was Rs.3,000/- per month, at the relevant time. Admittedly, he was bachelor and his age was 22 years at the time of accident.

7. The Tribunal has fallen in an error in deducting 1/3rd towards the personal expenses of the deceased and in coming to the conclusion that the claimants have lost source of dependency to the tune of Rs. 1,000/- per month. 50% was to be deducted towards his personal expenses, in view the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others** versus **Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104,** upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others** versus **Madan Mohan and another,** reported in **2013 AIR (SCW) 3120** read with the judgment rendered by the Apex Court in case titled as **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.**

8. Accordingly, it is held that the claimants being mother and brothers of the deceased, have lost source of dependency to the tune of Rs.1500/- per month.

9. The Tribunal has rightly applied the multiplier of '16', as per the 2nd Schedule appended to the Motor Vehicles Act read with the ratio laid down by the Apex Court in ***Sarla Verma's, Reshma Kumari's and Munna Lal Jain's,*** cases, *supra*.

10. Thus, the claimants are held entitled to the amount of Rs.1500/- x 12 = 18,000/- x 16 = Rs.2,88,000/- under the head 'loss of dependency'.

11. The Tribunal has fallen in an error in awarding Rs.2,000/- under the head 'funeral expenses' and Rs.2500/- under the head 'loss of estate'. The claimants are held entitled to the tune of Rs.10,000/- each, under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses'.

12. Viewed thus, the claimants are held entitled to total compensation to the tune of Rs.2,88,000/- + Rs.30,000/- = Rs.3,18,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

13. The amount of compensation is enhanced and the impugned award is modified, as indicated above. The appeal is accordingly disposed of.

14. The insurer is directed to deposit the enhanced amount alongwith interest, within a period of six weeks from today before the Registry. On deposit, the Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in their accounts.

15. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

The New India Assurance Co. Ltd. .....Appellant.

Versus

Smt. Simro Devi and others .....Respondents

FAO (MVA) No. 539 of 2009
Date of decision: 26th February, 2016.

Motor Vehicles Act, 1988- Section 166- Insurer pleaded that Insurance was not subsisting at the time of the accident- deceased was a daily-wager and his minimum wages were taken as Rs.3300/- per month which should not have been less than Rs. 4500/- per month, in view of latest judgment of the Supreme Court- hence, award cannot be said to be excessive but is meager. (Para- 8 to 10)

For the appellant: Mr.Praneet Gupa, Advocate.
For the respondents: Mr.Bhuvnesh Sharma, Advocate, for respondents No. 1 and 2.
Mr. Maan Singh, Advocate, for respondents No. 3 to 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral)*

This appeal is directed against the judgment and award dated 13.08.2009, made by the Motor Accident Claims Tribunal Hamirpur, H.P. in MAC Petition No. 66 of 2007, titled *Simro Devi and another versus Vijay Singh and others*, for short "the Tribunal", whereby compensation to the tune of Rs.5,25,200/- alongwith interest @7.5% per annum came to be awarded in favour of the claimant, hereinafter referred to as "the impugned award", for short.

2. Appellant, by the medium of this appeal, has questioned the impugned award on the grounds taken in the memo of appeal.

3. Claimants and other respondents have not questioned the impugned award on any ground. Thus, it has attained finality so far as it relates to them.

4. Heard.

5. The factum of insurance is not disputed. The grounds taken in the appeal cannot be pressed into service in view of the document i.e. Ext. RW1-C and statement of RW1. However, the learned counsel for the appellant half heartedly argued that the insurance was not subsisting at the time of the accident. This argument is without any force for the simple reason that they have already accepted the claim of the owner and have released the amount so far as it relate to him.

6. The factum of insurance is admitted. The grant of compensation cannot be defeated on flimsy grounds and technicalities have no role to play.

7. Having said so, the appeal does not survive.

8. At this stage, the learned counsel for the appellant argued that the amount awarded is excessive. This argument also cannot be pressed into service. The Tribunal has held that the deceased was a daily-wager and taken his minimum wages to the tune of Rs.3300/- per month which should not have been less than Rs.4500/- per month, keeping in view latest judgment of the Supreme Court and judgments delivered by this Court. Thus, the amount cannot be said to be excessive rather meager.

9. Accordingly, the impugned award needs no interference and the same is upheld and the appeal is dismissed.

10. The insurer is directed to deposit the amount within six weeks from today, if not already deposited. The Registry on deposit of the same is directed to release the amount in favour of the claimants, strictly as per the terms and conditions contained in the impugned, through payee's cheque account, or by depositing the same in her bank account, after proper verification.

11. Send down the record forthwith, after placing a copy of this judgment.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

The New India Assurance Company ...Appellant.

Versus

Pratap Singh and others ...Respondents.

FAO No.387 of 2009
Decided on: 26.02.2016

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver of the vehicle was not having valid and effective driving licence- vehicle was being plied in contravention of the terms and conditions of the insurance policy- however, no evidence was led by Insurer to prove this fact- hence, Insurance Company was rightly made liable to pay compensation. (Para-11)

For the appellant: Mr.B.M. Chauhan, Advocate.

For the respondents: Mr. Rajiv Rai, Advocate, for respondents No. 1 to 5.
Nemo for respondents No. 6 and 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Subject matter of this appeal is the judgment and award, dated 1st June, 2009, made by the Motor Accident Claims Tribunal-II, Sirmaur District at Nahan, H.P. (for short "the Tribunal") in MAC Petition No. 32-N/2 of 2007, titled as Shri Pratap Singh and others versus Narayan Singh and others, whereby compensation to the tune of ₹ 5,47,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till deposition of the amount came to be awarded in favour of the claimants and against the respondents (for short "the impugned award").

2. The claimants, driver and owner-insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has questioned the impugned award on the grounds taken in the memo of appeal.

4. The claimants have sought compensation to the tune of ₹ 20,00,000/-, by the medium of the claim petition, as per the break-ups given in the claim petition.

5. The respondents in the claim petition resisted the same on the grounds taken in the respective memo of objections.

6. Following issues came to be framed by the Tribunal on 24th June, 2008:

> *"1. Whether the deceased Geeta Devi had died in an accident which was the result of rash and negligent driving of the bus bearing registration No. HP-64-2198 by its driver as alleged? OPP*
>
> *2. If issue No. 1 is proved to what amount of compensation the petitioners are entitled to and from whom? OPP*
>
> *3. Whether the petition is not maintainable? OPR-1*
>
> *4. Whether the petition is bad for non-joinder of necessary parties? OPR-1*

5. Whether the driver of the vehicle was not possessed of a valid and effective driving licence at the time of accident? OPR-2

6. Whether the vehicle was being plied in contravention of the terms and conditions of the insurance policy? OPR-2

7. Relief."

7. Parties have led evidence.

Issue No. 1:

8. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have proved that on 11th February, 2007, at about 8.00 A.M., at place Sunnena (Thutti), the driver, namely Shri Yog Raj Chauhan, while driving the bus, bearing registration No. HP-64-2198, rashly and negligently, caused the accident, in which deceased-Geeta Devi sustained injuries and succumbed to the injuries. The said findings of the Tribunal have not been challenged. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

9. Before I deal with issue No. 2, I deem it proper to determine issues No. 3 to 6.

Issues No. 3 and 4:

10. It was for respondent No. 1 (owner-insured) to prove that the claim petition was not maintainable and was bad for non-joinder of necessary parties, has not led any evidence. Even, respondent No. 1 (owner-insured) has not questioned the impugned award. Accordingly, the findings returned by the Tribunal on issues No. 3 and 4 are upheld.

Issues No. 5 and 6:

11. It was for the insurer to plead and prove that the driver of the offending vehicle was not having a valid & effective driving licence and the vehicle was being plied in contravention of the terms and conditions of the insurance policy, has not led any evidence to prove the same, thus, has failed to discharge the onus. Viewed thus, how can it lie in the mouth of the appellant-insurer that the driver of the offending vehicle was not having a valid and effective driving licence and the owner-insured has committed any willful breach. The Tribunal has rightly determined issues No. 5 and 6, are, accordingly upheld.

Issue No. 2:

12. Learned counsel for the appellant argued that the deceased was a housewife and the amount awarded is excessive. According to him, the claimants have pleaded that the income of the deceased was ₹ 4,000/- per month and a house wife is not earning more than ₹ 3,000/-. The argument is totally misconceived. *Shoe wearer knows where the shoe pinches.* It is only a house wife who maintains the house and other domestic affairs. The Tribunal has rightly made the discussions on issue No. 2 in paras 16 to 20 and 23, need no interference.

13. Having said so, the amount awarded is adequate, cannot be said to be excessive, in anyway.

14. Viewed thus, the impugned award merits to be upheld and the appeal is to be dismissed. Accordingly, the impugned award is upheld and the appeal is dismissed.

15. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in their respective bank accounts.

16. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Puran Singh .....Appellant
Versus
Keshav Rachiyata and others ..... Respondents

FAO No.445 of 2009.
Decided on : 26.2.2016

Motor Vehicles Act, 1988- Section 166- Tribunal had recorded the findings that injured remained under treatment for about two years and also remained admitted in different hospitals- petitioner had undergone pain and suffering- compensation has to be awarded commensurate with the pain and sufferings- amount of Rs. 2 lacs awarded under the head 'pain and sufferings' and Rs.1 lac awarded under the head 'future pain and suffering'- claimant had sustained 30% disability in relation to the lower limb and 7.5% qua whole body- claimant is held entitled to Rs.1,000 x 12 x 15 = Rs.1.80 lacs under the head 'future loss of earning'- amount of Rs.50,000/- awarded under the head 'conveyance and other charges', Rs.36,000/- under the head 'attendant charges' and Rs.1,35,000/- under the head 'expenditure on medication'- thus, total amount in the sum of Rs.1.01 lacs awarded along with interest @ 7.5% per annum from the date of the petition. (Para-5 to 19)

Cases referred:
R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755
Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771

For the appellant: Mr.Vikas Rathour, Advocate, vice Mr.Tara Singh Chauhan, Advocate.
For the respondents: Neemo for respondents No.1 and 2.
Mr.Deepak Bhasin, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 25th June, 2009, passed by the Motor Accident Claims Tribunal(II), Una, H.P., (for short, the Tribunal), in Claim Petition No.17 of 2006, titled Puran Singh vs. Keshav Rachiyata and others, whereby compensation to the tune of Rs.2.65 lacs, alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization, came to be awarded in favour of the claimant, and the insurer was saddled with the liability, (for short, the impugned award).

2. The insurer, the driver and the owner/insured have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to them. Only the claimant has questioned the impugned award on the ground of adequacy of compensation.

3. Thus, the question to be determined in the instant appeal is – Whether the amount awarded by the Tribunal is inadequate?

4. I have heard the learned counsel for the parties and have gone through the record as also the impugned award. It is apt to reproduce paragraphs 4, 21, 26 and 27 of the impugned award hereunder:

> *"4. The petitioner had been immediately rushed to the Maheshwari Hospital Pvt. Limited, Maheshwari Nagar, Bye Pass, Mathura from where he had been shifted to Safdarjang Hospital, New Delhi on the same day. He was stated to have discharged on 19.11.2005 from Safdarjang Hospital. After having been operated on 30.10.2005, he was again admitted to Safdarjang Hospital on 23.11.2005 for the treatment of his injured right leg, which was also operated on 6.12.2005 and was discharged therefrom on 12.12.2005. He continued to receive follow up treatment up till 28.12.2005 from Safdarjang Hospital. Thereafter he received treatment from the Baraj Life Care Hospital & Trauma Centre, Jalandhar Road, Hoshiarpur (Pb.).*
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> *21. To substantiate the aforesaid fact he examined Dr.Rachhpal Singh, Incharge Bharaj Life Care Hospital & Trauma Centre, Jalandhar Road, Hoshiarpur. He has appeared as PW3. As per this witness the petitioner Puran Singh had been admitted in his Hospital on 9.1.2006 with septicemia due to infected nailing of the femur. He was operated and discharged on 22.1.2006. He has proved and placed on record discharge slip vide Ext.PW3/A. Further as per him the patient was against admitted for another operation on 5.7.2006 and discharged on 4.8.2006. The petitioner was again admitted on 4.10.2006 for plating and grafting of femur and was discharged on 10.10.2006. He was again admitted on 12.10.2006 for removal of the plates and discharged on 15.10.2006. The bills in relation to the treatment and the aforesaid operations have been placed and proved as Ext.PW-3/B to Ext.PW-3/F. As per the doctor about Rs.60,000/- had been spent by the petitioner on the bills issued by the Hospital.*
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> *26. As per PW2 Dr.S.P. Kanwar, the petitioner has been assessed to be permanently disabled to the extent of 30% in relation to the right lower limb as per Ext.PW2/A. He has further denied that the disability will be decreased with the passage of time. As per the doctor the disability qua whole body can be reckoned at 7.5%. Since admittedly the disability is only respect of right lower limb it can really be reckoned 7.5% in respect of the whole body. Seieing to be the age of the petitioner which was around 25 years at the time of accident, and that he was working as driver it can well be presumed that he was atleast earning Rs.3,000/- per month. After the standard deducting in relation to his owner needs that is 1/3rd of his income, his income is assessed as Rs.2,000/- and applying multiplier of 16, the total loss of future earning at 7.5% comes to approximately Rs.40,000/- (7.5% of Rs.3,84,000/-) and the petitioner is held entitled to the same on account of future loss of earning.*
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> *27. The evidence on record goes to show that the petitioner was bed ridden for sufficiently long time and had to regularly got for follow up treatment right from 2005 till 2007, to be precise till 15.10.2007 he had to undergo many operations. He did suffer pain and mental agony for almost 2 years."*

5. The Tribunal has positively recorded the finding that the claimant/injured remained under treatment for about two years and during this period, he also remained admitted in different hospitals for a pretty long time, i.e. from 30th October, 2005 till 19th November, 2005, from 23rd November, 2005 till 12th December, 2005, in Safdarjang Hospital, from 9th January, 2006 till 22nd January, 2006, 5th July, 2006 to 4th August, 2006, from 4th October, 2006 to 10th October, 2006 and lastly from 12th October, 2006 to 15th October, 2006 in Bharaj Life Care Hospital & Trauma Centre, Jalandhar. He was operated upon several times during the period of his hospitalization.

6. Thus, from the above, it is clear that the petitioner has undergone pain and suffering a lot and because of the disability suffered by the claimant, has to undergo pain and suffering throughout his life. Therefore, the compensation to be awarded in such injury cases must be commensurate with the pain and sufferings undergone and has to undergo as also disability suffered by the claimant.

7. The Apex Court in series of cases has laid certain guidelines as to how compensation has to be granted in injury cases.

8. The Apex Court in case titled as **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others,** reported in **AIR 1995 SC 755,** had discussed all aspects and laid down guidelines how a guess work is to be done and how compensation is to be awarded under various heads in the cases where permanent disability is suffered by the victim of a vehicular accident. It is apt to reproduce paras 9 to 14 of the judgment hereinbelow:

> *"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*
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> *10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.*

11. In the case Ward v. James, 1965 (1) All ER 563, it was said:

"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

13. This Court in the case of C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed (at p. 380):

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

14. In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said :-

"Non-pecuniary loss : the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

9. The said judgment was also discussed by the Apex Court in case titled as **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085,** while granting compensation in such a case. It is apt to reproduce paragraph 7 of the judgment hereinbelow:

"7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost

because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

10. The Apex Court in case titled as **Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787,** also laid down guidelines for granting compensation. It is apt to reproduce paras 8 & 9 of the judgment hereinbelow:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

11. The Apex Court in case titled as **Kavita versus Deepak and others, 2012 AIR SCW 4771,** also discussed the entire law and laid down the guidelines how to grant compensation. It is apt to reproduce paras 16 & 18 of the judgment hereinbelow:

"16. In Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. The heads under which compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. .....

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

12. Applying the above tests, the compensation awarded by the Tribunal can be said to be on the lower side and needs to be enhanced.

13. The claimant, as is evident from the discussion made hereinabove, had suffered a lot and has to suffer throughout his life. Therefore, the claimant is held entitled to a sum of Rs.2.00 lacs under the head 'pain and suffering undergone' and Rs.1.00 lac under the head 'future pain and suffering'.

14. Another fact which cannot be overlooked is that because of the accident, the claimant suffered 30% disability in relation to the lower limb and 7.5% qua whole body, which would affect the prospects of his earnings in future also. Therefore, the claimant is held entitled to Rs.1,000 x 12 x 15 = Rs.1.80 lacs under the head 'future loss of earning'.

15. It is also evident from the facts of the case that the claimant was taken to hospital on many occasions. The Tribunal has awarded only Rs.30,000/- under the head 'conveyance and other charges', which, to my mind, is meager and needs to be enhanced. Accordingly, a sum of Rs.50,000/- is awarded in favour of the claimant under the head 'transportation charges'.

16. In addition to above, this Court cannot be oblivious to the fact that the claimant remained under treatment for about two years and during that period, also remained hospitalized for a considerable long period on different occasions, as discussed hereinabove. Therefore, by exercising guess work, attendant charges at the rate of Rs.3000/- per month are also required to be awarded in favour of the claimant at least for a period of one year. Hence, the claimant is also awarded Rs.3,000 x 12 = Rs.36,000/- under the head 'attendant charges'.

17. The Tribunal, after examining the material placed on record, has rightly awarded a sum of Rs.1,35,000/- under the head 'expenditure on medication'. However, again the Tribunal has fallen in error in not awarding any amount for future treatment. Therefore, keeping in view the facts of the case, I deem it proper to award a sum of Rs.1.00 lac under the head 'expenses qua future treatment'.

18. In view of the above discussion, the claimant is held entitled to a sum of Rs.8,01,000/-, under the following different heads:

i) Pain and sufferings undergone: Rs.2.00 lacs.

ii) Future pain and sufferings: Rs.1.00 lac

iii) Loss of future earning: Rs.1,000 x 12 x 15 = Rs.1.80 lacs

iv) Transportation charges: Rs.50,000/-

v) Attendant charges: Rs.36,000/-

vi) Medical expenses incurred: Rs.1,35,000/-

vi) Expenses qua future treatment: Rs.1,00,000/-

19. The above amount shall carry interest at the rate of 7.5% per annum from the date of the claim petition till deposit.

20. The impugned award is modified as indicated above and the appeal is allowed. The insurer is directed to deposit the enhanced amount alongwith interest within a period of six weeks from today and on deposit, the Registry is directed to release the entire amount in favour of the claimant forthwith, after proper identification.

21. The appeal stands disposed of accordingly.

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BEFORE HON'BLE MR JUSTICE MANSOOR AHMAD MIR, C.J.

