Karnataka High Court Smt. S.V. Kunhima vs B.N. Viswanath on 7 March, 1996 Equivalent citations: ILR 1996 KAR 1853, 1996 (2) KarLJ 726 Author: A Sadashiva Bench: A Sadashiva ORDER A.J. Sadashiva, J. 1. Although this Petition is listed for admission, the same is heard for final disposal with the consent of the learned Counsel appearing on both the sides. 2. The Revision Petitioners are the tenants/respondents in HRC No. 10791/1991 on the file of the XIII Additional Judge, Court of Small Causes, Mayo Hall, Bangalore. The respondent in this revision is the landlord-petitioner in the said HRC Case. The parties to these proceedings are hereinafter referred to with reference to their status in the original proceedings. 3. This Revision Petition, filed under Section 60(1) of the Karnataka Rent Control Act, 1961, for short 'the Act', is directed against the order dated June 30, 1995, passed by the XIII Additional Judge, Court of Small Causes, Mayo Hall, Bangalore, in HRC No. 10791/1991 directing the eviction of the respondents under Section 21(1)(c) of the Act. 4. The petitioner instituted an eviction petition against the respondents under Section 21(1)(b) & (c) of the Act on the ground that the respondents have committed acts contrary to Clause 'o' of Section 108 of the Transfer of Property Act and they have erected on the premises certain permanent structures without his consent in writing and thus, they rendered themselves liable for eviction under Section 21(1)(b) & (c) of the Act. 5. The learned Trial Judge after receiving evidence and after hearing the parties dismissed the petition under Section 21(1)(b) of the Act However, the petition under Section 21 (1)(c) of the Act, was allowed on the ground that the respondents have erected on the petition schedule premises certain permanent structures. The petitioner did not challenge the order of the learned Trial Judge in respect of the ground under Section 21(1)(b) of the Act and, thus that portion of the order has become final. Hence, there is no need to make any reference either to the facts alleged by the petitioner or the defence of the respondents in their respective pleadings in respect of the grounds of eviction under Section 21(1)(b) of the Act. 6. The petitioner in his petition has stated that, the respondents, on 28.3.1989 removed the asbestos sheet roof of the petition schedule premises and also attempted to pull down the internal walls on the South Eastern side of the building running North to South and pulled down the chimny which was on the South Eastern side of the schedule premises. It is his further case that, the respondents have raised a wall running East to West perpendicular to the wall running North to South which Was demolished, without the consent of the petitioner and they have also installed a chimney on the North-East of the building shifting the same from South-East. 7. The respondents who are the widows of the tenant are represented by their General Power of Attorney Holder. They, having entered appearance filed their objections denying the allegations made by the petitioner. In their objection statement they admit the relationship and the rate of rent. However, they deny the alleged acts of demolition and construction of wall, construction of chimny and construction of bunk shop. They have also pleaded that the father of the petitioner had filed an eviction petition in HRC No. 3142/1981 against the respondents. The said eviction petition was allowed by the Trial Court; In the revision before this Court, the dispute was compro-

mised; Pursuant to the settlement an area measuring 12' x 15' on the Northern side of the building was agreed to be surrendered in favour of the petitioner by the respondents and the lease was agreed to be continued in respect of the remaining portion; Accordingly, the respondents surrendered the area measuring 12' x 15' on the Northern side of the petition premises. A separate wall was also constructed. The father of the petitioner after having taken possession let-out the same to one Ramu; In view of the violation of the order of this Court, it is pleaded by the respondents that, they filed an application in HRC Mis.No. 198/1989 for re-delivery of the said portion; The petitioner having got enraged on account of re-delivery proceedings, it is stated by the respondents, filed Original Suit and also these eviction proceedings. It is therefore contended by the respondents that this petition actuated by malafides and liable to be dismissed. 8. In support of his case, the petitioner examined himself along with two other witnesses and produced as many as 28 documents. He has also produced about 79 photographs which are marked as Exhibits-Pi series. The respondent closed his case by examining himself. He did not produce any documentary evidence. The learned Trial Judge after considering the evidence and hearing the parties passed an order dated June 13, 1995, directing the eviction of the respondents under Section 21(1)(c) of the Act. The learned Trial Judge has recorded a finding-that, the respondents have erected on the petition schedule premises a wall running East to West perpendicular to the wall running North to South and a chimny on the North-Eastern side of the premises and a permanent shop on the Southern side of the petition premises. In order to record such findings he placed reliance on the