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was applicable, the Appellate Bench would have the power. If section 8 of the Divorce Act was applicable, the Judge sitting singly on the original side would have the power. The Calcutta High Court held that section 24 of the Code of Civil Procedure was excluded by the special provision contained in section 8 of the Divorce Act read with section 45 of that Act. They said,—

“Section 8, Divorce Act, contains an express provision enabling the High Court, whenever it thinks fit, to remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act and also to withdraw any such suit or proceedings and transfer it for trial or disposal to the Court of any other such District Judge. Section 45 of the Act provides that :

“Subject to the provisions herein contained all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.”

It, therefore, follows that, as the Act contains an express provision regulating the transfer of a suit from the Court of one District Judge to that of another District Judge, Section 24, Civil P.C. can have no application.....”

The opinion of the Calcutta High Court fully supports the submission of the learned counsel for the respondent. The application is, therefore, dismissed, but in the circumstances without costs.

K.T.S.

REVISIONAL CIVIL

Before R. N. Mittal and K. S. Tiwana, JJ.

CHHAJU RAM,—Petitioner.

versus

TULSI DASS and another,—Respondents.

Civil Revision No. 475 of 1973

February 2, 1977.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) (b)—Premises rented out as a ‘shop’ but used as a ‘godown’—Such user—Whether different from the one for which they were let out.*

*Held*, that the meaning of the word 'shop' is a building or a room where goods are sold for price on retail. This meaning is quite distinct from the meaning of the word 'godown' or a 'warehouse' which means a place for storing the goods which are not immediately wanted for sale. A part of a shop, may to a limited extent, be used for storage of goods but this extent would only be limited for the purpose that the goods meant for sale at the 'shop' are stored in it and this in many cases becomes necessary because sale may not be effectively carried out if the goods are not stored therein but have to be brought from a distance. In that situation, the 'shop' cannot be equated with a 'godown' because the dominant purpose of the shop is the sale of the goods and not their storage. A servient purpose cannot change the complex of the dominant purpose. If the goods are only stored and the sale is not at that place but at different premises, then it will be a 'godown' and cannot fall within the ordinary dictionary meaning of the word 'shop'. The purpose of storing goods at a premises is different from the sale of those goods. It is understood as such even in common parlance by the ordinary people and the trading community. The words 'shop' and 'godown' cannot, indeed, be intermixed or alternatively used and when independently used these purposes do not overlap each other. Thus, the word 'shop' does not mean or include a 'godown' for the purpose of section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act 1949 and the premises, which are mentioned as a 'shop' in the rent-note cannot, without the consent of landlord, be converted into 'godown' for storing the goods being sold at other premises by the tenant. Where the premises are taken for use as a 'shop' but are actually used as a 'godown' for storing goods, they are used for a purpose other than the one for which they were let out and the landlord earns a right to evict the tenant.

(Paras 10 and 11).

*Case referred by Hon'ble Mr. Justice Rajendra Nath Mittal, dated the 28th July, 1975, to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Rajendra Nath Mittal and Hon'ble Mr. Justice Kulwant Singh Tiwana, finally decided the case on 2nd February, 1977.*

*Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of the Court of Shri Mohan Lal Jain, Appellate Authority, under the East Punjab Rent Restriction Act, Gurgaon dated the 7th day of February, 1973, affirming with costs that of Shri P. K. Goel, Rent Controller, Rewari, dated 17th December, 1971 dismissing the application of the applicant for eviction of the respondent from a shop bearing No. 1082 situated in Rewari.*

G. C. Garg, Advocate with J. V. Gupta, Advocate, for the Petitioner.

G. C. Mittal, Advocate, for Respondent No. 1.

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### JUDGMENT

Judgment of the Court was delivered by :—  
K. S. Tiwana, J.

(1) The facts of the case which led to this reference to the Division Bench are that Chhaju Ram petitioner purchased the shop in dispute which is situated at Rewari from Harish Chand, in which Tulsi Das respondent was a tenant at a monthly rent of Rs. 24. After the acquisition of the shop by the petitioner, the respondent became a tenant in these premises under him. The petitioner sought the eviction of the respondent from the Court of the Rent Controller on the ground that the respondent had sublet the premises and that these were being used for a purpose other than the one for which these had been rented to him. The respondent resisted the eviction by denying the subletting and the change of user. He pleaded that he was a partner in firm Motiram-Ramlal doing the business of purchase and sale of cloth at Rewari and this firm from the inception of the tenancy was using the demised premises for storing cloth. Other pleas which were raised before the Rent Controller were not pressed and for that reason need not be taken notice of. The learned Rent Controller returned a finding against the petitioner about the change of user and subletting of the demised premises. These findings were affirmed in appeal by the appellate authority. Dissatisfied with the adverse verdict of both the subordinate Tribunals, the petitioner filed this revision in this Court.