Rachh Pal .....Appellant.

Versus

Smt. Sudesh Garg and others .....Respondents.

FAO (MVA) No. 447 of 2009

Date of decision: 26th February, 2016.

Motor Vehicles Act, 1988- Section 166- Compensation of Rs. 5,71,000/ awarded in favour of the claimants- amount has been deposited by the appellant which has been paid to the claimants- award upheld and the appeal dismissed as settled. (Para-1 and 2)

For the appellant: Mr.Deepak Kaushal, Advocate.

For the respondents: Mr.K.D. Sood, Sr. Advocate with Mr. Sanjeev Sood, Advocate, for respondents No. 1 and 2.
Mr. Lalit Sharma, Advocate, for respondent No.5.
Nemo for respondents No. 3 and 4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral)*

This appeal is directed against the judgment and award dated 1.6.2009, made by the Motor Accident Claims Tribunal-II Sirmaur District at Nahan, H.P. in MAC Petition No. 24-N/2 of 2006, titled *Smt. Sudesh Garg and another versus Om Prakash and others*, for short "the Tribunal", whereby compensation to the tune of Rs.5,71,000/- came to be awarded in favour of the claimants, hereinafter referred to as "the impugned award", for short.

2. The learned counsel for the appellant stated at the Bar that the appellant has paid the entire amount to the claimants before the Tribunal. His statement is taken on record. Accordingly, the impugned award is upheld and the appeal is disposed of as settled. The statutory amount deposited by the appellant in this Registry be released to him.

C.O. No. 562/2009.

3. In view of the order passed in the appeal, the cross objections are disposed of.

4. Send down the record forthwith, after placing a copy of this judgment.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Smt. Sitara Begum .....Appellant
Vs.
Mohd Nawab & others ....Respondents.

FAO No. 304 of 2009
Decided on : 26.02.2016

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that accident had taken place due to the negligence of the respondent No.1- respondents No.1 to 5 stated that accident was the result of rash and negligent driving of the deceased who was driving the motorcycle and could not control the same- claimants examined the witnesses to prove this fact- however, no evidence was led by the respondent to prove the contrary- held, that it was prima facie proved that Tractor was being driven rashly and negligently by respondent No.1- the income of the deceased can be taken as Rs.4,000/- per month by guess work - after deducting 1/3rd amount towards personal expenses, claimants have lost source of dependency to the extent of Rs.2,500/- per month- multiplier of '16' applicable- thus, claimants are entitled to Rs. 4,80,000 (2500/- x 12 x 16) under the head loss of dependency – amount of Rs.10,000/- each awarded under the heads 'loss of love and affection', 'loss of consortium', 'loss of estate' and 'funeral expenses' along with interest @ 7.5% per annum from the date of the filing of the petition. (Para- 7 to 15)

Cases referred:
Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others Vs. Madan Mohan and another, 2013 AIR (SCW) 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105.

For the appellant	:	Appellant in person with Mr. Ashok Tyagi, Advocate.
For the respondents	:	Mr. Bimal Gupta, Senior Advocate with Mr. Vineet Vashisht, Advocate, for respondents No. 1 to 4. Respondent No. 5 stands deleted. Mr. G.D. Sharma, Advocate, for respondent No. 6. Nemo for respondent No. 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (oral)

This appeal is directed against the award dated 16th December, 2008, made by the Motor Accident Claims Tribunal-I, Sirmaur, District at Nahan, H.P., (hereinafter referred to as 'the Tribunal') in M.A.C. Petition No. 114-MAC/2 of 2005, titled Smt. Sitara Begum & another versus Mohd.Nawab & others, whereby the claim petition came to be dismissed, for short, 'the impugned award'.

2. The owner-cum-driver of the offending vehicle, i.e. tractor and the insurer have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. Only, one of the claimants, Smt. Sitara Begum has questioned the impugned award, on the grounds taken in the memo of appeal.

4. Heard. The impugned award merits to be set aside for the following reasons.

5. Claimants Sitara Begum and Uzma are the mother and widow of Mohammad Javed, deceased, respectively. The claimants have specifically averred in the claim petition that the accident was outcome of rash and negligent driving of Mohammad Nawab, i.e. respondent No. 1, who had driven the offending tractor, rashly and negligently, on 11.10.2005 and caused the accident, at about 5.50 a.m., at Brahampur Shri Ram Chander Mission, Yoga Ashram, Roorki, in which, Javed Mohammad sustained injuries and succumbed to the same.

6. Respondents No. 1 to 5 have specifically averred in their objections to the claim petition that the accident was outcome of the rash and negligent driving of the deceased, who was driving the motor cycle bearing No. UP-11-N-5483, rashly and negligently, could not control the same and struck against the tractor. Thus, they have admitted that the accident was outcome of the use of the motor vehicle, which runs contrary to the findings returned by the Tribunal in paras 9 to 11 of the impugned award.

7. The claimants have specifically averred in the claim petition that driver Mohammad Nawab had driven the tractor, rashly and negligently and caused the accident. They have also examined witnesses to this effect. The respondents have not led any evidence to the contrary.

8. It is *prima-facie* proved that the tractor was being driven, rashly and negligently by driver Mohammad Nawab. Even otherwise, the doctrine of *Res Ipsa Loquitor* has to be applied and the driver had to take precaution, which he has failed to do so.

9. Having said so, the claimants have proved issue No. 1. Accordingly, the findings returned by the Tribunal on issue No. 1 are set aside and it is held that Mohmmad Nawab had driven the tractor, rashly and negligently and caused the accident, in which Mohammand Javed had lost his life.

10. The next question is- *as to what amount of compensation, the claimants are entitled to?*

11. Admittedly, the age of the deceased was 28 years at the time of accident. The claimants have specifically averred in the claim petition that his income was Rs. 8,000/- per month, at the time of accident. While exercising the guess work, it can be safely held that the monthly income of the deceased would not have been less than Rs. 4,000/- at the relevant time. After deducting one-third towards the personal expenses of the deceased, it can be held that the claimants have lost source of dependency to the tune of Rs. 2500/- per month.

12. The multiplier of '16' is applicable in this case, as per the 2nd Schedule appended to the Motor Vehicles Act read with the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others** versus **Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104,** upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others** versus **Madan Mohan and another,** reported in **2013 AIR (SCW) 3120** read with the judgment rendered by the Apex Court in case titled as **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.**

13. In view of the ratio laid down by the apex Court in the cases, *supra,* the claimants are held entitled to the tune of Rs.2500/- x 12 = Rs.30,000 x 16 = Rs.4,80,000/- under the head 'loss of dependency'.

14. Keeping in view the recent judgments of the Apex Court, a sum of Rs.10,000/- each, is also awarded under the heads 'loss of love and affection', 'loss of consortium', 'loss of estate' and 'funeral expenses' in favour of the claimants.

15. Having said so, it is held that the claimants are entitled to compensation to the tune of Rs.4,80,000/- + Rs. 40,000/- total amounting to Rs. 5,20,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

16. Now the question is – *who is to be saddled with liability?*

17. The factum of insurance is admitted. Accordingly, the insurer-insurance, i.e. respondent No. 6 is saddled with the liability.

18. The claimants Sitara Begum and Uzma are entitled to the compensation in equal shares.

19. The insurer-Insurance Company is directed to deposit the awarded amount within eight weeks from today. On deposit, the award amount be released in favour of the claimants, in equal shares, strictly as per the terms and conditions contained in the impugned award, through payees' account cheque or by depositing it in their accounts. In case, claimant Uzma fails to appear, her share be deposited in the fixed deposit for a period of five years.

20. Accordingly, the impugned award is set aside, the compensation to tune of Rs. 5,20,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization, is awarded in favour of the claimants and the appeal is disposed of.

21. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR JUSTICE P.S.RANA, J.

Surender Kumar son of Girdhari Lal. .....Petitioner.

Versus

State of HP and others. .....Non-petitioners.

CWP No. 10059 of 2012.
Order reserved on:11.12.2015.
Date of Order: February 26,2016

Industrial Disputes Act, 1947- Section 25- Petitioner was engaged on daily wage basis- his services were terminated in violation of mandatory provisions of Industrial Disputes Act- petitioner submitted demand notice for reconciliation of matter but conciliation failed- Labour Court dismissed the reference- respondent pleaded that petitioner was appointed as Driver on casual basis till the joining of new driver- petitioner was not ready to serve on daily wages and thereafter H was engaged- services of the petitioner were terminated in the year 2006- hence, no work was available for the driver - appointment of petitioner was stop gap arrangement- petitioner had not impleaded H and no order can be passed against him- petitioner was appointed as driver on daily wages for 89 days only or till the joining of the new driver- petitioner never completed 240 days in a calendar year- appointment on public post is always made through selection process and through recommendation of selection committee in accordance with law- there is no evidence on record that petitioner was appointed by proper advertisement, by adopting the proper selection process - regularization by way of back door entry is not permissible- Labour Court had rightly appreciated the evidence – petition dismissed. (Para-7 to 9)

Cases referred:

Mool Raj Upadhyaya Vs. State of HP and others, 1994 Supp (2) SCC 316
Mohd. Ali Vs. State of HP and others, Latest HLJ 2015 HP 93

For the petitioner: Mr.V.D.Khidtta, Advocate.
For non-petitioners: Mr.Rupinder S.Thakur, Addl. Advocate General with Mr. J.S.Rana, Asstt. Advocate General.

