IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.413 of 2026
Reserved on: 05.10.2026
Date of decision: 09.10.2026

M/s Rakesh Kumar and Dinesh Kumar & others ...Petitioners

Versus

Nandan Tandon ...Respondent

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?[1]

For the petitioners: Mr. Janesh Gupta, Advocate.

For the respondent: Ms. Seema K. Guleria, Advocate.

Romesh Verma, Judge:

The instant petition has been filed assailing the order passed by the learned Rent Controller, Shimla, H.P., dated 23.07.2026, whereby application filed by the landlord/respondent for the amendment of petition came to be allowed.

2. The facts, as emerge in the present case, are that the present respondent/landlord filed a rent petition under Section 14 of the H.P. Urban Rent Control Act for the eviction of tenants, the present petitioners, from the suit premises situated at Lakkar Bazar. As per the averments as made in the eviction petition, it was contended that the shop was let out to late Shri Jia Lal by the predecessor-in-interest of

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the landlord. The eviction petition was sought on the ground of arrears of rent and that the petitioners have carried out material alteration in the premises (shop) in their possession and that the premises as being occupied by the petitioners are urgently required by the respondent for his own personal and bonafide need. It was averred that the son of the respondent, Mr. Saksham Tandon, is about to complete his course/education of hotel management and after completion of his studies, the respondent intends to open the restaurant in the premises in occupation of the petitioners. The eviction petition was filed in the month of September 2018 against the present petitioners.

3. The said eviction petition was opposed by filing a comprehensive reply by the present petitioners by raising preliminary objections with respect to maintainability, concealment of fact, that there is no relationship of landlord and tenant and that the rent petition is bad on account of non-joinder of the necessary parties. On merits, all the averments as made in the petition were specifically refuted and denied.

4. The learned Rent Controller framed the issues in the matter on 21.08.2019 in the following manner:

1. Whether the respondents are in arrears of amount @ Rs.1500/- per month since February, 2012? OPP
2. Whether the respondents have carried out material alterations thereby diminishing the value of the demised premises, as alleged? OPP

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3. Whether the petitioner bonafidely required the demised premises for personal need, as prayed for? OPP
4. Whether the petition is not maintainable, as alleged? OPR
5. Whether there does not exist any relationship of landlord and tenant between the parties, as alleged? OPR
6. Whether the petitioner has concealed material facts from the court, as alleged? OPR
7. Whether the petition is bad for non-joinder of necessary parties, as alleged? OPR
8. Relief.

5. Thereafter, the landlord/respondent concluded his evidence and the case was fixed for the evidence of the present petitioners. At that stage, the respondent/landlord filed an application under Order VI Rule 17 read with Section 151 of CPC for amendment of rent petition. In the application, it was averred that recently, while preparing the case, it transpired that landlord has inadvertently not correctly mentioned the details as mentioned in para 19 of the petition. It was stated that the introduction of said addition is very material and important to adjudicate the issue in controversy effectively and finally. Further, that addition of the same is also necessary in order to avoid the multiplicity of litigation. Therefore, the landlord intended to add following lines in para 19, which reads as follow:

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> *"....The petitioner has not vacated or purchased any commercial accommodation in the urban area of Shimla in the past five year before the filing of the petition. The petitioner and his brother are occupying two separate shops adjacent to the shop of the respondents."*

6. Therefore, it was prayed that after accepting the instant application, the amendment as sought may be allowed in the interest of justice and fair play.

7. The present petitioners contested the said application by filing reply and prayed for the dismissal of the application on the ground that what the applicant/respondent has not pleaded in the eviction petition is now intended to be incorporated in the pleadings, which is not admissible in terms of the provisions of H.P. Urban Rent Control Act. It was stated that the present application has been actuated and there is no bonafide reason on the part of the applicant for allowing the application. Therefore, the application, being without any merit, deserves to be rejected.

8. The learned Rent Controller, Shimla, vide its impugned order dated 23.07.2026, partly allowed the application for amendment subject to cost of Rs.3,000/- to the extent of seeking incorporation of amendment. It was ordered that the cost as imposed be defrayed by the landlord by way of depositing a portion of Rs.1500/- in Disaster

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Relief Fund with DLSA, Shimla and making cash payment of the balance to the tenants/petitioners by the next date of hearing.

9. Feeling dissatisfied, the petitioners/tenants have approached this Court assailing the order as passed by the learned Rent Controller, Shimla.

10. It is contended by Mr.Janesh Gupta, learned counsel for the petitioners, that the impugned order as passed by the learned Rent Controller is erroneous and liable to be quashed and set aside. He submitted that the learned Rent Controller has not exercised the jurisdiction strictly in accordance with the law, as there was no occasion to amend the petition filed by the landlord and no case is made out for such amendment. It has been contended by the learned counsel for the petitioners that the learned Rent Controller has not appreciated the point in controversy and has wrongly allowed the application filed by the present respondent. He would submit that after accepting the present petition, the application filed by the respondent for the amendment of rent petition may be ordered to be rejected.