evidence of PWs.2 and 3. However, he did not place reliance on the evidence of R.W.1 on the ground that he is not a trustworthy witness and no credence could be attached to his evidence. The relevant portion of the order reads as follows:- "15. Evidence of petitioner is corroborated by the evidence of commissioner and P.W.2 who is the photographer. Petitioner has produced the report submitted by the commissioner and he has marked it as Ex.P.25. In his report, the commissioner has stated that on the southern side next to the door adjacent to the window there is a bunk shop with a rolling shutter. In the kitchen one of the ventilators is half closed by new chimney which was built on the north-eastern corner of the wall which was recently plastered at the top of the roof. Two to three layers of bricks were not plastered. A steel grill window protruduing chimney was visible., which was a newly fixed one. . . " To reject the evidence of the respondent, the learned Judge has held as follows:- "17. . . . In his evidence before Court in O.S. 1840/1989, R.W.1 has stated that he do not know whether they have taken any photos at that time the hotel building is in the same condition as shown in photograph Ex.P.1 (39). Ex.P.1(39) shows the petty shop and this spot is marked as Ex.P.1 (39)(a), and this portion is delivered to second plaintiff. Now the said petty shop is shifted to the portion marked as Ex.P.1 (3). Even though this evidence of P.W.1 indicates that there was a bunk shop in the portion surrendered to the petitioner and he has shifted, that bunk shop to the southern side where the window was situated. He has stated that the shop was in existence right from the beginning. On account of these contradictory versions of R.W.1, he

is not a trustworthy witness; no credence could be attached to his evidence." The reasons assigned by the learned Judge to reject the evidence of R.W.1 as untrustworthy may not be right in the facts and circumstances of this case. It is well settled that, the entire evidence of a witness cannot be rejected merely because he tells lies on certain points. It is for the Court to scutinise the evidence to accept what appears to be true and to reject what appears to be not true. The reason assigned by the learned Judge to reject the evidence of R.W.1 as untrustworthy is unsustainable in law. Therefore, the entire evidence will have to be reappreciated in this revision petition. 9. Sri S. Shekhar Shetty, learned Counsel appearing for the revision-petitioner/respondent has contended that the learned Trial Judge has recorded his finding on the report of the Commissioner filed in O.S.1840/1989 and the same cannot be accepted as it was not prepared in the manner prescribed by law. It is his contention that, the execution of the commission warrant is in violation of Rule 18 of Order 16 CPC and therefore all further proceedings pursuant to the execution of the commission warrant is vitiated. It is his further contention that the commission report is prepared without notice to the respondents; No mahazar has been drawn in respect of the execution of the commission warrant, nor the signature of any witnesses were taken. In those circumstances, it is unsafe to place reliance on the Commissioner's report. It is his further contention that the Commissioner never visited the hotel at all and the report was prepared elsewhere and not in the hotel at the time of alleged local inspection. Sri Shekhar Shetty has further contended that the petitioner has failed to produce any evidence, in support of his contention that the respondents have constructed a wall, a chimny and a Paan shop. If the report of the Commissioner is excluded there is no evidence excepting the self-serving statement of the petitioner and therefore the finding recorded by the learned Trial Judge is without any basis. He further contended that even if there is any alteration it is not a material alteration of a permanent nature attracting the provisions of Section 21(1)(c) of the Act and therefore the order under revision is unsustainable. 10. Sri B.N. Jayadeva, learned Counsel appearing for the respondent has contended that the petitioner has produced both oral as well as documentary evidence in support of his case. The judgments relied on by the learned Counsel appearing for the tenant-respondent are not applicable to this case as the said decisions have been rendered in the context of the provisions under the different rent enactments and not under the provisions of the Karnataka Rent Control Act, particularly in view of the difference in the provisions. 10. Before I advert to the rival contentions raised by the parties it is necessary to state certain admitted facts, which are as follows:- The petitioner is the landlord and the respondents the tenants. The father of the petitioner filed an eviction petition against the respondents in HRC. No. 1258/1979 which later came to be renumbered as HRC.No. 3142/1981. The said eviction petition ended in compromise, pursuant to which a portion on the Northern side of the petition premises measuring 12' x 15' was surrendered by the respondents to the petitioner. There is some dispute as to, by whom the partition wall was constructed. That is not relevant in this case. That, in the year 1989, the petitioner instituted a suit against the respondent on the file of the learned