The following order of the Court was delivered.

P.S.Rana Judge.

Present civil writ petition is filed under Article 226/227 of the Constitution of India with prayer that award dated 12.6.2012 passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala HP be quashed and set aside. Further prayer sought that petitioner be recommended as driver on daily wage basis with all seniority and back wages benefit.

BRIEF FACTS OF THE CASE:

2. It is pleaded that in the month of January 2003 petitioner was engaged as driver on daily wage basis in the office of non-petitioner No.2 namely Block Development Officer Karsog District Mandi HP. It is further pleaded that in the month of January 2006 services of petitioner were terminated in violation of mandatory provisions of Industrial Disputes Act 1947. It is further pleaded that thereafter on August 2006 petitioner submitted demand notice for reconciliation of matter but conciliation failed. It is further pleaded that thereafter reference was sent by learned Labour Commissioner Shimla to learned Labour Court Dharamshala. It is further pleaded that learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala did not grant any relief. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners pleaded therein that petitioner was engaged as driver on casual basis w.e.f. 19.11.2003 to 22.5.2004. It is further pleaded that petitioner was engaged on daily wage till joining of new driver. It is further pleaded that petitioner was not willing to serve on daily wage and thereafter Sh Hem Singh was engaged. It is further pleaded that services of petitioner were terminated in the year 2006 because there was no work available for driver. It is further pleaded that there was no approval of finance department for continuous of service of petitioner. It is further pleaded that petitioner was appointed for limited duration only on temporary basis and his employment came to an end with expiry of the period. It is further pleaded that appointment of petitioner was stop gap arrangement. It is further pleaded that petitioner is not entitled to any relief. Petitioner also filed re-joinder and re-asserted the allegations mentioned in writ petition.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Advocate appearing on behalf of non-petitioners and also perused entire record carefully.

5. Following points arise for determination in the present writ petition:

(1) Whether civil writ petition is liable to be accepted as mentioned in memorandum of grounds of writ petition and whether Sh Hem Singh is necessary party in writ petition ?

(2) Relief.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that Sh Hem Singh was appointed as driver on regular basis in the year 2008 and petitioner was appointed on daily wage basis in the year 2003 and continued to work till 2006 and on this ground writ petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. In the present writ petition petitioner did not implead Sh Hem Singh as non-petitioner who is necessary party. It is well settled law that in judicial proceedings no one should be condemned unheard. It is held that no adverse order against Sh Hem Singh can be passed without impleading him as co-non-petitioner. It is held that writ petition is bad for non-joinder of necessary party i.e. Sh Hem Singh.

7. Submission of learned Advocate appearing on behalf of petitioner that petitioner was engaged on daily wage and non-petitioners have violated the principle of last come first go is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that vide letter dated 4.3.2005 issued by Deputy Commissioner Mandi petitioner was appointed as driver on daily wages for 89 days only or till joining new driver on contract basis. It is proved on record that petitioner did not complete 240 days in a calendar year. It is proved on record that petitioner has served as follow:

Sr.No.	Calender Year	Total number of days in a calendar year
1.	2003	19 days
2.	2004	69 days
3.	2005	208 days
4.	2006	3 days

Above stated working days remain un-rebutted on record. There is no positive, cogent and reliable evidence on record that petitioner has worked for more than the days mentioned supra. It was held in case reported in 1994 Supp (2) SCC 316 titled Mool Raj Upadhyaya Vs. State of HP and others that employee who has completed 240 days in a calendar year should be appointed as work charge employee. There is no evidence on record that petitioner has completed 240 days continuously in a calendar year. On the contrary it is proved on record that petitioner was appointed as stop gap arrangement on daily wage. Also see Latest HLJ 2015 HP 93 titled Mohd. Ali Vs. State of HP and others. It is held that in public post automatic appointment is not warranted. Appointment on public post is always conducted through selection process and through recommendation of selection committee in accordance with law. There is no evidence on record that petitioner was appointed by way of proper advertisement selection process and there is no evidence on record in order to prove that petitioner was appointed by selection committee constituted in accordance with law. Regularization of service by way of back door entry is not permissible under law upon public post. On the contrary it is proved on record that petitioner was appointed as stop gap arrangement only on daily wage. RW1 Satinder Thakur Block Development Officer Karsog appeared before learned Labour Court in person and deposed that no work is available in the office for the petitioner as regular driver Sh Hem Singh is working in the office. It is proved on record that there is only one post of driver in the office of non-petitioner No.2 i.e. Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur has stated in positive manner when he appeared in witness box before learned Labour Court that Sh Hem Singh was appointed as driver in the year 2008 in the office of Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur Block Development Officer has stated in positive manner that petitioner did not work for more than 240 days in a calendar year. RW1 has further stated in positive manner that no fictional breaks was given to petitioner. Testimony of RW1 Satinder Thakur Block Development Officer Karsog is trust worthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of RW1 Satinder Thakur. There is no evidence on record in order to prove that RW1 Satinder Thakur has hostile animus against petitioner at any point of time.

8. Letter Ext RW1/B, RW1/C, RW1/D, RW1/E, RW1/F and RW1/G proved in positive manner that appointment of petitioner was only on daily wage as stop gap arrangement. Letter Ext RW1/B to RW1/G remains un-rebutted on record.

9. Submission of learned Advocate appearing on behalf of petitioner that order passed by learned Labour Court is perverse against facts and contrary to law is also rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the award passed by learned Labour Court. Learned Labour Court has properly discussed oral as well as documentary evidence placed on record. It is held that finding of learned Labour Court is based upon oral as well as documentary evidence on record and are in consonance with law. It is held that there is no illegality in the award passed by learned Labour Court Dharamshala HP. In view of the fact that petitioner was appointed on daily wage as stop gap arrangement and in view of fact that petitioner did not complete 240 days in a calendar year court is of the opinion that it is not expedient in the ends of justice to

interfere in the award passed by learned Labour Court. Hence point No.1 is answered accordingly.

Point No.2 (Relief).

10. In view of finding upon point No.1 civil writ petition filed under Article 226/227 of the Constitution of India is dismissed. No order as to costs. Writ petition is disposed of. All miscellaneous application(s) are also disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

United India Insurance Co.Ltd. .....Appellant
Versus
Sabra Bibi and others ..... Respondents

FAO No.434 of 2009.
Decided on : 26.2.2016

Motor Vehicles Act, 1988- Section 149- Tribunal had awarded compensation of Rs.4.38 lacs, along with interest at the rate of 9% per annum from the date of filing of the claim petition till deposit- Tribunal had saddled the insurer with the right of recovery- once the Tribunal had recorded the findings the deceased was traveling in the vehicle as gratuitous passenger, the Insurer was rightly saddled with liability with the right of recovery- appeal dismissed. (Para-2 to 4)

Case referred:
Oriental Insurance Company vs. Smt.Veena Devi, and other connected matters, 2014(3) Him L.R. 1969

For the appellant: Mr.Lalit K. Sharma, Advocate.
For the respondents: Mr.Ramakant Sharma, Senior Advocate, with Ms.Soma Thakur, Advocate, for respondents No.1 and 2.
Mr.Ramesh Sharma, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 25th July, 2009, passed by the Motor Accident Claims Tribunal(I), Kangra at Dharamshala, H.P., (for short, the Tribunal), in Claim Petition No.47-N/II-2005, titled Sabra Bibi and another vs. Mohammad Ali and others, whereby compensation to the tune of Rs.4.38 lacs, alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till deposit, came to be awarded in favour of the claimants, and the insurer was saddled with the liability, with a right of recovery, (for short, the impugned award).

2. The insured/owner, the driver and the claimants have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to

them. Only the insurer has questioned the impugned award on the ground that the Tribunal has fallen in error in saddling the insurer with the liability with a right of recovery.

3. I have gone through the impugned award as also the record of the case. The Tribunal has recorded categorical finding to the effect that the deceased was traveling in the offending vehicle as gratuitous passenger. Therefore, the Tribunal saddled the insurer with the liability, with a right of recovery from the owner. It is not understandable as to why the appellant/insurer has questioned the impugned award by the medium of the instant appeal. The impugned award has been passed against the owner of the offending vehicle, who has not questioned the same. The Tribunal, in order to provide immediate succor to the victims of a vehicular accident, has rightly directed the insurer to pay the compensation at the first place and also protected it by granting the right of recovery from the owner.

4. This Court, after following the law laid down by the Apex Court, has already taken the similar view in case titled as **Oriental Insurance Company vs. Smt.Veena Devi, and other connected matters, 2014(3) Him L.R. 1969,** and catena of other judgments.

5. Having said so, there is no merit in the appeal and the same is dismissed. The Registry is directed to release the entire amount, alongwtih interest, in favour of the claimants, strictly in terms of the impugned award.

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BEFORE HON'BLE MR JUSTICE MANSOOR AHMAD MIR, C.J.

United India Insurance Company ...Appellant.
Versus
Rakesh Kumar and others ...Respondents.

