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was presented by the assignee in the present case do show a cause of action and, although I have come to the conclusion that the assignee has failed to show a valid assignment or a cause of action, I am unable to hold that the Court below should have rejected the application under the provisions of rule 5(d) mentioned above.

But there is another aspect of the matter which needs to be considered. Rule 5 of Order 33 provides that the Court shall reject an application for permission to sue as a pauper where the applicant has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter. I had occasion to state in a preceding paragraph that judging by the poverty of the applicant, the close relationship that he bears to some of the defendants and the other circumstances to which a reference has been made, the subject-matter of the suit vests wholly or partially in defendants Nos. 5 to 9. I am of the opinion that petitioner's application should have been rejected under the provisions of clause (e) of rule 5 of the Code of Civil Procedure.

For these reasons, I would accept the petition, set aside the order of the trial Court and direct that the application for permission to sue in *forma pauperis* be rejected. Ordered accordingly. Defendants Nos. 1 to 3 will be entitled to costs here and below.

I do not think any grounds have been made out which would justify me in certifying that the case is a fit one for appeal to the Supreme Court.

REVISIONAL CIVIL.

Before Bhandari, C. J.

DR. GOPAL DAS,—*Plaintiff-Petitioner.*

versus

DR. S. K. BHARDWAJ AND OTHERS,—*Respondents.*

Civil Revision No. 239 of 1956.

1957

April, 2nd

Code of Civil Procedure (V of 1908)—Section 115—Revision—Scope of interference in—Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Sections 34 and 35.

Evidence Act (I of 1872)—Section 115—Estoppel—Acquiescence—Landlord not protesting against the tenant using the building for the purpose different from and for which it is let—Effect of.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952) —Section 13(1)(b) and (c)—Expressions "Residential purpose" and "Suitable residence", Meaning of.

Held, as follows:—

(1) As a rule the High Court is extremely reluctant to disturb the findings made by a trial Court on controverted questions of fact when such findings are concurred in, or approved or affirmed, or are not disturbed by the appellate Court, when there is evidence to support the same, when no material evidence has been wrongly excluded and when there is no manifest error or abuse of discretion. The only duty that devolves on the High Court in such a case is to determine whether or not the law was properly applied to the facts as found.

(2) Where the landlord does not appear to have protested against the use to which the premises were put and must, therefore, be deemed to have acquiesced in the use of the premises for purposes of business, he is estopped from raising the question that the premises were not being used for purposes of business.

(3) The expression "residential purposes" appearing in section 13 of the Delhi and Ajmer Rent Control Act, directs attention solely to a use or mode of occupancy for which the premises were let. It is equivalent to residential in contradiction to business purposes. The purposes for which a building was let out might be determined by the contract between the landlord and the tenant.

(4) The expression "suitable" is an elastic term depending upon the differing needs of different persons. A thing to be suitable must be fit and appropriate to the end to which it is to be devoted. The test of suitableness of a particular building for a particular purpose is not whether it can be used for the purpose for which it is required but whether it possesses actual, practical and commercial fitness for that purpose. A building cannot be said to be suitable for the conduct of a business if the neighbourhood or locality in which it is situate is not suitable for that purpose.

Secretary of State v. *Rameswaran Devastharam and others* (1), relied upon.

Petition under section 35 of Delhi and Ajmer-Merwara Rent Act, 1952, for the revision of the order of Shri Basant Lal Aggarwal, Senior Sub-Judge, with enhanced Appellate Powers, Delhi, dated the 8th May, 1956, reversing that of Shri Mool Raj Sikka, Sub-Judge, 1st Class, Delhi, dated the 29th June, 1955, and dismissing the suit of the plaintiff with costs throughout.

A. N. GROVER and H. R. SODHI, for Petitioner.

GURBACHAN SINGH, for Respondents.

JUDGMENT

Bhandari, C.J.—This petition raises the question whether the lower appellate Court was justified in declining to order the eviction of a tenant.

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One Dr. Gopal Das Varma is the owner of a double-storeyed building known as 28, Barakhamba Road, New Delhi, the ground-floor of which consists of a block of offices and the first-floor of which consists of four flats. Three of these flats are in the occupation of the landlord while the fourth has been let out to one Dr. Bhardwaj, a specialist in diseases of the ear, nose and throat. The tenant appears to have taken the premises on lease as long ago as the year 1934, although the first agreement of tenancy was not executed till the 8th November, 1935. According to this agreement which is on a printed form the landlord agreed to let out his flat No. 1 to Dr. Bhardwaj on a rent of Rs. 90 per mensem payable in advance. The tenancy was to commence on the 1st day of October, 1935, and was to continue up to the 30th September, 1936, when it could be renewed on terms to be settled later. The tenancy was in fact renewed from year to year and the flat is still in the occupation of the tenant.