City Civil Judge, in O.S. 1840/1989 for a judgment and decree for permanent injunction restraining the respondents from altering the premises. An ad interim order of temporary injunction was also made. Another ad-interim order was also made appointing a Commissioner to hold local inspection of the schedule premises and to report as to the alterations and demolitions, if there was any. The respondents filed a Miscellaneous Application under Section 25 of the Act for re-delivery of possession of the area surrendered by them in HRC.Misc. 198/1989. It is not in dispute that the said Miscellaneous application is dismissed and the original suit is decreed against which an appeal is filed and the same is pending before the Court. The Commissioner submitted his report. 11. During the course of the trial in the eviction proceedings, the petitioner examined himself as P.W.1 and examined a photographer as P.W.2 and the Commissioner appointed in O.S.1840/1939 as P.W.3 to prove his case. At the outset, it may be stated that the evidence of P.W.2 and P.W.3 as given are not of much consequence in this case. P;W.2 - the photographer has not given any evidence identifying the photographs taken by him. He just stated that he took the photographs of the petition premises on 3 to 4 days and those photographs are produced. It is material to see that the photographs were not produced by P.W.2, nor has he identified those photographs with respect to any particular demolition, construction in the petition schedule premises, nor has he given any evidence that at the time he took photograph he noticed any particular construction or demolition. The relevant portion of his evidence reads as under:- ".... I had to take photographs at Hotel Galaxy next to Kino theatre in Sheshadripuram. I have taken about 130-140 photographs. They were taken on 3 or 4 days. After taking the photographs I handed over the film roll to the petitioner. I have not issued any bill to the petitioner. I did not collect any charges from the petitioner but I have taken cost of the film from him. The photographs were both black and white and colour photos. By looking into them I can make out whether they were taken by me or not. The photographs as Ex.P-1 are the photos taken by me. Ex.P-1(a) was taken in the year 1986. The photographs were taken from both inside and outside the hotel building. The building work was going on when I took the photographs..." It is clear from the aforesaid evidence that it is too vague as it should be. Nothing can be made out from the aforesaid evidence. He has not pointed out to any of the particular photographs which he has taken with reference to the conditions of the building as seen in the said photographs, it is also material to see that he never referred to the visit of the Commissioner to the petition schedule premises at the time of taking photographs by him. This is relevant, because, P.W.3 -Commissioner states that he has taken photographer with him at the time of execution of Commissioner Warrant. The evidence of P.W.3 -the Commissioner is more interesting than P.W.2. In his evidence he does not refer to any particular event he noticed at the time of execution of the Commissioner Warrant. He simply states. "Ex.P-25 is the certified copy of the report in that case. It is the report given by me." It is material to see that Exhibit P-25 is disputed by the respondents. The very preparation of the report is in dispute. It is the contention of the respondents that the Commissioner has not visited the hotel at all and

he prepared the report elsewhere, In these circumstances, if the Commissioner's evidence lacks particulars as to the demolition, construction or reconstruction of any wall, chimny, etc., in the building as noticed by him, it is not safe for any Court to place reliance on the report of the Commissioner to hold that the respondents have erected on the petition premises permanent structures. If the evidence of P.W.2 and P.W.3 is excluded then the only evidence that remains for consideration is the evidence of P.W.1 - the petitioner. It is needless to state that the petitioner being a party is always interested. The evidence of the interested witness shall be scrutinised with great care and caution. 12. At the outset, I may state that the petitioner has failed to prove the construction of a wall or a chimny as alleged in his petition. The only construction that has been proved in this case is the construction of pan shop on the Southern side of the building facing S.C. Road. In view of this construction it has to be examined whether this construction was made by the respondents and whether these constructions were made by the respondents with the consent of the petitioner in writing and whether this construction constitutes erection of a permanent structure on the petition schedule premises. 