FAO No. 403 of 2009
Decided on: 26.02.2016

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver did not have a valid driving licence- insurer had not led any evidence to prove that the driver did not have a valid and effective driving licence to drive the vehicle and that the owner had committed willful breach or had not exercised due care and caution- appeal dismissed. (Para-6 to 8)

For the appellant: Mr. P.S. Chandel, Advocate.
For the respondents: Mr. Abhay Kaushal, Advocate, vice Mr. T.S. Chauhan, Advocate, for respondent No. 1.
Nemo for other respondents.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Challenge in this appeal is to the judgment and award, dated 19th June, 2009, made by the Motor Accident Claims Tribunal, Fast Track Court, Una, District Una, H.P. (for short "the Tribunal") in MAC Petition No. RBT 16/05/03, titled as Rakesh Kumar versus Surinder Kumar and others, whereby compensation to the tune of Rs. 1,25,000/- with interest @ 6% per annum from the date of filing of the petition came to be awarded in

favour of the claimant-injured and against the respondents (for short "the impugned award").

2. The claimant-injured, driver and the owners-insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has questioned the impugned award so far it relates only to issues No. 4 and 5. Thus, I deem it proper to reproduce only issues No. 4 and 5 framed by the Tribunal herein:

> *"4. Whether the tractor in question was being used against the terms and conditions of insurance policy as alleged, if so its effect? OPR-5*
>
> *5. Whether respondent No. 1 was not having any valid and effective driving licence at the relevant time as alleged, if so its effect? OPR-5"*

Issue No. 4:

4. Appellant-insurer has not led any evidence to prove that the offending vehicle was being used in violation of the terms and conditions of the insurance policy. However, I have gone through the averments contained in the claim petition, wherein it has been specifically averred that the material was being taken for the personal use of the driver of the owners-insured. Thus, it cannot be said that the offending vehicle was being used in violation of the terms and conditions contained in the insurance policy.

5. It was for the appellant-insurer to plead and prove the said issue, has not led any evidence to this extent, thus, has failed to discharge the onus. Accordingly, the findings returned by the Tribunal on issue No. 4 are upheld.

Issue No. 5:

6. It was for the appellant-insurer to lead evidence and prove that the driver of the offending vehicle was not having a valid and effective driving licence to drive the offending vehicle.

7. Learned counsel for the appellant-insurer argued that the driver of the offending vehicle was having a fake licence, which is factually incorrect. The document, Ext. RW-1/A, which has been proved before the Tribunal, does disclose that the driving licence was valid one and the driver of the offending vehicle was having an effective driving licence.

8. Even otherwise, it was for the appellant-insurer to plead and prove that the owners-insured of the offending vehicle have committed a willful breach or they have not exercised due care and caution, has not led any evidence to this effect, thus, has failed to prove the said factum.

9. Having said so, the impugned judgment is well reasoned, needs no interference.

10. Accordingly, the impugned award is upheld and the appeal is dismissed.

11. Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in his bank account.

12. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Vijender Sharma son of Parkash Sharma. .....Revisionist/Tenant.

Versus

Smt. Uma Devi W/o Bhajan Lal. .....Non-revisionist/Landlady.

Civil Revision No. 119 of 2014.
Order reserved on: 31.12.2015.
Date of Order: February 26, 2016**.**

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlady filed an application pleading that premises had become unsafe for human habitation- it required repair which cannot be carried out without vacating the premises- premises was required bonafide by the landlady as her son got married and second son is also going to marry- tenant denied these allegations- it was contended that landlady had not pleaded that she was not occupying another residential premises and that she had not vacated any such building without any sufficient cause- held, that there was no evidence to prove that landlady had another residential building in Urban area and that she had vacated the residential building within five years from the date of filing of the Eviction Petition- other tenants had agreed to vacate the premises on demand- mere fact that eviction petition has not been filed against them is not sufficient to dismiss the eviction petition- non examination of the expert is not material in view of the admission of the tenant that retaining wall had collapsed- petition cannot be dismissed on the ground that site plan was not filed by the landlady- it was duly proved that one son had married and other was going to marry- hence, plea of the landlady that she had insufficient accommodation is acceptable- Revision petition dismissed. (Para- 11 to 17)

Cases referred:
Mangan Lal Vs. Nana 2009(1) Civil Court Case 102 (Apex Court).
Deep Chand Vs. Lajwanti 2008 (8) SCC 497
A.K.Jain Vs. Prem Kapoor 2008 (8) SCC 593
Som Dutt Vs. Sham Lal 2010 (1) Himachal law reports 442

For the revisionist: Mr.Mahesh Sharma, Advocate.
For Non-revisionist Mr.G.D.Verma, Sr. Advocate with Mr. B.C.Verma, Advocate.

The following order of the Court was delivere:

P.S.Rana, Judge.

Present revision petition is filed under Section 24(5) of HP Urban Rent Control Act 1987 against the order of learned Rent Controller Theog District Shimla HP dated 3.4.2012 announced in rent petition No. 19-2 of 2010 titled Smt. Uma Devi Vs. Sh Vijender Sharma and against the order of learned appellate authority announced in rent appeal No. 1-T-13b of 2013/12 titled Vijender Sharma Vs. Smt. Uma Devi .

BRIEF FACTS OF THE CASE:

2. Smt. Uma Devi landlady filed a eviction petition against tenant under Section 14 of HP Urban Rent Control Act 1987 pleaded therein that demised premises is residential in nature and was given on rent @ 500/- per month in the year 2000. It is further pleaded that electric fittings, water and all other amenities provided in the premises. It is further

pleaded that demised premises have become unsafe for human habitation. It is further pleaded that demised premises required repair from inner side and same could not be conducted without vacating the tenant. It is further pleaded that demised premises also required by landlady for her bonafide use as the accommodation of landlady is not sufficient because one son of landlady got married and second son of landlady also going to marry recently. Prayer for acceptance of revision petition sought.

3. Per contra response filed on behalf of tenant pleaded therein that landlady is harassing tenant and obstructing supply of water to tenant without any reasonable cause in demised premises. It is further pleaded that demised premises did not require any repair. It is further pleaded that demised premises is fit for human habitation. It is further admitted that during rainy season in the year 2010 some portion of existing retaining wall was collapsed. It is further pleaded that same was immediately re-constructed after 2/3 months. It is further pleaded that present eviction petition filed by landlady just to cause mental harassment to tenant. Prayer for dismissal of eviction petition sought.

4. As per pleadings of parties following issues framed by learned Rent Controller.

1. Whether disputed premises are unfit for human habitation and required for repair by the applicant, as prayed for?. .....OPA.

2.Whehter disputed premises are required by the applicant for her bonafide use as accommodation, as alleged? ....OPA.

3. Whether other tenants are also residing in the same premises, as alleged?. ...OPR.

4. Relief.

Learned Rent Controller decided issues No. 1 to 3 in affirmative and directed tenant to deliver vacant possession of the premises to landlady within a period of two months from the date of order.

5. Feeling aggrieved against the order of learned Rent Controller tenant filed rent appeal No. 1-T-13 B of 2013/12 before learned appellate authority titled Vijender Sharma Vs. Uma Devi. Learned appellate authority decided rent appeal on dated 31.7.2014 and dismissed the appeal filed by tenant.

6. Feeling aggrieved against the or der dated 31.7.2014 passed by learned appellate authority revisionist filed present revision petition.

7. Court heard learned Advocate appearing on behalf of revisionist and learned Advocate appearing on behalf of non-revisionist and also perused entire record carefully.

8. Following points arise for determination in present revision petition:

1. Whether revision petition filed by tenant is liable to be accepted as mentioned in memorandum of grounds of revision petition?.

2. Relief.

Finding on point No.1 with reasons:

9. PW1 Uma Devi has stated that a demised premise was given upon rent @ 500/- per month in the year 2000. She has stated that electricity and water facilities have been provided in the demised premises by landlady. She has stated that demised premises were constructed thirty years ago. She has stated that other tenants are ready to vacate demised premises. She has stated that she has constructed a retaining wall which was damaged during rainy season. She has stated that vacant premises are essential for repair.

She has stated that repair could not be conducted without vacation of tenants. She has stated that she has two sons and one son has got married and she would marry second son recently. She has stated that she has no accommodation for her family members. She has stated that she also issued notice to tenant Ext PW1/A. She has stated that entire building is comprised of five storeys. She has stated that building was constructed 30 to 35 years ago. She has stated that there are five other tenants in the same building. She has stated that other tenants are voluntarily ready to vacate the premises. She has denied suggestion that she has filed eviction petition just to harass the tenants. She has denied suggestion that she does not require the building for bonafide purpose.

10. RW1 Vijender Sharma has stated that he is tenant since 11.9.2000 on rent @ 500/- per month. He has stated that there are six other tenants in the same building. He has stated that landlady did not file any eviction petition against other tenants. He has stated that landlady is residing in fourth storey of the building. He has stated that landlady and her children used to block the supply of water and used to harass him. He has stated that one son of landlady is married and another son is un-married. He has stated that there are no cracks in demised premises. He has stated that building is in a proper condition. He has stated that present eviction petition filed just to harass the tenant in illegal manner. He has denied suggestion that cracks have developed in the demised premises due to fall of retaining wall.

11. Submission of learned Advocate appearing on behalf of revisionist that landlady did not plead that she is not occupying another residential building owned by her in urban area concerned and that she has not pleaded that she did not vacate any such building without any sufficient cause within five years of filing of present eviction petition and on this ground revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. There is no evidence on record in order to prove that landlady has another residential building in urban area. There is no evidence on record that landlady has vacated residential building in urban area within five years from filing present eviction petition. Even tenant did not plead above stated facts in the response. In the absence of pleadings it is not expedient in the ends of justice to dismiss the eviction petition filed by landlady.

