

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
CMPMO No.435 of 2025
Decided on 24th November, 2025

Smt. Nirmal Garg

...Petitioner

Versus

Sh. Vijay Kumar and another

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting?

For the petitioner: Mr. Virender Sharma, Advocate.

For the respondents: Mr. Subhash Punshi, Advocate.

Ajay Mohan Goel, Judge (Oral)

Respondents stand served. Mr. Subhash Punshi, Advocate, has put in appearance on behalf of the respondents.

2. By way of this petition, filed under Article 227 of the Constitution of India, the petitioner has prayed for the following relief:-

"It is, therefore, most respectfully prayed that this revision petition may kindly be allowed and the orders dated 16.09.2024 passed in CMA No.1872/2023 and CMA No.66 of 2024 in case No.68 of 2021 titled as Smt. Nirmal Garg, v. Vijay Kumar and another passed by the learned Rent Controller, Shimla, may kindly be quashed and set aside and with a further prayer to stay the proceedings in CMA No.52 of 2025 in CMA No.1872 of 2023 and CMA No.53 of 2025 in CMA No.66 of 2024 till the pendency of present petition in the interest of equity and justice."

3. The petitioner is aggrieved by order dated 16.09.2025 passed by the learned Rent Controller 025, which reads as under:-

“Matter is today listed for consideration on the application for deposit of rent. As per office report, the rent of Rs.91,839/- dated 13.10.2023 by way of Demand Draft No.000826 has been deposited before this Court. At this stage, it is stated by learned counsel for the respondent/landlord that the respondent/landlord is ready to withdraw the said amount being use and occupation charges. Statement of learned counsel for the respondent/landlord to this effect recorded and placed on record. In view of statement, the present application for deposit of rent to the tune of Rs.91,839/- dated 13.10.2023 by way of Demand Draft No.000826 is hereby allowed. Application disposed of accordingly. Be tagged. The respondent/landlord is at liberty to move separate application for release of the aforesaid amount.”

4. Having heard learned counsel for the petitioner as well as learned counsel for the respondents and having perused the order appended with the petition as also order dated 18.11.2023 passed by learned Rent Controller, Court No.1, Shimla, H.P., which was made available for the perusal of the Court by the learned counsel for the parties, this Court is of the considered view that there is no infirmity in the order under challenge.

5. Record demonstrates that the present petitioner, who was a tenant in the demised premises, was ordered to be evicted therefrom. In terms of Annexure P-1 dated 13.08.2023, the tenant was ordered to vacate the premises within a period of two months, with the observation that the tenant shall not be evicted if she pays Rs.13,92,000/- within a period of one month from the date of order and memo of cost was also ordered to be prepared accordingly. Said amount, as per the present petitioner, was deposited by the respondent, though, as per the respondent-landlord, the cost which was to be paid by the tenant, was not paid.

6. Be that as it may, it appears that thereafter an application was filed by the landlord, inter alia, on the ground that as there was a clerical mistake in order dated 13.08.2023, therefore, the same be rectified by inserting the arrears of rent as Rs.14,95,427/- instead of Rs.13,92,000/-. On said application, the learned Rent Controller, Court No.1, passed the following order on 18.11.2023:-

“At this stage, respondent stated that she does not intend to file reply to the application and that she has no objection if clerical mistake is rectified.

I have heard the learned counsel for the parties and have also gone through the case file.

It is apparent from the record that due to clerical and arithmetical mistake the arrears were wrongly calculated. Accordingly, the clerical mistake in the order dated 03.08.2023 is ordered to be rectified by inserting the arrears of rent as 14,95,427/- with a direction to respondent to pay the arrears within a period of 30 days from the date of order. Application stands disposed of. Office to do the needful. Necessary correction in order dated 03.08.2023 and memo of cost be made forthwith. File after due completion be consigned to the Record Room."

7. Pursuant thereto, the balance amount of Rs.1,04,000/- was deposited by the present petitioner.

8. It is in this backdrop that when the case was listed before learned Rent Controller on 16.09.2024, the impugned was passed, which reads as under:-

"Matter is today listed for consideration on the application for deposit of rent. As per office report, the rent of Rs.91,839/- dated 13.10.2023 by way of Demand Draft No.000826 has been deposited before this Court. At this stage, it is stated by learned counsel for the respondent/landlord that the respondent/landlord is ready to withdraw the said amount being use and occupation charges. Statement of learned counsel for the respondent/landlord to this effect recorded and placed on record. In view of statement, the present application for deposit of rent to the tune of Rs.91,839/- dated 13.10.2023 by way of Demand Draft No.000826 is hereby allowed. Application disposed of accordingly. Be tagged. The respondent/landlord is at liberty to move separate application for release of the aforesaid amount."

9. Learned counsel for the petitioner has submitted that as after the passing of order dated 03.08.2023, an execution was preferred by the landlord and in those execution proceedings, the tenant has been evicted from the premises in question, therefore, the learned Rent Controller erred in releasing the amount of Rs.91,839/- in favour of the landlord. He submitted that the learned Rent Controller erred in not appreciating that as in the interregnum, the tenant stood evicted and that too wrongly from the demised premises, there was no occasion for the learned Rent Controller to have released the said amount. He further submitted that another reason, on account whereof the amount should not have been released was that the entire articles of the petitioner were still in the shop, which were not handed over to the petitioner.

10. On the other hand, learned counsel for the respondents submitted that after the order of eviction was passed by the Executing Court in execution of the order of the learned Rent Controller, the same was unsuccessfully agitated by the present petitioner and in these circumstances as the additional

amount deposited related to the period when the petitioner was in actual possession of the demised premises, there is no infirmity in the order passed by the learned Rent Controller.

11. Having perused the order under challenge as well as the other contemporaneous record, which stand appended with the petition as well as order dated 18.11.2023, this Court is of the considered view that there is no infirmity in order dated 16.09.2024.

12. Learned Rent Controller in terms of the initial order of eviction passed on 03.08.2023, had held the tenant to be in arrears of an amount of Rs.13,92,000/-. On an application filed for the correction of said amount on 18.11.2023, learned Rent Controller rectified the amount from Rs.13,92,000/- to 14,95,427/- which order was passed as a consent order, as the application for the rectification of calculation was not opposed by the present petitioner. It is thereafter that amount was deposited which has been ordered to be released. Under these circumstances, the contention of the petitioner that the eviction of the petitioner from the premises is bad or that the articles of the petitioner were still in the premises etc., is of no relevance qua these proceedings.

Herein all that the learned Rent Controller has done is that it has released the amount of rent which the landlord was entitled to, on account of the usage of the property of the landlord by the tenant and this cannot be allowed to be agitated by the present petitioner as is being done by way of these proceedings.

13. Therefore, as this Court does not find any merit in the present petition, the same is dismissed. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

November 24, 2025
(*Vinod*)