13. In the petition filed under Section 21(1)(b) & (c) of the Act, the petitioner has stated that, "... They also removed the steel grill window on the southern side of the building facing S C Road and in its place fixed a rolling shutter to convert the window into a shop with internal alterations." The respondents have denied this allegation. Even though the respondent deny this allegation the fact remains that there is a Beeda shop on the Southern side of the petition premises facing S.C. Road. It is the case of the petitioner that, there was one Bunk shop on the Northern side which was surrendered to him by the respondents. After that portion was surrendered the respondents removed the steel grill window and put a rolling shutter and constructed a Beeda shop on the Southern side of the petition premises. It is true that the respondents have contended that they have not constructed the said shop at all and the said shop has been there right from 1966. It is their further case that there was no bunk shop on the Northern side of the petition premises. In support of his case, the petitioner has produced two photographs which are admittedly that of the petition schedule premises. Exhibit P1 (1) and P1(39) are the photographs. From Exhibit P1(1), it is seen that a Beeda shop with a rolling shutter is situated on the Southern side of the petition premises facing S.C. Road. On the Northern side of this premises there exists a shop with a big rolling shutter. It is the contention of the petitioner that, this is the portion which was surrendered pursuant to the order of this Court in the earlier proceedings. From Exhibit P1 (39) it is seen that a Beeda shop is situated on the Northern side of the petition premises, and there is no shop on the Southern side of the petition premises. But there exists a steel grill window. It is no doubt true that the respondent has denied the photograph Exhibit-Pi (39) as that of his hotel. In order to prove his case, the petitioner has also produced the evidence of R.W.1, given in O.S.No. 1840/1989 during the trial of which this very photograph was confronted to R.W.1- the GPA Holder of the respondents. In this context it is relevant to extract the evidence of P.W.1 and R.W.1 which reads as under: In the examination-in-chief, P.W.1 has stated as follows;

"... The window which was in existence in South-Western corner of the building facing Subedar Chatram Road, has been removed and a rolling shutter is put in instead. The said shutter covers a small shop created by the respondents..." R.W.1 in his examination-in-chief has stated that photograph Nos. 1, 2, 9, 12, 59, 75, 76, 78 and 79 in Exhibit P.1 relate to petition schedule premises and he could not say that when these photographs were taken and the remaining photographs do not pertain to the petition premises. During the course of his cross- examination he has stated that, "... There was a pan beeda shop in my hotel, it is there even now. It was there from the beginning of the hotel. Ex.P-1, photo number 39 is to the photo of my hotel. The board, Hotel-Galaxy is seen there in the photo. I have given evidence in O.S.1840/1989 filed by the petitioner against me.." He has also stated that, "... One Mr R.N. Satyan, was running a shop (sign board) in the same building. He has been examined as my witness in the said suit." Even though the respondent R.W.1 has disputed that Exhibit-P1 (39) is the photograph of his hotel Galaxy, he has clearly admitted in his evidence in O.S.No. 1840/1989. He has also admitted in these proceedings that, he gave evidence in O.S.No. 1840/1989 and he also examined one Mr.R.N. Satyan as his witness. The petitioner has produced depositions of R.W.1 and Satyan as Exhibits P26 and P27 in these proceedings. In Exhibit P26, RW-1 has stated that, "... I was present in the hotel on 1.4.1989 when the 2nd plaintiff came there along with two others. They spoke to me, but they have not gone inside the hotel. I do not know whether they have taken any photos at that time. The hotel building is in same condition as shown in photo Ex.P.1(39). Ex.P.1 (39) shows a petty shop and this portion is marked as Ex.P1(39)(e) and this portion is delivered to 2nd plaintiff. Now the said petty shop is shifted to the portion marked as Ex.P1(39)(d).." Sri R.N. Sathyan has corroborated him in his evidence. 13. It is contended by Sri S. Shekhar Shetty, the learned Counsel appearing for the revision petitioner-respondent that, the respondent has not removed the steel grill window and installed a Beeda shop in its place on the Southern side of the petition schedule premises facing Subedar Chatram Road and on the other hand the said shop has been in existence right from 1966, the date on which the petition premises was taken on lease. Sri Shekhar Shetty, learned Counsel appearing for the revision petitioner/respondent has further contended that the petitioner has failed to establish the existence of bunk shop on the Northern side of the building which was surrendered to him but admitted the existence of a Beeda shop in the petition schedule premises and therefore the Beeda shop admitted by the petitioner is the Beeda shop on the Southern side of the premises as seen in the photograph. Sri Shekhar Shetty, learned Counsel appearing for the revision petitioner/respondent relying on the decision of this Court in SMT PARAMESHWARI BAI v. MUTHOJIRAO SCINDIA, , that stray sentences elicited in cross-examination can hardly be construed as an admission, has contended that in order to decide whether, the respondent has put up any beeda shop on the Southern side of the petition premises, this Court should read and scrutinise the entire evidence of R.W.1 and placing reliance on a stray sentence in the evidence of RW-1 would be against the principle of appreciation of evidence. He has further contended that the petitioner has