12. Submission of learned Advocate appearing on behalf of revisionist that there are other tenants in the building and landlady did not file any eviction petition against other tenants and also did not place on record any agreement relating to eviction of demised premises against other co-tenants and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. Landlady has specifically stated when she appeared in witness box that other co-tenants have agreed to vacate the premises when demanded by landlady. Above stated statement of landlady remains un-rebutted on record. Revisionist did not examine any other co-tenants in order to prove that other tenants have not voluntarily agreed to vacate the premises as per demand of landlady.

13. Submission of learned Advocate appearing of behalf of revisionist that there is no evidence of expert on record that cracks have developed in the inner side of the building and same could not be repaired without eviction of tenants and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. Landlady has specifically stated when she appeared in witness box that retaining wall was fallen and thereafter cracks developed in the demised premises from inner side of building. Even revisionist has admitted that retaining wall was collapsed. Court is of the opinion that repair of inner wall of demised premises is essential in present case for

the safety of inhabitants. It is mandatory duty of landlady to keep demised premises in proper condition and to ensure the safety of inhabitants of the demised premises.

14. Submission of learned Advocate appearing on behalf of revisionist that site plan is not filed by landlady and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. In the present case there is no dispute inter se the parties qua tenancy and there is no dispute inter se the parties qua location of building. Court is of the opinion that site plan is essential when there is dispute inter se the parties qua demised premises and when there is dispute inter se the parties qua location of building. In the present case landlady has specifically mentioned in eviction petition in positive manner that demised premises is situated in ward No.2 Theog near Janog post office and Tehsil Theog District Solan HP. Even photographs of the building are placed on record and court is of the opinion that present eviction petition cannot be dismissed on the ground that site plan was not filed along with eviction petition by landlady.

15. Submission of learned Advocate appearing on behalf of revisionist that premises is not bonafide required by landlady for her own use and occupation is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that landlady has two sons. It is proved on record that one son of landlady is married. It is also proved on record that landlady has another un-married son. It is proved on record that landlady is in possession of two rooms set only. Court is of the opinion that two rooms set is not sufficient for landlady and other family members because landlady proposes to marry her younger son and each married sons required separate accommodation in order to enjoys matrimonial life in harmonious and peaceful manner.

16. Submission of learned Advocate appearing on behalf of revisionist that there is no evidence on record in order to prove that demised premises is required by landlady for the purpose of re-construction and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that learned Rent Controller has framed issue No.1 to the effect that whether demised premises requires by landlady for repair purpose and learned Rent Controller has given finding that demised premises requires by landlady for repair purpose. It is well settled law that landlady can repair her premises at any time in accordance with law for the safety of inhabitants of the premises. See. Mangan Lal Vs. Nana 2009(1) Civil Court Case 102 (Apex Court). See Deep Chand Vs. Lajwanti 2008 (8) SCC 497. See A.K.Jain Vs. Prem Kapoor 2008 (8) SCC 593. See Som Dutt Vs. Sham Lal 2010 (1) Himachal law reports 442.

17. Submission of learned Advocate appearing on behalf of revisionist that learned Rent Controller and learned appellate authority did not properly appreciate oral as well as documentary evidence placed on record and have caused miscarriage of justice to revisionist is also rejected being of any force for the reasons hereinafter mentioned. Court has carefully perused the orders passed by learned Rent Controller and learned first appellate authority. It is held that learned Rent Controller and learned first appellate authority have properly appreciated oral as well as documentary evidence placed on record. It is held that no mis-carriage of justice is caused to the revisionist. In view of above stated facts point No.1 is answered in negative.

Point No.2 (Relief).

18. In view of finding on point No.1 revision petition is dismissed. Orders of learned Rent Controller and learned first appellate authority are affirmed. No order as to costs. Revision petition is disposed of. Pending application if any also disposed of.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

Himachal Road Transport Corporation .....Appellant.
Versus
Lekh Ram .....Respondent.

LPA No.42 of 2015 a/w connected LPAs.
Decided on: February 27, 2016.

Constitution of India, 1950- Article 226- A direction was issued by the Single Judge to examine the case of the petitioners in the light of the orders of the appointment, which were contrary to the appointment policy- it was conceded by the petitioner that direction to examine the case of the petitioners in accordance with the offer of the appointment is not legally correct – he prayed that direction be issued to examine the case of the petitioners in the light of the policy which was prevailing at the time when the writ petitioners approached the writ respondents for appointment on compassionate ground - LPA disposed of with the direction to examine the case of the petitioners in the light of the decision of the Court in ***Surinder Kumar vs. State of H.P. and others, ILR 2015 HP (VI) 842 (DB).*** (Para-1 to 5)

Case referred:
Surinder Kumar vs. State of H.P. and others, Latest HLJ 2016 (HP)(DB) 113: {ILR 2015 HP (VI) 842 (DB)}

For the Appellant(s): Mr.Ajay Mohan Goel, Advocate.
For the Respondent(s): Mr.V.D. Khidta, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

All these appeals are directed against the judgments, dated 29th October, 2014 and 5th November, 2014, passed by a learned Single Judge of this Court, whereby the learned Single Judge has directed the writ respondents (appellants herein) to examine the cases of the writ petitioners in light of the orders of appointment i.e. Annexure P-12, Annexure P-10, Annexures P-14 & P-15, Annexure P-9, and Annexures P-24 and P-25, annexed with respective writ petitions, which were also not in consonance with the policy prevailing at the relevant point of time for making appointments on compassionate ground.

2. At this stage, the learned counsel for the writ petitioners (respondents herein) stated that it is a fact that the impugned judgments, in so far as they relate to examining the case of the writ petitioners in accordance with the offer of appointment are concerned, the same are not legally correct. It was further submitted that the instant Letters Patent Appeals may be disposed of by directing the respondents to examine the cases of the writ petitioners in light of the policy which was prevailing at the time when the writ petitioners approached the writ respondents for employment on compassionate ground.

3. The controversy viz. a viz. applicability of the policy stands settled by this Court in its latest decision in **Surinder Kumar vs. State of H.P. and others, Latest HLJ 2016 (HP)(DB) 113,** wherein, amongst others, following two questions were framed by this Court:

"(ii) Which date would be relevant viz. a viz. applicability of the Policy - whether the date of death of the employee or the date when the application was presented, for the first time, for seeking employment on compassionate ground or the date on which the application came up for consideration before the Authorities, and whether a claim for compassionate appointment can be decided on the basis of subsequent amendment, when the application was presented prior to such amendment?

(iii) If an applicant was in lis and his case was directed to be reconsidered, whether the claim of such applicant is to be determined as per the policy which was existing at the time of passing the order or as per the policy which was in place at the time of staking claim for the first time or as per the policy existing at the time of consideration?"

4. After dilating upon different decisions of the Apex Court, this Court held that the case of the applicant would be considered as per the provisions of the Policy prevalent at the time when, for the first time, the application for appointment on compassionate ground was made to the Department. It is apt to reproduce paragraphs 63 and 64 of the said decision hereunder:

"63. Applying the ratio to the cases in hand and keeping in view the provisions of the Policy in question, we hold that the date of death of the employee is not to be taken into consideration while seeing the applicability of the Policy. Similarly, the date on which the application comes up for consideration before the competent Authority is also of no importance, since, because of the lackadaisical approach of the Departments, such cases may have been kept pending for a pretty long time and during that period, the policy may have been amended. Thus, the applicants, in such circumstances, cannot be made to suffer for the inaction on the part of the Authorities.

64. Accordingly, we hold that the case of the applicant would be governed by the provisions of the Policy which was in place at the time when the application, for the first time, was made by the applicant to the Department, and in the case of a minor, the right to apply would commence from the date he/she attained majority, as given in the Scheme and his/her application would be considered as per the Policy/Scheme which was in vogue at the time of presenting the application. In the matters where the Court or the Tribunal has directed the Authorities to consider the case of the applicant afresh, the claim of the applicant has to be determined as per the policy applicable at the time of presenting the application for the first time before the Department concerned. Points No.(ii) and (iii) are answered accordingly."

5. In view of above discussion, all the Letters Patent Appeals are disposed of by directing the writ respondents to examine the cases of the writ petitioners in light of the decision of this Court in Surinder Kumar's case supra and the observations made herein above, and make a decision within a period of six weeks from today. Pending CMPs, if any, also stand disposed of.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

Parveen Kumar ...Petitioner.
VERSUS
State Election Commission and others ...Respondents.

CWP No.24 of 2016.
Decided on: February 27, 2016.

Constitution of India, 1950- Article 226- Writ Petition has become infructuous in view of subsequent developments and by the efflux of time- hence, same is dismissed as infructuous. (Para-1)

For the petitioner: Mr.Ashok Thakur, Advocate.
For the Respondents: Ms.Nishi Goel, Advocate, for respondent No.1.
Mr.Shrawan Dogra, Advocate General, with Mr.Anup Rattan and Mr.Romesh Verma, Addl.A.Gs. and Mr.J.K. Verma, Dy.A.G., for respondents No.2 to 5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

In view of the subsequent developments and by the efflux of time, the writ petition has become infructuous and the same is dismissed as such. However, the petitioner is at liberty to seek appropriate remedy.

2. Pending CMPs, if any, also stand disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

The State of H.P. & another. .....Appellants.
Versus
Kehar Singh & another. .....Respondents.

