2020 INSC 111

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.833-834 OF 2020
(arising out of SLP(C) Nos. 5926-5927/2017)

Om Prakash …Appellant(s)

Versus

Suresh Kumar …Respondent(s)

J U D G M E N T

A. M. KHANWILKAR, J.

1. Leave granted.

2. These appeals are directed against the judgments and orders dated 12.5.2016 in Civil Revision No. 227/2015 and 24.8.2016 in Review Petition No. 65/2016 passed by the High Court of Himachal Pradesh at Shimla (for short, 'the High Court').

3. The facts very briefly are that the appellant being owner of the premises having three rooms with one veranda, admeasuring *36.53 square meters* situated in Ward No. 6, M.C. Area, near Sabji Mandi, Up Mahal, Hamirpur, Himachal Pradesh (for short, "the suit premises"), had inducted the father of the respondent as its monthly

tenant in the year 1969 to use it for non-residential purpose and the respondent was in occupation thereof when the appellant filed eviction proceedings before the Rent Controller for possession. The respondent, at the relevant time, was carrying on business as cloth merchant in the suit premises. The Rent Controller vide order dated 28.11.2013 decreed the suit directing eviction of the respondent from the suit premises on the ground that the suit premises was required bonafide by the appellant for the purpose of reconstruction, which could not be carried out without vacating the same followed by demolition thereof. That decree was confirmed by the appellate Court, against which civil revision being C.R. No. 227/2015 came to be filed before the High Court. During the hearing of the said petition, the learned counsel for the respondent-tenant had urged before the High Court that the tenant was ready and willing to handover possession of the suit premises subject to the landlord (present appellant) agreeing to re-induct him as tenant in equivalent area occupied by him in the suit building. In response to the said submission, the learned counsel appearing for the present appellant, unequivocally, stated before the High Court that the appellant was not averse to the offer so made by the tenant. That statement has

been recorded by the High Court and on that basis the civil revision came to be disposed of in the following words: -

> "5. **Mr. R.K. Sharma, learned Senior Advocate assisted by Ms. Anita Pramar, Advocate is not averse to the offer so made on behalf of the petitioner-tenant**. It is stated at the Bar that construction work will be completed within one year from the date i.e. 30th October, 2016, when the possession of the demised premises is to be handed over to the respondent-landlord. **Mr. Sharma further submits that the petitioner-tenant will be re-inducted in equal area in the newly constructed building within one month i.e. on or before 30th November, 2017 from the date of completion of the construction work i.e. 31.10.2017**. Mr. Sharma also agreed to the fixation of rent on re-induction of the petitioner-tenant at the market rates prevalent in the area where the demised premises situate by the Rent Controller concerned.
>
> 6. **In view of the above, nothing is left to be adjudicated upon in this petition on merits. The same, therefore, is disposed of with a direction to the petitioner-tenant to hand over the vacant possession of the demised premises to respondent-landlord on or before 31st October, 2016. He shall pay the use and occupation charges till 31st October, 2016 at the rates, he is paying at present. On his failure to hand over the vacant possession by the aforesaid date, the respondent-landlord shall have the right to execute the order of eviction and in that event the petitioner-tenant shall also have no right to claim his re-induction in the newly constructed building. There shall be a direction to the respondent-landlord to complete the construction on the spot on or before 31st October, 2017. He shall re-induct the petitioner-tenant in equal area i.e. 36.53 square meters, presently occupied by him in the demised premises within one month thereafter i.e. by 30th November, 2017. On the failure of the respondent-landlord to compete the construction within the stipulated period and re-induction of the petitioner-tenant in the newly constructed building, he shall be liable to pay the damages at the rate of Rs.1,000/- per day from 1.12.2017 onwards till he is re-inducted as tenant**.