failed to produce the sanctioned plan which is a material piece of evidence and on account of non-production of the same, the learned Judge ought to have drawn an adverse inference against the petitioner in view of the judgment of the Supreme Court in DEVIDAS AND ORS. v. SHRISHAILAPPA AND ORS., . It is no doubt true that the Courts in deciding the dispute should not place reliance on a stray sentence, but it does not mean that a categorical admission made by the parties during the cross-examination should not be considered to test the veracity of the evidence of the witnesses. If an admission in respect of a material fact is excluded from consideration on the ground that it is a stray admission contrary to his earlier statement in the evidence, I am of the considered view that the very object of cross-examination would stand defeated. 14. In order to appreciate the contention of Sri Shekhar Shetty, it is necessary to note the distinguishing features between this case and Parameshwari Bai's Case. The relevant portion of the Judgment reads as follows:- "I do not remember on what date and during which year I was proposed to the respondent." Again she has stated, "I have forgotten the date of my marriage. ...I do not know the name of Purohit. Sundaramma had arranged the Purohit. The Purohit was a Brahmin." It is in this context that we have to appreciate the suggestion put by the Counsel to the respondent as also the so called admission made by the respondent. Having clearly stated that she does not remember as to the date or year of the marriage, it is elicited from her in the further cross-examination that the marriage took place after the respondent retired. This is what she has stated: 'Respondent was retired then', 2) It may be seen that this sentence occurred in the same para in the beginning of which she has stated "I have forgotten the date of marriage." It is further elicited from her "my father presented a suit and silver articles to the respondent. It may be about two years earlier to the marriage the respondent had retired from the service." Thus, it is clear that these stray sentences elicited in the cross-examination could hardly be construed as admission." The facts in this case are clearly distinguishable from the case of Parameshwari Bai. That was a case where the marital status of the parties was in question. The petitioner gave evidence in respect of the date of her marriage. There is bound to be some discrepancy in respect of the date of marriage. But that is not so in this case. In O.S. No. 1840/1989, the specific case of the petitioner was that the respondents committed certain acts in violation of the ad-interim injunction issued by the Civil Court and he put up permanent structures in the premises, thus caused damage to the building. In that context the respondent gave evidence, the relevant portion of which is extracted in the earlier paragraphs. In order to consider the contention of Sri Shekhar Shetty in the light of the decision of this Court in Parameshwari Bai's case I think, at the cost of repetition it is necessary to re-extract the relevant portion of the evidence of the respondent in O.S.1840/1989 which reads thus:- In the Chief Examination he has stated thus:- "In front of the hotel premises there is a beeda shop. We have not removed the steel windows and put up rolling shutters. The rolling shutters was there since the date of construction of the building."

In the cross-examination the respondent has stated as follows: "I was present in the hotel on 1.4.1989 when the second plaintiff came there along with two others. They spoke to me, but they have not gone inside the hotel. I don't know whether they have taken any photos at that time. The hotel building is in same condition as shown in photo Ex.P-1(39). Ex.P1(39) shows a petty shop and this portion is marked as P.1.39A and this portion is delivered to the second plaintiff. Now the said petty shop is shifted to the portion marked as Ex.P-1. 39D. Ex.P1 (30) relates to the hotel building. This is the hind of the premises delivered to the second plaintiff. Beyond the portion delivered to the plaintiff there is a chimny. The chimny is not found in P.1.30.1 cannot say whether P.1.32 relates to the hotel building. It is incorrect to suggest that I constructed a chimney wall, a wall running from north to south. It is incorrect to suggest that I demolished the old chimney in the building." As stated supra, the evidence of the respondent in O.S.No. 1840/1989 is marked as P.26 in these proceedings. The respondent is examined as RW-1 but refused to accept the photographs produced by the petitioner as the photographs of the Hotel Galaxy. The evidence of RW-1 in the HRC proceedings reads as follows:- "..The photo Nos. 1, 2, 9, 12, 59, 75, 76, 78 and 79 in Ex.P.1 relate to the petition schedule premises. I cannot say when those photographs were taken. The remaining photographs do not pertain to the petition premises." In the cross-examination he has admitted that he has given evidence in the City Civil Court in O.S.No. 1840/1989. He has further admitted that, "... There I have stated the exact position of the situation of the property." Further, he denied for having stated to have shifted the petty shop. He further stated that, "... I have stated that the party shop is there in present position since 1966." He has admitted that P.26 is a certified copy of the evidence