the tenant that the property was kept secreted by the respondent and the Receiver did not know of it. Same was the case in *Mutha Sarvarayudu's case* (1). There too the property had been secreted from the Insolvency Court and in spite of that the above-quoted observations were made by the learned Judges of that Court. In principle, I see nothing wrong in these observations and I am in entire agreement with the same.

(6) Mr. Sibal then urged that the Receiver should be made a party to the suit. I have no doubt that in case an application is made by the petitioner asking that the Receiver be impleaded as a party to the suit, the trial Court will make him a party to the suit.

(7) The petition is accordingly dismissed the order of the trial Court is upheld and the case remitted to it for proceeding further according to law. The parties are directed to appear in the trial Court on the 14th of October, 1968. In the circumstances of the case, however, there will be no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

NARANJAN KAUR,—*Petitioner*

versus

DR. SIRI RAM JOSHI,—*Respondent*

Civil Revision No. 153 of 1966

September 11, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(d) and 13(2)(ii)—Non-residential premises let for trade or business—Tenant residing in part thereof—Such user by the tenant—Whether changes the character of the premises—Tenant—Whether can be evicted.

Held, that from the definition of the expression 'non-residential building', read along with the provision in clause (d) of section 2 of East Punjab Urban Rent Restriction Act, it is clear that such a building is solely to be used for

purpose of trade or business and the only residence that is permitted by this provision in such a building to save it from being converted into a 'residential building' is residence 'only for the purpose of guarding it'. So that residence in a 'non-residential building' not for the purpose of guarding it, would not save it from being converted into a 'residential building'. The meaning of section 2(d), with the definition of the expression 'non-residential building', read with the proviso under it, is that such a building remains a 'non-residential building' when two conditions are fulfilled (a) it is solely used for the purpose of business or trade, and (b) if any part of it is to be used for residence, it can only be used for the purpose of guarding it, otherwise it changes its character from a 'non-residential building' to a 'residential building'. Once a 'non-residential building' is converted into a 'residential building', this would immediately come under section 13(2)(ii)(b) of the Act. The tenant can, therefore, be evicted for such conversion. **(Para 3)**

Case referred by Hon'ble the Chief Justice Mr. Mehar Singh on 23rd February, 1968, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice B. R. Tuli finally decided the case on 11th September, 1968.

Petition under section 15(v) of the East Punjab Urban Rent Restriction Act, 1949 for the revision of the order of Shri A. D. Koshal, District Judge, (Appellate Authority), Amritsar, dated 11th November, 1965, affirming that of Shri G. K. Bhatnagar, Rent Controller, Jullundur, dated 30th March, 1965, dismissing the application.

H. L. SARIN, SENIOR ADVOCATE, H. S. AWASTHY AND A. L. BAHL, ADVOCATES, for the Petitioner.

G. P. JAIN, G. C. GARG AND S. P. JAIN, ADVOCATES, for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—The demised premises is a shop situate in bazar Nauhrian in the urban area of Jullundur. It is the property of Naranjan Kaur applicant. It was let by her to Dr. Sri Ram Joshi respondent to be used by him as a clinic for the carrying on of his profession as a medical man.

(2) Eviction of the respondent was sought by the applicant on various grounds, but the ground which has survived with the Appellate Authority, in its order of November 11, 1965, is under section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), that the respondent used the demised

premises 'for a purpose other than that for which it was leased', the Appellate Authority having found as a fact and on the appraisal of the evidence on record that back part of the shop in question was used by the respondent for residential purposes. However, both the Rent Controller and the Appellate Authority dismissed the eviction application of the applicant following *Indar Singh* v. *Kalu Ram and another* (1). In that case the tenant had leased the shop for the purpose of his trade as a barber and while he carried on his trade in the front part of the shop, he had started living, with his family, in its back part. Falshaw C. J., held that the case did not fall under section 13(2)(ii)(b) of the Act, observing—"I am inclined to take the view that such a partial conversion is not covered by the provisions of the Act and I derive support for this view from the different way in which clauses (a) and (b) of section 13(2) (ii) have been phrased. Clause (a) reads 'transferred his right under the lease or sublet the entire building or rented land or any portion thereof', while the words 'or any portion thereof' do not appear in clause (b). Obviously the omission is deliberate, and in my opinion the ejectment was rightly refused on this ground." It is the correctness of the decision in *Indar Singh's case* (1), which is questioned in this revision application by the applicant and hence the correctness of the orders of the authorities below.