(2) Both the Rent Controller and the appellate Court found as a fact and the parties are not at variance that the premises in dispute are being used as a godown by the respondent. In the Chambers before my learned brother R. N. Mittal, J. it was urged on behalf of the petitioner that in the rent note the premises are mentioned as a 'shop' which has not been defined in the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. III of 1949), hereinafter referred to as the Act. 'Shop' in ordinary parlance means a place where business of purchase and sale of goods on retail for price is done. According to the petitioner, a 'godown' is not the same thing as a 'shop'. Thus where a 'shop' is used as a 'godown' there is change of user. To support this argument, the petitioner cited *Balwant Singh v. Brij Mohan* (1) and (2) *Ram Swarup v. Om*

(1) C.R. 645/61 decided on 16th March, 1962.

*Parkash* (2). The learned counsel on behalf of the respondent after citing *Kishan Lal v. Madan Gopal*, (3) and *Chhabil Dass v. Fajeh Chand*, (4) argued that if a shop keeper stores goods or uses the 'shop' as a 'godown', then the user is not changed. R. N. Mittal, J. referred the case to a larger Bench observing 'after perusing the aforesaid judgments I find that the question involved in the present case is not free from difficulty. The question is also of such a nature which may very often arise. In the circumstances it is desirable that the case may be referred to a Division Bench'. This is how the case came to be laid before us.

(3) The question for determination before us is whether a 'shop' as it is commonly understood can be used as a 'godown' for storage of goods alone and if it is so used, then does that amount to putting it to a different use than one for which it was let out as contained in section 13(2)(ii)(b) of the Act.

(4) The rent note executed between the parties is a charter of their rights. If the purpose or use for which the demised premises is rented, is set out after agreement by the parties, in the rent note, then it does not pose any problem. If, on the other hand, it does not specifically state the purpose of letting, then the Courts or the Tribunals are called upon to decide the matter in controversy by interpretation of the statutory definition or, in the absence of such a definition by reference to the ordinary dictionary meanings or their meanings as are commonly understood in business, trade or in the locality.

(5) In the Act, the word 'shop' has not been defined. We have, therefore to resort to its ordinary dictionary meaning. Shri Gokal Chand Mittal, learned counsel for the respondent, urged that the word 'shop' has been defined in section 2(xxv) of the Punjab Shops and Commercial Establishments Act, 1958 (hereinafter referred to as the 1958 Act), and wanted to import the definition of this word in that Act for application to the case in hand. In the 1958 Act, the definition has been given for the purpose of that Act, which has been enacted to regulate the conditions of work in the shop and commercial establishments. Any definition of the word 'shop' given in the 1958 Act cannot be extended beyond the limits of that Act for application to other statutes, as each statute is designed to meet a distinct and

(2) C.R. 654/62 decided on 6th September, 1963.

(3) C.R. 698/59, decided on 12th August, 1960.

(4) C.R. 237/66 decided on 25th November, 1966.

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particular purpose and the words used in each statute have to be read and interpreted in the context of that statute. It is neither proper nor plausible to borrow the definition from other statutes when the provisions of both the Acts are not in *pari materia*. We, therefore, cannot fall back upon the definition of the word 'shop' in the 1958 Act and have to resort to the ordinary dictionary meaning of the words 'shop' and 'godown', and also as they are commonly understood by the people in general.

(6) To appreciate whether a 'shop' means and includes a 'godown', we have to look for the meanings of both the words in the different dictionaries for purpose of reference.

(7) In the 'Concise Oxford Dictionary', (4th edition) the meanings of the word 'shop' are given as 'building, room etc., for retail sale of some commodity.' In 'Chamber's Twentieth Century Dictionary', (revised 1964 edition), the meanings of the word 'shop' are given as 'a building or room in which goods are sold.' In 'Webster's New Twentieth Century Dictionary', Volume II (second edition), the meanings of the word 'shop' are given as 'a place where goods are sold at retail'. According to 'Stroud's Judicial Dictionary', third edition the word "shop' implies a place where a retail trade is carried on." In 'Law Lexicon of British India', 1940 edition, by Aiyar 'shop' is stated to be 'a place kept and used for the sale of goods'. It is further stated in the book that "the word 'shop' implies a place where a retail trade is carried on".

