

(2016) 09 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 26 of 2016

Smt. Reeta Gupta

APPELLANT

Vs

Sh. Lal Chand

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107(2), Section 152
Himachal Pradesh Urban Rent Control Act, 1987 — Section 24(5)

Citation : (2016) Sup HimLR 2763 : (2016) LatestHLJ(HP) 1270

Hon'ble Judges : Mr. P.S. Rana, J.

Bench : Single Bench

Advocate : None despite service, for the Non-revisionists No. 2 to 15; Mr. Neeraj Gupta, Advocate, for the Revisionists; Mr. Ajay Sharma, Advocate, for the Non-Revisionist No. 1

Final Decision : Disposed Off

Judgement

P.S. Rana, J. - Present civil revision petition is filed under Section 24(5) of H. P. Urban Rent Control Act 1987 against the interim order dated 24.02.2016 whereby learned Appellate Authority (I) Kangra at Dharamshala (H.P.) remanded the rent petition to learned Rent Controller(I) Kangra at Dharamshala (H.P.) for limited purpose to correct clerical mistake in memo of parties only relating to rent petition No. 08/07/2005 title Sh. Lal Chand v. Sh. Ram Parshad and others decided on 26.04.2013.

Brief facts of the case:

2. Sh. Lal Chand s/o Sh. Tulsi Ram landlord filed eviction petition against tenants under Section 14(3)(C) of H. P. Urban Rent Control Act 1987. During pendency of rent petition before learned Rent Controller(I) Kangra at Dharamshala (H.P.) Sh. Ram Chand Mehta co-respondent No. 4 died and learned Rent Controller impleaded Smt. Vimla Devi, Sh. Rajesh Mehta, Smt. Chanchla Devi, Smt. Shanta Devi and Smt. Sudha Devi as co-party in rent petition being LRs of deceased Sh. Ram Chand Mehta. Due to clerical mistake in the final eviction order passed by

learned Rent Controller on dated 26.04.2013 in the memo of parties name of Smt. Sudha Devi was omitted. Learned Rent Controller evicted tenants from premises on the ground of reconstruction which could not be carried out without eviction of tenants. Learned Rent Controller directed tenants to hand over vacant possession of premises to landlord within three months w.e.f. 26.04.2013. Thereafter against eviction order Smt. Reeta Gupta and other tenants filed rent appeal No. 78-D/XIV/13 title Smt. Reeta Gupta and others v. Sh. Lal Chand and others.

3. Thereafter during pendency of rent appeal No. 78-D/XIV/13 landlord Sh. Lal Chand filed application before Appellate Authority (I) Kangra at Dharamshala (H.P.) under Section 152 CPC for correction of memo of parties in the eviction order and in memo of costs with plea that name of Smt. Sudha Devi be added as co-respondent No. 4(v) in memo of parties. Learned Appellate Authority (I) on dated 24.02.2016 held that mistake committed by learned Rent Controller in memo of parties is liable to be corrected by learned Rent Controller. Thereafter learned Appellate Authority (I) Kangra at Dharamshala (H.P.) remanded the matter to learned Rent Controller(I) Kangra at Dharamshala (H.P.) for limited purpose to correct clerical mistake and add name of Smt. Sudha Devi as LR of deceased Sh. Ram Chand Mehta as co-party in eviction order and in memo of costs. Learned Appellate Authority (I) directed that after correction of clerical mistake in memo of parties and memo of costs learned Rent Controller would submit the record to learned Appellate Authority (I) on or before 16.03.2016. Aggrieved against interim order of learned Appellate Authority (I) dated 24.02.2016 revisionists filed present civil revision petition in H.P. High Court.

4. Court heard learned Advocate appearing on behalf of revisionists and learned Advocate appearing on behalf of non-revisionist No. 1 and Court also perused the record of present civil revision petition carefully.

5. Following points arise for determination:

1) Whether civil revision petition filed under Section 24(5) of the H. P. Urban Rent Control Act 1987 is liable to be accepted as mentioned in memorandum of grounds of revision petition?

2) Final order.

Findings upon Point No. 1 with reasons.