> 7. As regards the rent on re-induction, the parties shall file a joint application for the purpose in the Court of learned Rent Controller at Hamirpur. The application so filed shall be decided by learned Rent Controller, in accordance with law and taking into consideration the rates prevalent in the area where the demised premises situate, after affording an opportunity of being heard to the parties on both sides. Pending application(s), if any, shall also stand disposed of."
>
> (emphasis supplied)

4. The appellant changed his Advocate and then filed review petition before the High Court being Review Petition No. 65/2016, asserting that he had never instructed his counsel to make such statement before the Court regarding re-induction of the respondent-tenant in the newly constructed shops. The said review petition came to be dismissed vide order dated 24.8.2016. Consequently, both these decisions (dated 12.5.2016 and 24.8.2016) passed by the High Court are subject matter of challenge in the present appeals.

5. The principal argument of the appellant is that the statement made by his counsel before the High Court was not binding on him, as it was made without his instructions. For that, reliance has been placed on the decision of this Court in ***Himalayan Coop. Group Housing Society vs. Balwan Singh & Ors***.[1].

6. When the special leave petitions were listed for admission on 9.1.2017, this Court deferred the hearing by passing the following order: -

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1 (2015) 7 SCC 373

> "On a query as to whether the petitioner would be in a position still to spare a small room for the respondent, **learned counsel prays for some time to produce a plan of the shop**.
>
> List the matter after three weeks."
>
> (emphasis supplied)

The matter was then listed on 15.2.2017 when the Court noted the submission of the learned counsel for the appellant and issued notice to the respondent. That order reads thus: -

> "Delay condoned.
>
> The learned counsel for the petitioner submits that the respondent is not even permitting the petitioner to demolish the building and go for construction.
>
> In view of the above submission, issue notice, returnable in four weeks."

7. Thereafter, the matter was listed on 14.11.2017 when the Court after noting the submissions of the parties, passed the following order:-

> "The petitioner is permitted to complete the construction of the building.
>
> There shall be no obstruction whatsoever caused by the respondent or his men for doing the construction work. The respondent shall also not cause any obstruction for the ingress and egress of the petitioner.
>
> **The petitioner is directed to complete the construction within four months from today**.
>
> List on 1.5.2018, when the parties are directed to be present before this Court.
>
> **In view of the order, as above, the petitioner shall not be liable to pay the amount of Rs.1000/ per day, as ordered by the High Court for the delayed construction.**
>
> **We make it clear that before the petitioner making the actual use of the premises, permission shall be sought from this Court so that this Court may**

> **pass appropriate orders to protect the interests of the respondent as well.**"
>
> (emphasis supplied)

It has come on record that during the pendency of these cases, the appellant transferred the abutting plot being khasra No. 778 to his son on 14.3.2018.

8. Be that as it may, in view of the deliberations in Court, the learned counsel for the appellant sought time to take instructions, as is noted in the order dated 21.8.2019 which reads thus: -

> "List these matters after three weeks **to enable the counsel for the petitioner to get instructions in the matter**."
>
> (emphasis supplied)

Again on 22.11.2019, the matter was deliberated upon, whereafter the learned counsel appearing for the respondent took time to file affidavit of a qualified Architect to show that the building constructed after demolition of the suit premises can be provided with access to the upper floors (first and second floors) from outside the building. That has been recorded in the order dated 22.11.2019, which reads thus: -

> "Learned counsel for the sole respondent prays for time to place on record affidavit of a qualified Architect indicating therein the feasibility of providing access to first and second floor of the building from outside the building.
>
> List the matters on 5th December, 2019."

Pursuant to the liberty given, the respondent has filed an affidavit of one Ram Swaroop, son of Mr. Prithvi Chand, a qualified Architect,

accompanied by the relevant sketches/plan(s) and photographs of the building from outside, as well as, floor-wise in support of the stand taken earlier that the appellant can provide access to the upper floors through the staircase outside the newly constructed building, without disturbing the possession of the respondent on the ground floor thereat. The appellant, however, by filing affidavit dated 20.1.2020, has pointed out that the staircase already constructed is on the rear side of the building within the premises (being triplex house) and it is not possible to provide additional access to the first and second floors from outside the building. The appellant is also placing reliance on the photographs in support of this submission.