11. On the other hand, Ms.Seema K. Guleria, learned counsel appearing for the landlord, has defended the impugned order. She submitted that there is no illegality, perversity or jurisdictional error in the impugned order. Therefore, while exercising the power under Article 227 of the Constitution of India, this Court will not interfere in the well-reasoned order as passed by the learned Rent Controller.

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12. The learned counsel for the respondent has raised a preliminary objection with respect to the maintainability of the present petition on account of the fact that vide its order dated 23.07.2026, the learned Rent Controller had allowed the application filed by the landlord for the amendment of the rent petition subject to cost of Rs.3,000/-.

13. On 27.07.2026, as per the order passed by the learned Rent Controller, Shimla, it was observed that the landlord/respondent deposited the costs in terms of the order dated 23.07.2026 by depositing Rs.1,500/- with the District Legal Services Authority (DLSA) and a cash payment of Rs.1,500/- was made to the learned counsel appearing for the present petitioners, who accepted the same. It was further observed that the learned counsel for the present petitioners appearing before the learned Rent Controller stated that since the amendment allowed was formal in nature, no fresh reply was intended to be filed to the amended rent petition.

14. It was submitted by learned counsel for respondent that once the learned Rent Controller passed the impugned order subject to payment of costs and the learned counsel for the petitioners accepted the said costs, the present petitioners are precluded and estopped from assailing the impugned order by invoking the provisions of Article 227 of the Constitution of India before this Court.

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15. I have heard the learned counsel for the parties and gone through the material placed on record.

16. In the present case, the respondent has primarily raised an objection to the maintainability of the present petition on the ground that following the passing of the impugned order dated 23.07.2026, the amendment application was allowed subject to payment of costs of Rs.3,000/-. In pursuance thereof, the landlord/respondent deposited a sum of Rs.1,500/- with the DLSA and the remaining Rs.1,500/- was paid to the learned counsel for the present petitioners. The said fact was duly acknowledged by the learned counsel representing the present petitioners before the learned Rent Controller, as is recorded in the order of the learned Rent Controller dated 27.07.2026.

17. The learned counsel for the respondent has vehemently argued that the petitioners cannot be permitted to approbate and reprobate. In the case at hand, a conditional order was passed by the learned Rent Controller allowing the application of the landlord subject to the payment of costs. Once the costs was accepted by the present petitioners, they cannot be permitted to challenge the order after accepting the same. Having accepted the costs imposed by the learned Court below pursuant to a conditional order, the present petitioners cannot be permitted to challenge the said order before this Court.

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18. The Hon'ble Apex Court, in the case titled ***Bijendra Nath Srivastava(dead) through LRs vs. Mayank Srivastava and others, (1994) 6 SCC 117***, has held that the principle of estoppel which precludes a party from assailing an order allowing a petition subject to payment of costs where the other party has accepted the costs in pursuance of the said order applies only in those cases where the order is in the nature of a conditional order and payment of costs is a condition precedent to the petition being allowed. In such a case it is open to the party not to accept the benefit of cost and thus avoid the consequence of being deprived of the right to challenge the order on merits. The said principle would not apply to a case where the direction for payment of costs is not a condition on which the petition is allowed and costs have been awarded independently in exercise of the discretionary power of the court to award costs because in such a case the party who has been awarded costs has no opportunity to waive his right to question the validity or correctness of the order.

19. The said proposition of law was reiterated and reaffirmed by this Court in **RSA No.369 of 1994, titled *Haridya Ram versus Chanda Ram***, dated 22.07.2002, which reads as follows:

> *"11. The learned counsel on the other hand contended that the said order dated 11.6.1990 permitting the plaintiff to lead additional evidence was not a conditional order. The costs were awarded not as a condition precedent o allowing additional evidence but the same were allowed by way of exercise of the discretionary power of the court to award costs to the opposite party. Therefore, acceptance of cost*

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would not amount to estoppel and acceptance of the said order dated 11.6.1990.