6. Submission of learned Advocate appearing on behalf of revisionists that learned Appellate Authority (I) has committed grave illegality by way of remitting the case file to learned Rent Controller(I) Kangra at Dharamshala (H.P.) for limited purpose for correcting clerical mistake in memorandum of parties is rejected being devoid of any force for reasons hereinafter mentioned. It is well settled law that section 152 Code of Civil Procedure 1908 is based upon concept of *actus curiae neminem gravabit*. (An act of Court should not prejudice anyone). It is well settled law that as per Section 152 Code of Civil Procedure 1908 Court

is competent to correct clerical or arithmetical mistake at any stage of the case either on its own motion or on application of any party. It is also well settled law that an arithmetical mistake is a mistake of calculation and clerical mistake is a mistake of writing or typing. See AIR 2003 SC 4179 title State of Punjab v. Darshan Singh. See AIR 1966 SC 1047 title Master Construction Co. (P) Ltd. v. State of Orissa. See AIR 1977 Orissa 68 title Bishnu Charan v. Dhani Biswal. See AIR 1966 Orissa 225 title Sagua v. Bichinta.

7. Submission of learned Advocate appearing on behalf of revisionists that clerical mistake could be rectified by only Rent Controller and application for rectification of clerical mistake was not maintainable before Appellate Authority and on this ground revision petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. It is proved on record that rent appeal No. 78-D/XIV/13 title Smt. Reeta Gupta and others v. Sh. Lal Chand and others is pending before learned Appellate Authority (I) Kangra at Dharamshala (H.P.). It is well settled law that appeal is in continuation of judicial proceedings. See AIR 1967 Allahabad 214 title Shyam Sunder Lal v. Shagun Chand. See AIR 1960 Calcutta 469 title Damodar Mukherjee & Others v. Bonwarilal Agarwalla. See AIR 1957 M.P. 98 title Shyamlal v. Takhatmal. See AIR 1975 Gauhati 40 title Mahangu Parsad v. Pravag Sah & Others. See AIR 1968 Manipur 42 title Kakhangai Kabui & Others v. Smt. Apanbi Kabuini and others. It is held that Appellate Authority is legally competent to correct clerical mistake committed by learned Trial Court at any stage of the case. Power of Appellate Court is defined under Section 107 Code of Civil Procedure 1908. As per Section 107 Code of Civil Procedure 1908 Appellate Court has powers (1) To determine case finally (2) To remand the case (3) To frame issues and refer them for trial (4) To take additional evidence himself or direct that such additional evidence would be taken by Trial Court. As per Section 107(2) Code of Civil Procedure 1908 Appellate Court would have same powers and would perform same duty as conferred upon Courts of original jurisdiction.

8. In the present case it is proved on record that Sh. Ram Chand Mehta died during pendency of rent petition before learned Rent Controller. It is proved on record that learned Rent Controller by way of judicial order directed that following persons would be impleaded as LR's of deceased Sh. Ram Chand Mehta in rent eviction petition. (1) Smt. Vimla Devi (2) Sh. Rajesh Mehta (3) Smt. Chanchla Devi (4) Smt. Shanta Devi (5) Smt. Sudha Devi. It is proved on record that due to clerical mistake in memorandum of parties of final eviction order learned Rent Controller omitted name of Smt. Sudha Devi as co-party. It is held that mistake committed by learned Rent Controller in memo of parties is purely clerical in nature. It is held that it is expedient in the ends of justice to direct the learned Rent Controller to correct clerical mistake in memorandum of parties and incorporate name of Smt. Sudha Devi in memorandum of parties as one of LR's of deceased Sh. Ram Chand Mehta. In view of above stated facts it is held that there is no illegality in the interim order dated 24.02.2016 passed by learned Appellate Authority (I) Kangra at Dharamshala (H.P.). Point No. 1 is answered in

negative.

Point No. 2 (Final order).

9. In view of findings upon point No. 1 above present civil revision petition is dismissed. Interim order of learned Appellate Authority (I) Kangra at Dharamshala (H.P.) dated 24.02.2016 is affirmed. Parties are left to bear their own costs. Observations will not effect merits of case in any manner and will be strictly confined for disposal of present revision petition. Parties are directed to appear before learned Appellate Authority (I) Kangra at Dharamshala (H.P.) on 05.10.2016. Certified copy of this order be sent back forthwith to learned Appellate Authority (I) Kangra at Dharamshala (H.P.) and learned Rent Controller(I) Kangra at Dharamshala (H.P.) for compliance forthwith. C.R. No. 26/2016 is disposed of. Pending applications if any also disposed of.