LPA No. 297 of 2011
Date of order: 27.02.2016

Constitution of India, 1950- Article 226- Directions were issued to the respondents to take action in terms of the judgment titled ***Gauri Dutt & others vs. State of H.P.,*** reported in ***Latest HLJ 2008 (HP) 366***- held, that judgment was passed on the basis consent and LPA does not lie against the consent judgment – appeal dismissed. (Para-1 and 2)

Case referred:
Gauri Dutt & others vs. State of H.P., Latest HLJ 2008 (HP) 366

For the appellants: Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, Deputy Advocate General for the respondents.

For the respondents: Nemo.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice. *(Oral).*

This Letters Patent Appeal is directed against the judgment and order dated 18.08.2010, made by the learned Single Judge of this Court in CWP(T) No. 6865 of 2008, titled Kehar Singh versus State of H.P. & others, whereby the writ petition filed by the writ petitioner-respondent herein came to be disposed of with a direction to the writ respondents-appellants herein to take necessary action in terms of directions contained in ***Gauri Dutt & others vs. State of H.P.,*** reported in ***Latest HLJ 2008 (HP) 366*** (for short "impugned judgment"), on the grounds taken in the memo of appeal.

2. We have gone through the impugned judgment and are of the considered view that a consent judgment has been passed and LPA will not lie against the consent judgment.

3. Accordingly, the impugned judgment is upheld and the appeal is dismissed alongwith pending applications, if any.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

State of H.P. and another .....Appellants

Versus

Rewa Shankar Kaushik Shastri and others .....Respondents.

LPA No. 263 of 2011
Date of decision: 27th February, 2016.

Constitution of India, 1950- Article 226- Judgment passed by the Court was cryptic- cases of the writ petitioners are squarely covered by the judgment passed by this Court in ***Paras Ram versus State of Himachal Pradesh and another CWP(T) No. 7712 of 2008,*** decided on 19.5.2009 – respondent directed to examine the case of the petitioner in the light of the judgment and to take the decision within six weeks. (Para-1 to 3)

For the appellants: Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Addl. AGs, and Mr. J.K. Verma, Deputy Advocate General.

For the respondents: Mr. Anshul Attri, proxy Advocate for Mr. Neel Kamal Sood, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice ***(Oral)***

This Letters Patent Appeal is directed against the judgment dated 30.8.2010, made by the learned Single Judge of this Court in CWP(T) No.2354 of 2008, titled *Rewa Shankar Kaushik versus State of Himachal Pradesh and others,* whereby the writ petition filed by the petitioner came to be allowed, hereinafter referred to as "the impugned judgment", for short, on the grounds taken in the memo of appeal.

2. The impugned judgment, on the face of it, is cryptic. The learned counsel for the writ petitioners- respondents herein stated at the Bar that the cases of the writ petitioners/respondents herein are squarely covered by the judgment made by this Court in ***Paras Ram versus State of Himachal Pradesh and another CWP(T) No. 7712 of 2008,*** decided on 19.5.2009 and respondents may be directed to examine the cases of the writ petitioners and make a decision within a time frame. Mr. J.K. Verma, learned Deputy Advocate General has no objection to this proposition. Their statements are taken on record.

3. In the given circumstances, the writ respondents are directed to examine the cases of the writ petitioners in the light of the judgment referred to supra and make a decision within six weeks from today.

4. Having said so, the LPA is allowed and the impugned judgment is modified, as indicated hereinabove. Pending applications, if any stand disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Ghan Shayam ...Appellant.

Versus

State of Himachal Pradesh and another ...Respondents.

LPA No.158 of 2011
Decided on: 29.02.2016

Constitution of India, 1950- Article 226- Writ petitioner approached the Court to seek direction against the respondent to regularize his services with 1996 with all consequential benefits and release the arrears of payment- prior to this, writ petitioner had approached the Administrative Tribunal vide OA No. 143 of 1991 decided on 3.12.1996- OA was disposed of with the observations that the writ petitioner had already completed 10 years of the services on December 31, 1995 as Pump Operator and as per the statement of learned Additional Advocate General, his services for regularization will be considered from 1996- relying upon the order of the Administrative Tribunal, the writ petition was dismissed by the Court- held, that the Writ petitioner could not have claimed any relief which was not prayed in that lis as the relief claimed was hit by Order 2 Rule 2 CPC read with Section 11 CPC- Writ Petition was rightly dismissed- appeal also dismissed. (Para-1 to 8)

For the appellant: Mr. Ramakant Sharma, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice. *(Oral)*

This appeal is directed against the judgment and order, dated 5th May, 2010, made by the Writ Court in CWP (T) No. 5163 of 2008, titled as Shri Ghan Shyam versus State of Himachal Pradesh and another, whereby the writ petition filed by the appellant-writ petitioner came to be dismissed (for short "the impugned judgment").

2. It is apt to reproduce the reliefs sought by the appellant-writ petitioner in OA No. 1287 of 1998, which was transferred to this Court and came to be diarized as CWP (T) No. 5163 of 2008, herein:

> *"(i) That the respondents may very kindly be directed to regularise the services of the applicant w.e.f. due date i.e. the year 1996 with all consequential benefits.*
>
> *(ii) That the respondents may further be directed to release the running pay scale to the applicant from 5.9.89 to 31.12.1995 and the arrears of payment be released with interest.*
>
> *(iii) That the respondents may further be directed to produce the entire record pertaining to the case of the applicant for the kind perusal of this Hon'ble Tribunal.*
>
> *(iv) Any other order/relief to which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be passed in favour of the applicant and against the respondents."*

3. It would be profitable to record herein that the appellant-writ petitioner had already approached the H.P. State Administrative Tribunal (for short "the Tribunal") by the medium of OA No. 143 of 1991, which was decided by the learned Tribunal on 3rd December, 1996, and the following order came to be passed:

> *"The original record produced by the learned Additional Advocate General which shows that the applicant has completed 10 years service on December 31, 1995 as Pump Operator. From 1996 his case will be considered for regularisation. He further submits that none of the applicant's junior has been regularised.*
>
> *In these circumstances no other and further order needs be passed. The application is finally disposed of in above referred to terms."*

4. The grievance of the appellant-writ petitioner as on 3rd December, 1996, stands clinched by the said order, dated 3rd December, 1996.

5. The appellant-writ petitioner cannot claim any relief, which he has not prayed in that lis or which had accrued to him or was available and, if prayed, was not granted, in view of the mandate of the provisions contained in the Code of Civil Procedure (for short "CPC"), particularly, Order 2 Rule 2 CPC read with Section 11 CPC.

6. The question is – whether the appellant-writ petitioner has sought for any relief which has accrued to him in terms of the order, dated 3rd December, 1996? No such relief has been sought for.

7. Having said so, the Writ Court has rightly made the impugned judgment, needs no interference.

8. Accordingly, the impugned judgment is upheld and the appeal is dismissed alongwith all pending applications.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Hans Raj Khimta ... Petitioner/DH
Versus
Smt. Kanwaljeet Kaur alias Sardarni Babli ... Respondent/JD

Civil Revision No. 128 of 2012
Reserved on : 5.1.2016
Date of Decision : February 29, 2016

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Rent Controller ordered the eviction of the tenant on account of arrears of rent- tenant failed to pay/tender the rent to the landlord and instead deposited it with the Rent Controller vide cheque dated 13.8.2009- held, that tenant in order to escape f rom the eviction has to pay the amount to the landlord - deposit with the Rent Controller will not help the tenant- application filed by the landlord allowed. (Para-2 to 7)

Cases referred:
Madan Mohan & another vs. Krishan Kumar Sood, 1994 Supp. (1) SCC 437
Wazir Chand vs. Ambaka Rani & another, 2005 (2) Shim. L.C. 498,
Atma Ram vs. Shakuntala Rani, (2005) 7 SCC 211

For the petitioner : Mr. Ajay Sharma, Advocate, for the petitioner.
For the respondent : Mr. R. K. Bawa, Sr. Advocate, with Mr. Ajay Sharma, Advocate, for the respondent.

The following judgment of the Court was delivered:

Sanjay Karol, J.

Petitioner who is the landlord filed a petition for ejectment against the respondent/tenant, inter alia on the ground of non payment of rent under the provisions of Section 14 of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as the "Act"). Such petition stood decided by the Rent Controller, Solan, Distt. Solan, H.P. vide order dated 23.7.2009 passed in Rent Petition No. 14/2 of 2007, titled as Hans Raj Khimta vs. Smt. Kanwal Jeet Kaur alias Sardarni Babli whereby the tenant was ordered to deposit the arrears of rent up to 31.7.2009. As per statutory requirement, needful was to be done within a period of 30 days. There is no dispute that the said order has attained finality. The amount due stood quantified by the Rent Controller. Undisputedly the tenant did not

pay/tender the same to the landlord but instead deposited it with the Rent Controller vide cheque dated 13.8.2009. This was so done within a period of 30 days.

2. The issue which arises for consideration is as to whether such payment is a valid tender, entitling the tenant for the benefit of not being evicted, in terms of the third proviso of sub-section (2) of Section 14 of the Act, thus rendering the order of ejectment to be unexecutable?