(8) In Aiyar's Law Lexicon the word 'godown' is defined as a store, a warehouse. In 'Webster's New Twentieth Century Dictionary', Volume I, Second edition, the word 'godown' is meant as 'in India, China, Japan etc. a warehouse'. In the 'Concise Oxford Dictionary' fourth edition the meanings of this word are given as 'warehouse in parts of Asia, esp. India'. The 'warehouse' has been defined in 'Law Lexicon of British India', 1940 edition, as: 'a warehouse is, properly speaking, a building used for the purpose of storing goods imported at a reasonable rent. 'According to 'Stroud's Judicial Dictionary', third edition, "a 'warehouse', in common parlance, certainly means a place where a man stowes or keeps his goods which are not immediately wanted for sale". In 'Webster's New Twentieth Century Dictionary', Volume II, second edition, the meanings of the word are given as 'a building where wares, or goods, are stored, as before being distributed to retailers a storehouse.'

(9) The word 'shop' has not been defined in the Act. We do not taken upon ourselves to attempt for giving any comprehensive meaning or definition to this word, but we are to take its ordinary dictionary meanings for the purpose of the Act, so that the dispute between the landlords and the tenants may be resolved regarding the change in the user of the tenanted premises.

(10) The meanings of the word "shop" derived from the standard, legal and educational dictionaries quoted above are 'a building or a room where goods are sold for price on retail'. These meanings are quite distinct from the meanings of the word 'godown' or a 'warehouse' which means a place for storing the goods and according to Stroud's Judicial Dictionary, those goods are stored which are not immediately wanted for sale. The learned counsel for the respondent has argued that in the cases of *Kishan Lal and Chhabil Das*, wherein the premises were rented as 'shops' but had been used as 'godowns', it was not a change of the user as anticipated by section 13(2)(i)(b) of the Act. In *Kishan Lal's case*, the tenant was an Arhti or a commission agent in foodgrains. After taking the shop on rent, he stored foodgrains in that shop for the purpose of sale. In that case, G. D. Khosla, C. J., observed that 'the storing of goods is not vastly different from the use to which a shop is put. The tenant is an Arhti or commission agent, and there is nothing extraordinary or harmful in his storing wheat in the premises which were let out as a shop'. It was further observed in the same judgment: 'in the present case the rent note did not specify the purpose, and it may, therefore, be assumed that the shop could be used in the usual manner in which shops are used. Shops are used both for the sale of goods and for the storing of goods.' In *Chhabil Das's case*, the demised premises were constituted of three parts. The landlord retained the hind portion of the shop with him and rented out the two front portions to the tenant. The tenant used those as a godown and carried on his business in a different premises. Mehar Singh, C.J., in those circumstances, observed: —

"The argument on the side of the applicant is that *Kishan Lal's case* completely covers the facts of the present case, which in my opinion it does. The rent note in the present case, as in *Kishan Lal's case*, does not show that the shop was to be used as a shop and was to be kept open according to the hours settled in accordance with the provisions of Punjab Act 15 of 1958. It merely let out the first two rooms

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of the shop to the applicant, leaving the third room for the user of the respondent. The user was not described. But it may be assumed that, since it is a shop, the parties intended that the applicant was going to use the first two rooms as a shop. The question then is whether user of it as a godown is such user as to attract section 13(2)(ii)(b) of the Act and the answer given to this by the learned Chief Justice in *Kishan Lal's case* is in the negative. I agree with that." ...

In *Chhabil Das's case*, there was no discussion on the merits of the distinction between a 'shop' and a 'godown'. Mehar Singh, C.J., simply followed the decision in *Kishan Lal's case*. Shri Gokal Chand Mittal, learned counsel for the respondent, has argued that in *Kishan Lal's case* the above finding was returned, after assuming that the intention of the parties was that the premises should be used as a 'shop' and not for the purpose wholly different to the purpose to which a 'shop' can be put. With due regards to the eminent Judge deciding *Kishan Lal's case*, we are unable to persuade ourselves to agree with the observations which are too wide. Neither from literal nor any practical point of view, such an import can be given to the word 'shop' to enlarge its meanings which are brief and not so comprehensive as given in *Kishan Lal's case* or intended to be enlarged by Shri Mittal. We concede to the argument only to the extent that a part of a 'shop', may to a limited extent, be used for storage of goods'. This extent would only be limited for the purpose that the goods meant for sale at the 'shop' are stored in it and this in many cases becomes necessary because sale may not be effectively carried out if the goods are not stored therein but have to be brought from a distance. In that situation, the 'shop' cannot be equated with a 'godown' because the dominant purpose of the shop is the sale of the goods and not their storage. A servient purpose cannot change the complex of the dominant purpose. If the goods are only stored and the sale is not at that place but at different premises, then it will be a 'godown' and cannot fall within the ordinary dictionary meanings of the word 'shop'. The purpose of storing goods at a premises is different from the sale of those goods. It is understood as such even in common parlance by the ordinary people and the trading community. Thus, 'shop' means a 'shop' and 'godown' means a 'godown' and the words cannot be intermixed or alternatively used. When independently used these purposes do not overlap each other.