(3) The demised shop comes within the definition of the expression 'non-residential building' in section 2(d) of the Act, in which it is defined to mean 'a building being used solely for the purpose of business or trade', and there is a proviso to this definition of the expression 'non-residential building' in clause (d) of section 2 which proviso reads — "Provided that residence in a building only for the purpose of guarding it shall not be deemed to convert a 'non-residential building' to a 'residential building' ". On the clear words of the definition of this expression the building, which is a 'non-residential building', has to be used 'solely' for purpose of business or trade. Obviously if it is not used solely for that purpose, it would not come within the definition of the expression 'non-residential building'. In clause (g) of section 2 of the Act the definition of the expression 'residential building' is given to mean 'any building which is not a non-residential building'. It is evident from

(1) I.L.R. (1965) 1 Punj. 121=1965 P.L.R. 58.

the definition of these two expressions that non-residential buildings are those that are used solely for the purpose of business or trade, and the remaining, for the purposes of the Act, are residential buildings. It is further clear from the definition of the expression 'non-residential building', read along with the proviso in clause (d) of section 2, that such a building is solely to be used for purpose of trade or business and the only residence that is permitted by this provision in such a building to save it from being converted into a 'residential building' is residence 'only for the purpose of guarding it'. So that residence in a 'non-residential building' not for the purpose of guarding it, would not save it from being converted into a 'residential building'. The meaning of section 2(d), with the definition of the expression 'non-residential building', read with the proviso under it, is that such a building remains a 'non-residential building' when two conditions are fulfilled (a) it is solely used for the purpose of business or trade, and (b) if any part of it is to be used for residence, it can only be used for the purpose of guarding it, otherwise it changes its character from a 'non-residential building' to a 'residential building'. This is the obvious meaning of the definition of the expression 'non-reidential building' in section 2(d) of the Act. This definition was not for consideration before the learned Chief Justice when he delivered the judgment in *Indar Singh's case* (1). No doubt in clause (a) of section 13(2) (ii), on the matter of subletting, there is reference to the subletting of entire building or portion thereof, but in clause (b) of the same, on the matter of conversion of user, no such words are used, and it is stated straightway that user of the building for a purpose other than that for which it was leased is a ground for eviction. Whereas in clause (a) the words used are 'the entire building or any portion thereof', in clause (b) the words used are 'the building'. If consideration was only confined to these two clauses of section 13(2) (ii), the approach by the learned Chief Justice obviously finds support from the language used in the two clauses. Thus, in spite of an argument on the side of the applicant that in section 2(a) the meaning of the word 'building' has within its scope 'part of a building', the words in clauses (a) and (b) of section 13(2) (ii) do lend support to the opinion expressed by the learned Chief Justice. Only the definition of the expression 'non-residential building', with the proviso as in clause (d) of section 2, directly deals with the nature and character of such a building, which completly takes away the force of the argument based on the language used in clauses (a) and (b) of section 13(2)

(ii). The definition in section 2(d) directly applies to a 'non-residential building' and it envisages nothing else but residence in such building only for the purpose of guarding it, and thus residence in it otherwise converts it into a 'residential building'. Once a 'non-residential building' is converted into a 'residential building', this would immediately come under section 13(2) (ii) (b) of the Act. In these circumstances the view of the learned Chief Justice in *Indar Singh's case,* (1), cannot be supported, for where, in the case of a 'non-residential building', residence is taken in it for a purpose other than guarding it, that obviously would bring in the ground of eviction as in section 13(2) (ii) (b) of the Act.