in O.S.No. 1840/1989. During the course of his cross-examination in these proceedings, he has stated as follows:- "... To the north and east of the hotel there is a lodge. To the south is the Kino Theatre. To the west there is a road. There was a pan beeda shop in my hotel. It is there even now. It was there from the beginning of the hotel. Ex.P-1, Photo No. 39 is not the photo of my hotel. The board 'Hotel Galaxy' is seen in the photo. I have given evidence in O.S.1840/89 filed by the petitioner against me. It is not correct to say that in my evidence that I have admitted that my hotel is the one shown at Ex.P1 and photo No. 39, Ex,P.26 is the certified copy of the evidence and Ex.P.26A is the relevant portion. It is true that Ex.P2 is the certified certified copy of the photo produced in that case." The photo-39 in Ex.P1 is admittedly the photograph of the Hotel Galaxy, petition schedule premises, Photo-39 in Ex.P.1 is also, according to the petitioner the photo of Hotel Galaxy, prior to the compromise. Of course, the respondent has denied that it is the photograph of the petition schedule premises. To test the veracity of the evidence of the respondent, his admission in the previous proceedings becomes relevant. He has admitted for having given evidence in O.S.No. 1840/1989. He has admitted that Ex.P26 is the certified copy of his evidence. Further he says that he has not stated that he shifted the pan-beeda shop to the present position. It is seen in Ex.P.26 that he has admitted that photo- 39 in Ex.P-1 is the photo of the hotel, in which we can see the pan-beeda shop on the northern side of the

petition premises. He has further admitted the portion where the pan-beeda shop was situated was surrendered to the petitioner and he has further admitted that he shifted the shop to the other side of the premises. Mr. Shetty wants this court to treat this admission as a stray admission. I am afraid to hold such a view. Mr. Shetty, further submitted that the petitioner is a Keralite. Not having conversant with the Kannada and his evidence should be considered with certain degree of lenience and indulgence. In the facts and circumstances of the case, the contention of Mr. Shetty cannot be accepted. The court has noticed that the respondent has taken oath in Kannada and he read the board kept in the Court Hail to administer oath. The court having observed the demenour of the witness. In these circumstances it is not possible to take any other view in respect of his admission. R.W.1 has been carrying on the business as GPA holder of the respondent for nearly 3 decades. He is quite conversant with the Court proceedings, having fought earlier litigations. His admission cannot be excluded from consideration on the ground that it is a stray admission. In the circumstances stated above, the admission cannot be construed as a stray admission. R.W.1. knew the implication of his admission. He knew that the photograph 39 in Ex.P1 is that of his hotel. Having admitted that photograph is the photograph of his hotel, he cannot turn round and say in eviction proceedings that it is not the photograph of his hotel. If we compare photograph-1 in Ex.P.1 with photograph 39 in Ex.P1 it is quite clear that prior to the respondent surrendering northern portion of the petition schedule premises there was a bunk shop in the northern side and after surrender the same is shifted to the southern side. It is not the case of the respondent that the said bunk shop was constructed by the petitioner. It is he who is in exclusive control and possession of the petition premises. If any construction is to be made, it must be made to his knowledge. He has not produced any evidence that the said construction was made by any other person other than the person in occupation of the premises. In this context his admission in O.S.No. 1840/1989 that he shifted the bunk shop to the present position assumes importance. From the facts stated above, it is clear that the bunk shop on the southern portion of the petition schedule premises facing Subedar Chatram Road is constructed by the respondent and not by the petitioner. 15. The next question that remains for my consideration is whether this construction is a construction of a permanent nature attracting the provisions of Section 21(1)(c) of the Act. Sri Shankar Shetty, learned Counsel appearing for the revision petitioner/ respondent relying on the decisions of the Supreme Court has contended that the construction of a bunk shop is not a construction of a permanent nature. It is his contention that the shop is not covered by the waifs as a permanent structure requires to be covered on three sides. In view of the absence of any evidence as to the construction of 3 sides of the bunk shop, it is his contention that the petition is liable to be dismissed for want of evidence as to the construction of a permanent nature on the petition premises. 16. In OM PRAKASH v. AMAR SINGH AND ANR., , the Supreme Court considering the case of the tenant under the provisions of Section 14(c) of the U.P. Cantonments (Control of Rent and eviction) Act 10 of 1952 has held as follows:- “6. In determining the question the Court must address itself to the na-