(11) It was urged before us that *Kishan Lal and Chhabil Das'* cases have held the field for a long time, i.e., since 1960 and on the principle of *stare decisis* it would not be proper to depart from the law laid down in those cases. This Court in various cases has pronounced upon the change of user and the view which we are expressing is not inconsistent with the decisions of this Court. In *Tarlok Singh v. Seth Rama Nand-Kidar Nath Trust*, (5), the facts were that the landlord had let out the shop for carrying on the business of carpentry. The tenant installed a lathe run on power in the same premises and urged that these were installed for rounding the logs of wood. M. R. Sharma J., in that case, held that the installation of these electrical appliances was a change of user of the premises. Similarly, in *Mehta Baldev Datt v. Puran Singh* (6), the premises were rented out for tailoring business. The tenant started work by installing a machine on power. D. K. Mahajan J., held that the user of the building had been changed. In *Cement Pipe Factory v. Daulat Ram Narula* (7) decided on the premises were initially leased out for working handlooms. The tenant installed the looms operated by power in those premises. In that case also, it was held that the tenant had put the demised premises to a different use than the one for which it was let out as envisaged by section 13(2)(ii)(b) of the Act. The ratio of the judgments cited above shows that this Court did not want to put any enlarged meanings to the words commonly used as in the case of 'looms' and 'power operated looms' etc. We also do not want to give broad meanings to the word 'shop' to include a 'warehouse' or a 'godown' if in those premises no sale, which is the main constituent of a 'shop', is being carried on. No other case of this Court or any other High Court was cited before us. With respectful disagreement to the learned Judges deciding *Kishan Lal and Chhabil Das'* cases, we hold that the word 'shop' does not mean or include a 'godown' for the purposes of section 13(2)(ii)(b) of the Act, and the premises which are mentioned as a 'shop' in the rent-note cannot, without the consent of the landlord, be converted into 'godown' for storing the goods being sold at other premises by the tenant. The words, as discussed above, in our view, are distinct having distinct and separate meanings which are well understood in this part of the country and for that matter, in some educational

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(5) 1975 R.C.R. 652.

(6) C.R. 913/72, decided on 21st February, 1973.

(7) C.R. 416/50, decided on 1st January, 1951



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dictionaries, meanings of the word 'godown' are given, as these are understood in Asia.

(12) After the answer of the legal question against the tenant, we advert to the facts of the case in hand. As referred in the earlier part of the judgment, both the Rent Controller and the appellate authority have returned a concurrent finding to the effect that the premises in dispute were entered as a 'shop' in the rent note but were being used as a 'godown'. The report of the local Commissioner also suggested the same. This finding of fact has not been contested by the counsel for the parties before us. We had a look at the rent note. Throughout the rent note the premises were mentioned as a 'shop'. Clause 4 of the rent note is "Ye Keh Dukan Mazkoora Par Main Khud Kaam Karunga....." (that in the concerned 'shop' I will myself do business). From this, the intention of the respondent becomes manifest that he had taken the 'shop' on rent and that in that shop he was to carry out his own business. He has nowhere in the rent note mentioned that he was a partner in the firm Motiram-Ram Lal or that it was taken for the business of that firm. The terms of the rent note were clear and explicit and did not leave any scope for the argument that it could be used as a 'godown'.

(13) There is bead roll of authorities of this High Court, some of which have been referred to above, laying down that when the premises have been used for the purpose other than the one for which these were leased, the landlord earns a right to evict the tenant. It should suffice to refer only to a Division Bench authority of this Court in *Telu Ram v. Om Parkash Garg*, (8), in which all the case law up-to-date till the decision of that case was considered.

(14) In view of what has been discussed above, the revision is accepted and the orders of the Rent Controller and the appellate authority dismissing the petition of the landlord-petitioner for eviction of the tenant respondent is set aside. In view of the point of law involved in the case, the parties are left to bear their own costs.

*Rajendra Nath Mittal, J.*—I agree.

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(8) I.L.R. (1972) II Pb. and H. 528.

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N. K. S.