9. The moot question is: whether the appellant should be bound by the statement made by his counsel before the High Court that the respondent-tenant will be re-inducted in equal area in the newly constructed building within one month i.e. on or before 30.11.2017 from the date of completion of the construction work i.e. 31.10.2017. From the tenor of the statement made before the High Court on behalf of the appellant, it is obvious that it is an unequivocal statement made by the counsel engaged by the appellant to espouse his (appellant's) cause before the High Court. It is not the case of the appellant that he had expressly instructed his counsel not to make

such a statement. Further, the statement was in respect of the commitment of the appellant qua the subject matter of the proceedings in which the counsel was engaged and instructed to appear. Not only that, right from the beginning and even before this Court, an attempt was made by the parties to explore possibility of working out an amicable solution, as is evident from the order dated 9.1.2017 before the respondent was put to notice of these appeals, and more particularly, dated 14.11.2017.

10. Considering the above, the appellant cannot now be allowed to resile from the statement made before the High Court, which the High Court justly declined to undo in the review petition filed by the appellant for that purpose. In the peculiar facts of this case, the decision of this Court in ***Himalayan Coop. Group Housing Society*** (supra) will be of no avail to the appellant. Inasmuch as, it is not a case where the counsel, who made the statement was not engaged by the appellant before the High Court. The engagement was in respect of eviction proceedings and the statement was in relation to the commitment of the appellant qua the subject matter thereof and being an unequivocal statement, it will be binding on the appellant. In any case, even this Court showed indulgence to the appellant on the basis of impression given to this Court about the possibility of at

least sparing a small room for the respondent, which was the basis for issuing notice to the respondent, as is evident from the orders dated 9.1.2017 and 15.2.2017.

11. Reverting to the exposition in paragraph 22 of the reported decision, the same reads thus: -

> "**22.** Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. **The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer**. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel."

Our attention was also invited to paragraph 31 of the same decision, which reads thus: -

> "**31**. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment."

In addition, we may usefully refer to paragraph 32 of the said decision, which reads thus: -

> "**32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions**. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. **A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed**. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. **We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights**."
>
> (emphasis supplied)

As aforesaid, in the present case, the counsel who was engaged by the appellant and had appeared for him before the High Court did not,

stricto sensu, transgress the authority conferred on him by the appellant. Notably, the appellant filed review petition before the High Court by engaging another Advocate for reasons best known to him. This Court has deprecated the conduct of such petitioners and has opined that such review petitions should not be encouraged and need to be dismissed, as expounded in ***Tamil Nadu Electricity Board & Anr. vs. Raju Reddiar & Anr***.[2] Not only that, even before this Court, the appellant, advisedly, showed willingness to explore possibility of settlement as is evident from different orders recorded above. It is obvious that the delivery of possession of the suit premises, then in possession of the respondent, was expedited and made over to the appellant only after intervention of this Court, which indulgence was shown because the appellant had expressed inclination to spare portion of premises for the respondent. Only after this Court intervened, the appellant could take the construction of proposed building forward and completed it on 19.6.2018. In terms of the order dated 14.11.2017 of this Court, it was made absolutely clear that the appellant will not put the newly constructed premises to use without seeking prior permission of this Court. That permission is yet to be given to the appellant.