ture, character of the constructions and the extent to which they make changes in the front and structure of the accommodation, having regard to the purpose for which the accommodation may have been let-out to the tenant." After so holding and discussing the evidence in the said case, the Supreme Court held that the construction of a 6 feet partition wall is not a construction of a permanent nature and similarly the construction of a tin shed. The Supreme Court was considering the case of the tenant in the light of the provisions of Section 14(c) of the U P Cantonments (Control of Rent and Eviction) Act, 1952, which reads thus:- "(c) That the tenant has without the permission of the landlord, made or permitted to be made any such construction as in the opinion of the Court has materially altered the accommodation or is likely substantially to diminish its value." In BRIJENDRA NATH BHARGAVA AND ANR. v. HARSH WARDHAN AND ORS., , the Supreme Court while considering the case of the respondent under Section 13(1)(c) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, has held that making a showroom, a cabin and balcony or dochatti on the roof of the cabin with a wooden structure is not a permanent structure. In OM PAL v. ANAND SWARUP, 1988(4) SC 545, the Supreme Court considering the case of a tenant under the provisions of the E.P, Urban Rent Restriction Act, 1949, has held that the construction of a parchatti by the tenant in a shop taken on lease by him for running a dry cleaning laundry is not an act causing material impairment to the building and such construction is not a permanent construction. In para 9 of the Judgment, the Supreme Court has held that- "As has been repeatedly pointed out in several decisions it is not every construction or alteration that would result in material impairment to the value or the utility of the building. In order to attract Section 13(2)(iii) the construction must not only be one affecting or diminishing the value or utility of the building but such impairment must be of a material nature i.e. of a substantial and significant nature. It was pointed out in Om Prakash v. Amar Singh that, the legislature had intended that only those constructions which brought about a substantial change in the front and structure of the building that would provide a ground for the tenant's eviction and hence it had taken care to use the word"materially altered the accommodation" and as such the construction of a chabutra, almirah, opening of window or closing a varandah by temporary structure or replacing of a leaking roof or placing partition in a room or making minor alterations for the convenient use of the accommodation would not materially alter the building." All the above cases were considered by the Supreme Court under the provisions of the respective Rent Acts which is clearly distinguishable from Section 21(1)(c) of the Act. The purpose and intent of those provisions is also different from the purpose and intent of Section 21(1)(c). In order to get an order of eviction under the relevant provisions of the aforesaid rent acts, the landlord has to prove that the tenant has without his permission made a construction which has materially altered the premises or is likely to diminish the value thereof. Section 21(1)(c) of the act would not deal with such a position. It reads as under:- "21. Protection of tenants against eviction:- c) That the tenant has without his landlord's consent given in writing erected on the premises any permanent structure." From the aforesaid provisions it is clear

that mere erection on the premises any permanent structure without the consent of the landlord in writing is sufficient for the landlord to seek the eviction of the tenant from the said premises. 17. In MANMOHANDAS SHAH AND ORS. v. BISHANDAS, , the Supreme Court while considering as to what constitutes the material alteration in the demised premises under the provisions of the Uttar Pradesh (Temporary) Control of Rent & Eviction act (3) of 1947, has held as follows:- "(7) As regards the alterations, there is no dispute that the respondent carried them out without the permission of the appellants. The question then is whether they were such that they materially altered the accommodation as provided by Clause (c). Without attempting to lay down any general definition as to what material alterations mean, as such a question would depend on the facts and circumstances of each case, the alterations in the present case must mean material alterations as the construction carried out by the respondent had the effect of altering the form and structure of the accommodation. The expression 'material alterations' in its ordinary meaning would mean important alterations, such as those which materially or substantially change the front or the structure of the premises." In VENKATLAL G. PILLAI v. BRIGHT BROTHERS PVT. LTD., , the Supreme Court while considering the question as to, whether the structure constructed by the tenant in the premises in question amounted to permanent structure leading to the forfeiture of the tenancy of the tenants under the provisions of the Bombay Rents, Hotel and Lodging House Rents Control Act, 1974, has held as follows: "19. In Khureshi Ibrahim Ahmed v. Ahmed Haji Khanmahomad, in connection with Section 13(1)(b) of the Rent Act, Gujrat High Court held that the permanent structure must be one which was a lasting structure and that would depend upon the nature of structure. The permanent or temporary character of the structure