(1) A.I.R. 1934 P.C. 112

In October, 1953, the landlord brought a suit for the ejectment of Dr. and Mrs. Bhardwaj on two grounds, namely (1) that the landlord required the premises for occupation as a residence for himself and the members of his family, and (2) that the tenant had recently built a suitable residence for himself in the Golf-link area in New Delhi. The trial Court found in favour of the landlord and ordered the eviction of the tenant. The Senior Subordinate Judge, however, reversed this order in appeal, set aside the order of eviction and dismissed the landlord's suit. The latter is dissatisfied with the order and has come to this Court in revision.

A landlord can secure the eviction of his tenant under clause (e) of subsection (1) of section 13 of the Delhi and Ajmer Rent Control Act, 1952, if all the following conditions concur, namely—

(1) that the premises were let out for residential purposes;

(2) that the said premises are required *bona fide* by the landlord for occupation as a residence for himself or the members of his family, and

(3) that he has no other suitable accommodation.

The trial Court gave a decision in favour of the landlord on point No. 1 and in favour of the tenant on points Nos. 2 and 3, while the Senior Subordinate Judge gave a decision in favour of the tenant on all the three points. Both the Courts are agreed that the landlord cannot claim the eviction of the tenant under clause (e) of subsection (1) of section 13.

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As a rule the High Court is extremely reluctant to disturb the findings made by a trial Court on controverted questions of fact when such findings are concurred in, or approved or affirmed, or are not disturbed by the appellate Court, when there is evidence to support the same, when no material evidence has been wrongly excluded and when there is no manifest error or abuse of discretion. The only duty that devolves on the High Court in such a case is to determine whether or not the law was properly applied to the facts as found. The Court is, however, at liberty to examine the evidence itself with the object of determining whether, when all the evidence is considered in a light most favourable to the successful party below, there is total failure to prove any one or more of the elements of that party's alleged cause of action or defence.

Mr. Grover, who appears for the landlord in the present case, contends that the Courts below have failed to take into consideration several pieces of evidence on which the parties had relied and that the evidence taken as a whole leads one irresistibly to the conclusion that the finding on which they have arrived is manifestly perverse.

It is contended on behalf of the landlord that the Senior Subordinate Judge was not justified in holding that the flat in question was let out to the tenant for use as a residence-cum-office. The site on which the building is situate was auctioned by Government for construction of "office buildings and residence above"; the memorandum of agreement dated the 8th November, 1935, shows that the tenant agreed to use the property for purposes of residence; the bills which were sent by the landlord from time to time indicate that the rent was being charged for a flat and not for an office; the Chief Commisioner of Delhi held in the year 1941

that the tenant had restricted the use of the premises to residential purposes. These objections are good as far as they go but they have been completely answered by the evidence produced by the tenant. It is true that the site on which the building has been constructed was auctioned by Government for purposes of "office buildings and residences above", but the purposes for which the flat in question was let out must be determined not by the contract between Government and the landlord but by the contract between the landlord and the tenant. One of the terms of the agreement on the printed form was that "the tenant agrees to use the property for residential or business purposes". A line has been drawn across the expression "business" appearing in this clause. The landlord states that the word "business" was struck out by the tenant at the time of the execution of the agreement while the tenant deposes that the word in question was cut out without his consent or knowledge some time after the agreement had been executed and when the agreement was in the possession of the landlord. The correction does not bear the signatures or initials either of the landlord or of the tenant; the ink which has been used in making the correction is different in colour from the ink which was used in making the other entries in the document; the landlord did not care to produce any witness in support of his assertion that the expression "business" was scored through at the time of the execution of the agreement of tenancy; the only evidence in support of the assertion made by the landlord is the uncorroborated testimony of the landlord himself. The Senior Subordinate Judge was unable to accept the statement of the landlord at its face value and preferred instead to accept the evidence of the tenant. It may be that certain bills which are alleged to have been submitted by the landlord to the tenant show that the expression "office" appearing therein has

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been scored through and the word "flat" has been left intact, but these bills can be of little or no help to the landlord, for a flat may be used either for purposes of residence or for purposes of business or for purposes of residence and of business and the defendant has produced a number of bills sent by the landlord in which the expression "office" has not been omitted.