(4) Of the cases decided, in *Nand Lal* v. *Dr. Gurbakhsh Rai,* reported as (2). Falshaw, J., (as he then was), held that a tenant carrying on his own business in major portion of the shop let to him could not be said to have used the building for a purpose other than that for which it was let, simply because he found it convenient to cook his own meals in a small portion of the premises. This was perhaps not a case of really user other than that for which the shop had been let. The second case is ***Richhpal v. Ishwar Chand*** (3) decided by S. B. Capoor, J. It was a case of shop in the market area of Thanesar town. The rent-note said clearly that the shop was taken on rent for the purpose of tenant's business. It was found as a fact that the back part of the shop was used for tethering cattle which damaged and spoiled the floor. One of the grounds considered by the learned Judge was that under clause (b) of section 13(2) (ii) of the Act, and when *Indar Singh's case,* (1), was cited before him, the learned Judge observed that the observations in that case applied to the peculiar facts of that case and could not be stretched so far as to permit tethering of cattle in the premises let out for purpose of a shop. This rather supports the view that I have expressed above. The third case is *Basanti Devi* v. *Khazan Chand,* (4), in which R. P. Khosla, J., following *Indar Singh's case,* (1), came to the conclusion that where the premises had been let out to the tenant for running *sarafa* or jeweller's business and instead he started manufacture of hosiery by setting up machines in the same, that was not really a case of

(2) 1962 P.L.R. 601.

(3) C.R. 332 of 1964 decided on 1st Occtober, 1965.

(4) C.R. 488 of 1965 decided on 3rd February; 1967.

partial conversion of user for a purpose other than for which the premises had been let within the meaning and scope of section 13(2) (ii) (b) of the Act. This was a clear case which did not come under that provision because the premises taken on rent for business were used for the purpose or purposes of business but of a different type. The last case in this respect is a decision by me in *Sarla Devi* v. *Union of India* (5), in which a building had been rented by the Income-Tax Department for its offices. It was a non-residential building. Some of the employees of that Department such as peons and process-servers occupied the out-houses paying nominal rent. This was sought to bring under section 13(2) (ii) (b), but this argument was rejected having regard to the definition of the expression 'non-residential building' as in section 2(d), though curiously reference to the proviso in that definition is not made in the judgment. The argument was rejected and this supports the view that has been expressed above. So all these cases, which concerned non-residential buildings, do not support the contention on the side of the respondent. The only other cases that have been referred to during the arguments are a reference order by Mahajan, J., in *Brahma Nand* v. *Narain Singh* (6), *Rameshwar Dass and another* v. *Rishi Parkash, and another* (7), and *Himalyan Traders* v. *Narain Dass*, (8), but none of these cases is of assistance in the present case because the same deal with eviction from residential buildings. In each case eviction was sought from a house and different considerations may apply to the case of an eviction from a house than from business premises.

(5) I agree with the observations of Eric Weston, C. J., in *Janeshwar Dass* v. *Ram Dev* (9), that it is a matter of ordinary experience that petty owners of property are often completely indifferent to the purpose to which their tenants may put the property. They are concerned only with the amount of rent they will receive. So that when eviction is sought on the ground of violation of letting purpose, it is the landlord who must prove the purpose for which the letting was made and the violation of the same. In

(5) I.L.R. (1968) Punjab & Haryana.
(6) C.R. '723 of 1964 decided on 7th October, 1965.
(7) I.L.R. (1965) 1 Punj. 177.
(8) 1965 Curr. Law Journal (Punj.) 894.
(9) 1953 P.L.R. 22.

the present case the finding, based on evidence, of fact by the Appellate Authority is that the demised premises which were let for business, that is to say, clinic of the respondent, have been used for residential purpose in part. There is not even an allegation, much less evidence, that the respondent used part of the demised premises for residence to safeguard the same having regard to the proviso in section 2(d) of the Act. This is, on the findings of the Appellate Authority, not assilable in this revision being findings of fact, a case to which the ground of eviction under section 13(2) (ii) (b), apparently and without question applies. In this approach the revision application of the applicant is accepted, and, reversing the orders of the authorities below, the eviction application of the applicant is allowed, and the eviction of the respondent from the demised premises is accordingly ordered. As some reported cases have brought the litigation between the parties to this stage, so there is no order in regard to costs. The respondent is given two months from the date of this order within which to vacate the demised premises.

BAL RAJ TULI, J.—I agree.

K.S.

APPELLATE CIVIL

Before S. B. Capoor and R. S. Narula, JJ.

MANOHAR LAL AND ANOTHER,—*Appellants.*

versus

GANESHI RAM AND OTHERS,—*Respondents.*

Regular First Appeal No. 456 of 1958

September 16, 1968.

Usurious Loans Act (X of 1918) as amended by Punjab Relief of Indebtedness Act (VII of 1934)—S. 3 proviso (ii)—Word "decree"—Whether includes consent decree—Courts—Whether can re-open debt transaction payable on the basis of a previous consent decree in subsequent suit for redemption.