3. For determining the controversy in issue, the relevant provisions of the "Act" (Section-14, Section 20 & Section 21) are reproduced as under:-

> "Section 14 (1). A tenant in possession of a building or rented land shall not be evicted there from in execution of a decree passed before or after the commencement of this Act or otherwise, whether before or after the termination of the tenancy, except in accordance with the provisions of this Act.
>
> (2). A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied –
>
> (i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:
>
> Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at the rate of 9 percent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;
>
> Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 percent per annum:
>
> Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non payment of rent due from him, shall not be evicted as a result of his order, if the tenant pays the **amount due** within a period of 30 days from the date of the order; or
>
> (ii) to (iv) … … ; or
>
> (v) … … ;
>
> The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:"
>
> … …
>
> … …
>
> "Section 20. Receipt to be given for rent paid. – (1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable.
>
> (2) Every tenant who makes payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a

written receipt for the amount paid to him duly signed by the landlord or his authorized agent.

(3) If the landlord or his authorized agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorised agent, by order, direct the landlord or his authorised agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid."

"Section 21. Deposit of rent by the tenant. – (1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 20 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner.

(2). … …" **[Emphasis supplied]**

4. Careful perusal of the aforesaid provisions leads to one conclusion. Section 14 of the Act does not envisage a situation whereby tenant can deposit the amount with the Rent Controller. Neither does Sections 20 and 21 provide for such a mechanism. In fact the latter provision deals with a totally different fact situation, enabling the law abiding tenant to deposit the rent upon refusal of the landlord in accepting the same.

5. Evidently the provisions of the Section save the tenant from getting the order of ejectment executed only and only if the amount due is paid within the stipulated period of time.

6. The expression used in the third proviso is "pays" and not "deposit" the amount so determined by the Rent Controller. The Section itself does not provide for deposit of the amount with the Rent Controller, after the order is passed. As such the only meaning which can be given to the expression "pay" (third proviso) and "tender" (Part (i) of sub-section 2 of Section 14) is that the rent is to be directly paid to the landlord and not deposited in the Court. In the given facts and circumstances provisions of Section 21 cannot be invoked, for there was neither any tender by the tenant nor any refusal by the landlord in accepting the rent. In fact the tenant herself does not rely upon the said provisions, for she did not deposit the rent by filing the application as stipulated under the provisions. Significantly no intimation of deposit of rent was sent to the landlord within thirty days from the date of passing of the order.

7. It is not the case of the tenant that after depositing the amount in court, an intimation was sent to the landlord. No request was made to the landlord for withdrawal of the same. It is only after expiry of the statutory period of 30 days, when the landlord filed an application for execution, did he learn that the amount stood deposited in the Court.

8. Though such fact would not have any bearing on the outcome of the present petition, but is only reflective of the mindset of the tenant, who even for the subsequent period, in perpetuity continued to commit default in payment of rent, thus forcing the landlord to file another petition for ejectment, pendency of which is not disputed before this Court.

9. The tenant also cannot be allowed to take advantage of the fact that the cheque deposited by her stood encashed and entered in the records of the rent controller.

The cheque was in the name of the Rent Controller and not the landlord. As such, court encashed it. There was no prayer made before the Rent Controller for remitting the rent to the landlord or informing him of such action. The tenant took recourse to such action at his own peril. It is also not her case that she did so under any legal advise.

10. The apex Court in *Madan Mohan & another vs. Krishan Kumar Sood,* 1994 Supp. (1) SCC 437 explained the purpose behind the Rent Controller specifying, in the order of eviction, the exact amount of rent payable by the tenant. While harmoniously construing the provisions, and more specifically proviso to Section 14, Court reiterated that the tenant must effectively know with certainty the amount he is liable to pay, enabling him to comply with the clause of exception, saving him from ejectment.

11. Now what is the meaning of the expression "amount due" is no longer *res integra* and stands sufficiently explained through various judicial pronouncements including *Madan Mohan (supra)* and CMPMO No. 156 of 2015, titled as *Sanjay Kumar vs. Smt. Pushpa Devi*, decided on 6.01.2016.

12. In *Madan Mohan (supra)* the Court observed that:

> "15. In such cases it will be advisable if the controller while passing the order of eviction on the ground specified in clause (i) of sub-Section (2) of Section 14 of the Act specifies the "amount due" till the date of the order and not merely leave it to the parties to contest it after passing of the order of eviction as to what was the amount due.
>
> 16. Surely the Rent Control Acts, no doubt, are measures to protect tenants from eviction except on certain specified grounds if found established. Once the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood."
>
> [Emphasis supplied]

13. This court in *Sanjay Kumar (supra)* observed as under:

> "22. The words "tender" and "pay" have not been defined under the Act. This Court in *Satsang Sabha, Akhara Bazar, Kullu vs. Shrimati Kartar Kaur,* Latest HLJ 2003 (HP) 1006, observed as under:
>
> "16. In *Sheo Ram vs. Thabar* (AIR 1951 Punjab 309), the word tender has been defined to be offer of lawful money which must be actually produced to the creditor by producing and showing the amount to the creditor or to the person to whom the money is to be paid. A mere offer to pay does not constitute a valid tender. The law insists upon an actual, present physical offer.
>
> 17. The word 'pay' has been defined in *Parmeshri v. Atti,* (1957 PLR 318) to mean to give money or other equivalent in return for something or in discharge of an obligation."
>
> 23. The expression used in the third proviso is "pays" and not deposit. The Section itself does not provide for depositing the amount in the Court after passing of the order. As such the only meaning which can be given to the expression "pay" and "tender" is that the rent is to be directly paid to the landlady and not deposited in the Court. At this juncture it be only observed that the Act does provide a mechanism for depositing the rent in the Court. Sections 20 and 21 of the Act deal with the same. But then in the given facts and circumstances these provisions cannot be invoked, for there was neither

any tender by the tenant nor any refusal by the landlady to accept the rent. Significantly no intimation of deposit of rent was sent to the landlady within thirty days from the date of passing of the order.

24. Conjoint reading of the first and the third proviso of Section 14(2)(i) of the Act mandates that the tenant is also required to pay the stipulated interest, not only till the date of the passing of the order, but till the date of payment of the amount due, which could not have been calculated by the Rent Controller for want of certainty, as it was left to the discretion of the tenant to deposit the same within thirty days from the date of passing of the order. As such, the tenant was duty bound to calculate interest thereupon, and pay or tender the same to the landlady.

25. This question of payment of interest for the period up to thirty days, from the date of passing of the order never came up for consideration in any of the decisions referred to hitherto before.

26. It is neither the intent nor the mandate of the legislature that after the parties finish off one round of litigation, they would be relegated to another round of litigation for recovery of the amount due, which would include the costs and interest.

27. Once the order of eviction is passed, the executing Court is duty bound to execute its orders and as laid down in *Madan Mohan (supra), Bilasi Ram vs. Bhanumagi,* 2007 (1) Shim. L.C. 88 and *Rewat Ram vs. Ashok Kumar & others,* 2012 (3) Shim. L.C. 1265, no question of equity or hardship would arise for consideration, at this stage."

... .

"36. As stands laid down by the Full Bench of this Court in *Wazir Chand (supra),* it is the duty of the tenant to be vigilant and explain the reason or cause for shortfall in the amount of deposit.

37. At the cost of repetition it is reiterated that protection under the Act is only till such time the tenant dutifully complies with the same. The third proviso necessarily has to be read conjunctively with the first proviso to the sub-Section. In the instant case, tenant did not pay the amount to the landlord. She directly, without tendering it to him and not on account of his refusal, deposited the amount in the Court, which she did purely at her risk, responsibility, so also consequences. It is not his case that on account of any legal advise it was so done.

14. A Full Bench of this Court in *Wazir Chand vs. Ambaka Rani & another,* reported in 2005 (2) Shim. L.C. 498, has also explained that the expression "amount due" so used in the third proviso to the Section would include the component of rent, interest and the costs.

15. The apex Court in *Atma Ram vs. Shakuntala Rani*, (2005) 7 SCC 211 observed as under:-

"18. In *E. Palanisamy v. Palanisamy*, (2003) 1 SCC 123 the provisions of T. N. Buildings (Lease and Rent Control) Act, 1960 came up for consideration. The requirement of the Act was somewhat similar to the Rajasthan Rent Act and the A. P. Rent Act considered by this Court in *Kuldeep Singh v. Ganpat Lal* , (1996) 1 SCC 243 and *M. Bhaskar v. J. Venkatarama Naidu,* (1996) 6 SCC 228. Reiterating the view in *Kuldeep Singh v. Ganpat Lal,* (1996) 1 SCC 243 and *M.*

Bhaskar v. J. Venkatarama Naidu, (1996) 6 SCC 228 this Court observed : (SCC pp. 127 & 128, paras 5 & 8)

> "The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains expression provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i. e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh v. Ganpat Lal,* (1996) 1 SCC 243 and *M. Bhaskar v. J. Venkatarama Naidu,* (1996) 6 SCC 228.
>
> * * *
>
> Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking section 8 (5) of the Act without following the procedure contained in the earlier sub-sections i. e. sub-sections (2) , (3) and (4) of section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. "
>
> 19. It will thus appear that this Court has consistently taken the views that in Rent Control legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision."

16. There is serious default on the part of the tenant in complying with not only spirit but also letter of the law.

17. Hence for all the aforesaid reasons present petition needs to be allowed. Order dated 27.9.2012, passed by Rent Controller Solan, Distt. Solan, H.P. in Case No. 20/10 of 2009, titled as *Hans Raj Khimta vs. Shrimati Kanwal Jeet Kaur alias Sardarni Babli*, is quashed and set aside. Application filed by the landlord before the Rent Controller as also this petition stand allowed. Pending application(s), if any, also stand disposed of accordingly.

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