12. In Bijendra Nath Srivastava(dead) through LRs vs. Mayank Srivastava and others, (1994) 6 SCC 117, amendment of the pleadings were allowed by an order which reads:

> *"Heard learned counsel for the parties at length and gone through the objections already made and the earlier amendment proposed to be made therein. The objector by the proposed amendment wants to clarify certain points and even to add fresh particulars of alleged misconduct having been committed by the arbitrator in giving the award. The proposed amendment does not amount to depriving the opposite party from any right accrued to them. Further the amendment is necessary in order to decide the matter in controversy involved between the parties. Thus, in order to decide the question finally and effectively the amendment proposed is necessary and essential. Further, the opposite party is not prejudiced and can very well be compensated in terms of money. Thus, for the aforesaid reasons the amendment is to be allowed on Rs 50 as costs."*

13. Dealing with the above quoted order, the Hon'ble Supreme Court held:

> *"A perusal of order dated 8-5-1976 shows that the said order is not a conditional order. The Civil Judge, after considering the merits has allowed the proposed amendments. The costs were awarded not as a condition precedent to allowing the amendment but by way of exercise of the discretionary power of the court to award costs to the opposite party. It may also be mentioned that the appellants did not accept the said order dated 8-5-1976. They assailed the validity of the same at the stage of final hearing before the trial court but the said contention was rejected by the Additional District &*

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Sessions Judge on the view that the said order had become final as regards the proceedings before him and the same could not be recalled or reviewed. Thereafter, the appellants assailed the correctness of the order dated 8-5-1976 in the appeal filed by Respondents 1 and 3 in the High Court. The principle of estoppel arising from acceptance of costs so to preclude the appellants from challenging the validity of the order dated 8-5-1976 cannot, therefore, be invoked in the facts and circumstances of the present case."

14. On the question of principle of estoppel which precludes a party from assailing an order allowing a petition/application subject to payment of costs where the other party has accepted the costs in pursuance of such order the Hon'ble Supreme Court held as follows:

"18. That apart the principle of estoppel which precludes a party from assailing an order allowing a petition subject to payment of costs where the other party has accepted the costs in pursuance of the said order applies only in those cases where the order is in the nature of a conditional order and payment of costs is a condition precedent to the petition being allowed. In such a case it is open to the party not to accept the benefit of cost and thus avoid the consequence of being deprived of the right to challenge the order on merits. The said principle would not apply to a case where the direction for payment of costs is not a condition on which the petition is allowed and costs have been awarded independently in exercise of the discretionary power of the court to award costs because in such a case the party who has been awarded costs has no opportunity to waive his right to question the validity or correctness of the order. The decision of the Andhra Pradesh High Court in Metal Press Works Ltd. v. Guntur Merchants Cotton Press Co. Ltd. 3 on which reliance has been placed by the High Court, proceeds on

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the basis that awarding of costs was, in fact and substance, a part of the entire order allowing amendment in written statement and the said order was a conditional one. The decision of the Madras High Court in Sree Mahant Prayag Dossjee Varu v. Raja Venkata Perumal4 and the decisions of the Patna High Court in Ramcharan Mahto v. Custodian of Evacuee Property5 and Kapura Kuer v. Narain Singh6 on which reliance has been placed in the said judgment of the Andhra Pradesh High Court also emphasise that the orders under challenge were conditional orders and payment of costs was a condition precedent to allowing the petition. In J. Devaiah v. Nagappa7, the order allowing amendment of the election petition contained a direction regarding payment of costs. It was held that the application was allowed 3 AIR 1976 AP 205: (1975) 1 APLJ (HC) 283 4 AIR 1933 Mad 410: 1932 MWN 11 18: 142 IC 903 5 AIR 1964 Pat 275 1964 BUR 291 6 AIR 1949 Pat 491 27 Pat 187 7 AIR 1965 Mys 102 without any condition and that the order was not a conditional order and principle of estoppel was held inapplicable."

15. In the present case, a perusal of the order dated 11.6.1990 shows that the said order is a conditional order. The application made by the plaintiff for additional evidence was allowed "subject to Rs.50/- as costs." Therefore, once the order dated 11.6.1990 is held to be a conditional order, acceptance of costs by the defendant without any reservation would stop him from assailing the said order."

20. As observed in the earlier part, the impugned order came to be passed by the learned Rent Controller allowing the application for amendment subject to payment of costs of Rs.3,000/-. Costs of Rs. 1,500/- was deposited with the DLSA and Rs.1,500/- was paid to the

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learned counsel appearing for the petitioners before the learned Rent Controller. The order clearly reveals that the same was a conditional order. Therefore, in view of the dictum of law laid down by the Hon'ble Apex Court, this Court has no hesitation in holding that after accepting the costs of Rs.1,500/-, the present petitioners are precluded and estopped from assailing the impugned order in the attending facts and circumstances of the case.

21. Without touching the merits of the present petition, this Court is of the considered opinion that in view of receipt of payment of costs by the learned counsel for the tenants/petitioners before the learned Rent Controller, they cannot agitate or challenge the impugned order by invoking the provisions of Article 227 of the Constitution of India.

22. Therefore, on this sole ground, the present petition deserves to be dismissed. Ordered accordingly. Pending application(s), if any, shall also stand disposed of.

23. Any observation made hereinabove is meant only for adjudication of the present proceedings and the same shall have no bearing on the merits of the main case.

(Romesh Verma)
Judge

9th October, 2026
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