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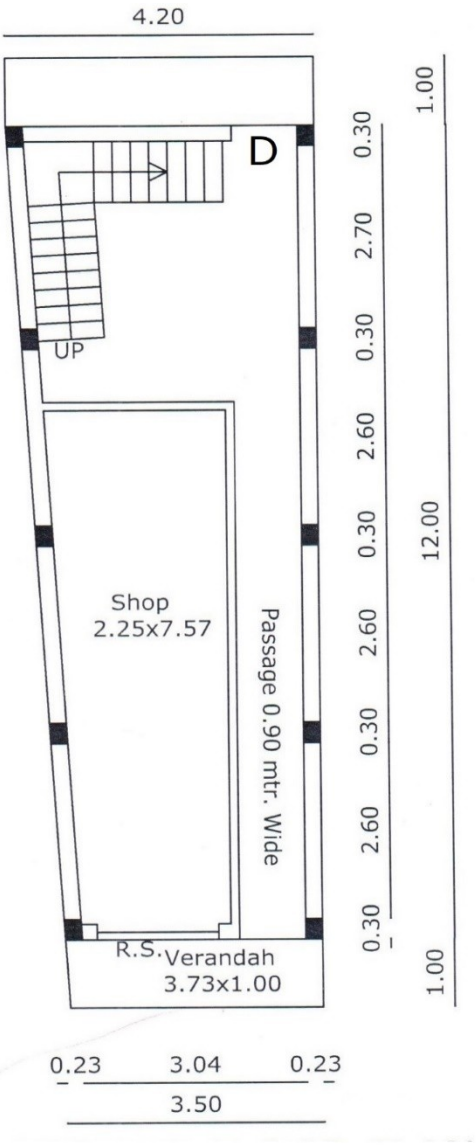
2 (1997) 9 SCC 736

12. The argument of the appellant that the respondent cannot take benefit of amendment to Section 14(3)(c) of the Himachal Pradesh Urban Rent Control Act, 1987 in the form of Himachal Pradesh Rent Control (Amendment) Act, 2008, will be of no avail to the fact situation of the present case. For, in this case, the appellant is obliged to abide by the unequivocal statement made before the Court to re-induct the respondent-tenant in the newly constructed building and to provide him same area which was being used by him earlier, namely, *36.53 square meters*. Considering the above, the appellant cannot be permitted to extricate himself from the obligation flowing from the impression given to the Court (before the High Court and again before this Court) and need to be bound by the same.

13. However, from the subsequent affidavits filed before this Court, it is obvious that the entire ground floor cannot be given to the respondent. Initially, the appellant had given an offer to accommodate the respondent on the upper floor, but it is noticed that the staircase going towards the upper floors (namely, first and second floor) in the newly constructed building passes through the ground floor itself. The same is erected at the rear side within the building (being triplex house). The photographs produced before us, however, depict that an opening (exit door) is provided on the rear side of the

building, on the ground floor, which opens towards plot No. 778 (which the appellant had transferred in favour of his son during the pendency of these appeals). In other words, it is possible to provide access to the upper floors from the rear side of the building, which also opens on the road (as a car parked at that entrance can be seen in the photographs) or portion of plot being khasra No. 778 (now owned by the appellant's son). The fact remains that the staircase has been erected in such a manner, for the reasons best known to the appellant, that the access to first and second floors would be possible only through the ground floor premises, as it is inside the building and not outside the building.

14. At the conclusion of the proceedings, the learned counsel for the appellant without prejudice, gave offer to provide portion of the marked ground floor premises to the respondent, admeasuring *2.25 meters* x *7.57 meters* by carving out a passage within the ground floor providing access for upper floors through the staircase from the front door of the newly constructed building. The proposed ground floor plan, as submitted by the appellant through counsel is as follows: -



D=Door

GROUND FLOOR PLAN

15. This offer has been turned down by the respondent, firstly because the area of the premises will get reduced to just about *17.0325 square meters* instead of the original area, admeasuring *36.53 square meters*. Moreover, the premises, as offered, would be unusable for carrying on the business as cloth merchant therefrom. The width being just *2.25 meters (7.382 feet)* will not be enough to

accommodate sale counter and stock storage space; and moreso leaving no space for free movement of customers/sales persons.