There are several other circumstances which appear to indicate that the premises were let out to the tenant not only for purposes of residence but also for purposes of business. It is common ground that the tenant was and is a specialist in diseases of the ear, nose and throat, that he practises his profession in the premises in question and that he has no consulting room or surgery in any other part of Delhi. It is in evidence that though he resided in the premises with his wife the bulk of the accommodation available to him was used for the purposes of his profession. The landlord who has always been in occupation of the remaining three flats on the first-floor knew or could with reasonable diligence have known that the tenant was a medical practitioner, that he was carrying on his business in the premises, that a considerable portion of the accommodation available to him was set aside for the purposes of his profession and that he had no place of business elsewhere. He does not appear to have protested against the use to which the premises were put and must therefore be deemed to have acquiesced in the use of the premises for purposes of business. His acquiescence in this behalf ever since the year 1934 estops him now from raising the question that the premises were not being used for purposes of business.

Again, it appears that on the 12th August, 1941, the landlord addressed a communication to

the tenant informing him that the flat would not be available for lease after the 30th September, 1941, the date on which the lease was due to expire. The tenant replied on the 28th August, that it would be extremely in-convenient for him to vacate the flat and requested the landlord to extend the tenancy for a further period of 12 months under the provisions of the New Delhi House Rent Control Order, 1939, which applied only to residential accommodation. The Rent Controller permitted him to continue in occupation of the premises for a further period of one year. The landlord applied to the Chief Commissioner of Delhi and argued before him that the Order of 1939 was not applicable as the accommodation in question was not truly residential accommodation. The landlord exhibited a copy of the perpetual lease by which he held the land under the building from Government which showed that the land was leased with a view to the construction on it of a block of offices. On the other hand, it was not denied that both the landlord and the tenant had in fact been living in different parts of the building and that parts of the building were *de facto* residential. The Chief Commissioner came to the conclusion that although the tenant resided and had his consulting rooms in the premises, the flat in question was *de facto* residential and declined to pass an order disallowing the extension demanded by the tenant.

There are certain other circumstances also which lead one irresistibly to the conclusion that the flat occupied by the tenant was not used for purposes of residence alone. On the 30th July, 1942, a legal practitioner sent a notice to the tenant under instructions from the landlord. In paragraph 1 of this notice he pointed out that the landlord had let out flat No. 1 to him with one garage and one outhouse on a monthly rent of Rs. 90 "for office and residential purposes combined". This

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notice contains a very clear and unequivocal admission on the part of the landlord that the flat was being used not only for purposes of residence but also for purposes of business. On the 14th April, 1947, the landlord issued a communication to the tenant informing him that with effect from the 1st May, 1947, the rent of the premises would be increased to Rs. 196-3-0 exclusive of taxes. This figure was arrived at as follows:—

		Rs. (*Per mensem*) Rs.	A.	P.
Basic rent	...	100	0	0
Increase due to structural alterations at 6¼ per cent on Rs. 4,000	...	20	13	0
Rent of fans at Rs. 5 each	...	10	0	0
Total	...	130	13	0

		Rs.	A.	P.
Increase at 50 per cent	...	65	6	0

The increase of 50 per cent over and above the basic rent of Rs. 90 per mensem appears to have been decided upon under the provisions of paragraph 4 of Part B of the Second Schedule to the Delhi and Ajmer-Merwara Rent Control Act, 1947, which provides that where the premises in respect of which rent is payable are let for any purpose other than use as a residence the standard rent of the premises shall be the basic rent increased by 50 per cent thereof if the basic rent per annum is more than Rs. 1,200. In view of the evidence which has been produced in this case I am of the opinion

that the learned Senior Subordinate Judge was fully justified in holding that the premises were let out to the tenant for purposes of residence and for the purposes of his work as a member of the medical profession. The expression "residential purposes" appearing in section 13 directs attention solely to a use or mode of occupancy for which the premises were let. It is equivalent to residential in contradiction to business purposes. A building which was let out primarily for use as a place of abode and in which no business is carried on except incidentally must be said to be let out for residential purposes. On the other hand, a building which was let out "for residence or business purposes" and which is being used primarily for purposes of business and only incidentally for purposes of residence cannot be said to have been let out for residential purposes. A building which is used primarily for the care and treatment of the sick cannot be regarded as a residence, for it is used more for purposes of a commercial enterprise than for purposes of residence.

Assuming for the sake of argument that the premises were let out for residential purposes, the question arises whether these premises are required *bona fide* by the landlord for use and occupation of himself or the members of his family. It was argued before the trial Court that the family of the landlord consists of a large number of persons and that it is impossible for the landlord to accommodate them in the three flats which are already in his occupation. It came unhesitatingly to the conclusion that only 11 members of the family live in Delhi, that the landlord is already in possession of three flats each containing four rooms, one bath-room, one kitchen, one store-room, one pantry, two courtyards and two verandahs. He is also in possession of 13 out-houses. The trial Court was accordingly of the

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opinion that this accommodation is more than sufficient for the residence of the plaintiff's family of 11 or at the most of 17 members. The trial Court had the advantage which was denied to the lower appellate Court and to this Court of seeing the witnesses and observing the manner in which the testimony was given and it was therefore in a better position than the other Courts of saying what weight should be attached to it. The view of the trial Court was endorsed by the Senior Subordinate Judge who held that the accommodation which is in the possession of the landlord is more than sufficient for the needs and requirements of the landlord and the members of his family particularly as some of the members are residing with their families outside Delhi. During the course of arguments I went carefully into the evidence with the object of ascertaining whether the accommodation required by the members of the family of the landlord who are actually residing with him in Delhi is more than has been provided for them in the three flats occupied by him. The landlord was unable to satisfy me that these members could not be conveniently accommodated in the rooms which are already in their possession. I must accordingly concur in the view taken by the Courts below that the flat occupied by the tenant is not *bone fide* required by the landlord for occupation as a residence for himself or the members of his family. In any case the province of a Court of revision is generally limited to the review of corrections of errors of law, for as pointed out by their Lordships of the Privy Council in *Secretary of State* v. *Rameswaran Devastharam and others* (1), section 100 of the Code of Civil Procedure confers no jurisdiction on the High Court to reverse the findings of fact arrived

(1) A.I.R. 1934 P.C. 112

at by the lower appellate Court, however erroneous the findings may be, unless they are vitiated by some error of law.

The question now arises whether the tenant has built, acquired vacant possession of or been allotted a suitable residence, for if the answer to this question is in the affirmative it is open to the landlord to ask him to vacate his flat under the provisions of clause (h) of subsection (1) of section 13 of the Rent Control Act. It is contended on behalf of the landlord that the tenant has recently constructed a house in the Golf-link area and that he has let out this house on high rent. It is accordingly argued that as he has acquired a suitable residence for himself he ought to be required to vacate the flat occupied by him. On the other hand, Mr. Gurbachan Singh, who appears for the tenant, contends that the new house which is said to have been constructed by his client is completely unsuitable for his requirements as a member of the medical profession. There is in my opinion considerable force in this contention for the house which has been constructed by the tenant is situate in a distant part of Delhi away from the Connaught Place where several of the more eminent physicians, surgeons and dentists carry on business and is, in my opinion, unsuitable for the requirements of this particular tenant. The expression "suitable" as defined in a standard English dictionary means fitting, capable of suiting or appropriate. It is an elastic term depending upon the differing needs of different persons. A thing to be suitable must be fit and appropriate to the end to which it is to be devoted. It must be appropriate under the circumstances. What may be suitable for one person may not be suitable for another. The test of suitableness of a particular building for a particular purpose is not whether it can be used for the

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purpose for which it is required but whether it possesses actual, practical and commercial fitness for that purpose. A building cannot be said to be suitable for the conduct of a business if the neighbourhood or locality in which it is situate is not suitable for that purpose.

For these reasons I am of the opinion that the premises in question have not been let out for residential purposes and are not required *bona fide* by the landlord for occupation as a residence for himself or the members of his family and that the tenant has not built or acquired vacant possession of or been allotted a residence which is suitable to his own requirements. I would accordingly uphold the order of the lower appellate Court and dismiss the petition. There will be no order as to costs.

APPELLATE CIVIL.

Before Tek Chand, J.

THE UNION OF INDIA AND OTHERS,—*Appellants.*

versus

MESSRS. NARAYAN COLD STORAGE, LTD., G. T. ROAD, AMRITSAR,—*Respondents.*

First Appeal from Order No. 102 of 1955.

1957

April, 2nd

Arbitration Act (X of 1940)—Sections 34 and 39—Stay of proceedings—Discretion of Trial Court, when to be interfered with—Principles stated—Suit when not to be stayed—Arbitrator—Whether to be Rhadamanthus in all cases.

Held, that section 34 gives a discretion to the trial Court either to stay the suit or not to stay it though normally the Court would be inclined to give effect to the arbitration agreement, it is pre-eminently a matter for the satisfaction of the trial Court that there is no sufficient reason that the matter should not be referred to the judge of the parties' choice according to the arbitration agreement.