16. After considering the arguments of both parties, we are of the considered opinion that the appellant must provide the entire front portion of the ground floor premises, measuring *3.73 meters (width)* x *7.57 meters* (*length*) by putting up a brick wall separating the back end of the ground floor premises, where the staircase has been erected as is shown in the plan. In other words, instead of width of *2.25 meters*, the premises to be given to the respondent will have the entire frontage width of *3.73 meters* with exclusive access from the front side. The depth or the length of the premises would be *7.57 meters* as indicated in the plan. The appellant shall provide access to the first and second floors from the rear side of the building where exit door and staircase has already been erected, as is noticed from the plan/photograph(s). This is the most equitable arrangement that can be provided in the fact situation of the present case, to do complete justice to the parties. However, while doing so, as the respondent-tenant will be deprived of almost *8.2939 square meters* of the original area (*36.53 square meters – 28.2361 square meters*), the appellant must compensate the respondent commensurately for the said loss of area by paying amount quantified at Rs.73,898.649

rounded off to Rs.74,000/- [i.e. equivalent to prevailing circle rate (Rs.8910/- per square meter[3]) for the concerned locality, that is to say, *8.2939* x 8910], by way of compensation/damages.

17. The arrangement directed by us would result in compliance of the statement made on behalf of the appellant before the High Court and which was made the basis to dispose of the respondent's revision petition and at the same time, minimise the loss of area to be made over to the respondent-tenant and optimize the utility of the premises to be used by him for non-residential purpose after re-induction and also adequately compensate him for the loss of area.

18. We may note that this arrangement is in lieu of the liability of the appellant to pay a sum of Rs.1,000/- (Rupees one thousand only) per day from 1.12.2017 towards damages for delayed re-induction of the respondent as directed by the High Court, which, if given effect to, would be substantial amount. In other words, to do substantial and complete justice to the parties, we have modified the impugned decree to the above extent. In terms of this modified decree, the appellant shall forthwith erect a brick wall beyond *7.57 meters* from the front door, so as to divide the ground floor premises into two parts as indicated above. We direct the appellant to re-induct the respondent

3 Per Notification Nos. HMR/DCH/DRA/Circle Rates-2019-20: 1517-37 dt. 30th March, 2019 and HMR/DCH/DRA/Circle Rates-2019-20: 247-63 dt. 31st March, 2018 issued by the District Collector, Hamirpur, District Hamirpur, H.P.

in the front portion, admeasuring *3.73 meters* x *7.57 meters* and the leftover rear portion can be used by the appellant for providing access to upper floors (first and second floors) through the staircase already erected in that area.

19. We, accordingly, modify the order/decree passed by the High Court vide impugned judgment as under: -

(i) The appellant shall construct the brick wall separating ground floor premises in two portions in the manner mentioned hitherto within six weeks from today and handover the front portion premises to the respondent, whereafter the respondent can use the same for non-residential purpose on monthly rent basis.

(ii) In addition, the appellant shall pay the amount of Rs.74,000/- (Rupees seventy four thousand only) towards compensation/damages and until such payment is made, the appellant shall desist from using the first and second floor premises for any purpose.

(iii) We appoint the Chief Administrative Officer, District Court, Hamirpur as receiver in respect of the newly constructed building situated at Ward No. 6, M.C. Area, near Sabji Mandi, Up Mahal, Hamirpur, Himachal Pradesh owned by the appellant - Om Prakash, to ensure proper implementation of the above terms and submit compliance report to this Court.

(iv) In case the appellant commits any breach of the condition of using the first and second floors until delivery of possession and payment of damages/compensation, the Chief Administrative Officer, District Court, Hamirpur shall report that fact to this Court forthwith and not later than one week from the knowledge thereof.

(v) For determination of monthly rent upon re-induction of the respondent in the suit premises, the parties shall file a joint application before the Rent Controller at Hamirpur. The Rent Controller shall decide the same expeditiously and not later than six months from the date of presentation, in accordance with law after giving fair opportunity to both parties in that regard.

20. The appeals are partly allowed and the impugned judgments/decree stand modified in the aforementioned terms. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

....., J
(A.M. Khanwilkar)

....., J
(Hemant Gupta)

....., J
(Dinesh Maheshwari)

New Delhi;
January 30, 2020.