would have to be determined having regard to the nature of the structure and the nature of the materials used in the making of the structure and the manner in which the structure was erected and not on the basis of how long the tenant intended to make use of the structure. As a matter of fact, the court observed, the nature of the structure itself would reflect whether the tenant intended that it should exist and be available for use for a temporary period or for an indefinite period of time. The test provided by the legislature was thus an objective test and not a subjective one and once it was shown that the structure erected by the tenant was of such a nature as to be lasting in duration -lasting of course according to ordinary notions of mankind - the tenant cannot come forward and say that it was erected for temporary purpose. 20. The question was again considered in the case of Ramji Virji v. Kadarbhai Esufali. It was observed that whether the structure was a permanent structure was a mixed question of law and fact. It was held in that case that alterations made by a tenant like constructing loft, wooden bathroom, frame and putting up a new drain being minor alterations which were easily removable without causing any serious damage to the premises would not amount to permanent structure leading to the for-feiture. 21. There are numerous authorities dealing with the question how the structure is a permanent structure or not should be judged. It is not necessary to deal with all these. One must look to the nature of the structure,

the purpose for which it was intended and take a whole perspective as to how it affects and enjoyment, the durability of the building etc. and other relevant factors and come to a conclusion." In A.C. BHANDARY v. V.S.J. LOBO, , this Court has held that, "... In other words, what js admitted is that he has created additional accommodation of a type which was not intended under the terms of the lease apart from interfering with the access that was available to all users of the rear terrace. In such a situation it will not be difficult for the court to reach a conclusion whether a structure is a permanent structure or not as long as the intention is clear to use such structural alteration reasonably for a long period. The fact that destructible material was used to create such a structural change, does not, in my opinion, render such a structure any the less permanent. In fact, there is no structural building material which can claim absolute permanancy. Even a concrete wall made of cement can be destroyed by using appropriate instrument. A brick-wall can be buldozed. A ply-board can be burnt. Type of the material used coupled with the intention of the maker of the alteration would be a more rational test than the test for deciding the permanent structure merely on the material used." It is on record that a steel grill window constructed on the Southern side of the premises is removed and in its place a bunk shop is constructed using the building material and the door was fixed permanently by rolling shutter. It is also on record that the same is being used as a shop for the sale of beeda, beedi and cigarettes. When the part of the premises is being used as a shop premises or bunk shop premises by providing the rolling shutters to the cement frame and the duration of structure has been there for nearly for more than five years and it continues to last as long as the tenant continues to be in occupation of the petition premises, it cannot be said that it is a temporary structure. Even the user of that premises for the purpose of a Beeda shop cannot be said to be temporary as the user is also altered. By constructing the Beeda shop fixing the rolling shutter the accommodation in the petition premises is materially altered. Flow of light and air to the premises is materially affected when the window was closed. Besides it may cause obstruction to the movers on the footpath. Under no circumstances the construction can be termed as a temporary one. In view of the construction being permanent, erected on the petition premises, the case is attracted by provisions of Section 21(1)(c) of the Act. 18. Sri B.N. Jayadeva, learned Counsel appearing for the petitioner, has contended that the respondent has demolished Certain walls and reconstructed in its place altering the direction of the wall. !n support of his case he has produced certain photographs. One of the photographs No. 30 at Exhibit P1(1) is the photograph of the Hotel from which it can be seen that the Wall is demolished. From the other photographs also it could be seen that the demolished debris is collected at various parts of the building. However, Sri Shekhar Shetty contends that respondent has not admitted all the photos of the petition schedule premises. But from looking at the photographs and comparing the same with the admitted photographs it can be easily said that all the photographs are that of the petition premises. Still it is not possible to hold that the respondent has erected on the petition schedule premises a permanent structure like a wall or the chimny in the absence of any

evidence. The demolition of walls is not a ground for granting eviction under Section 21 (c) of the Act. 19. For the reasons aforesaid this petition fails and accordingly rejected. However, in the facts and circumstances of the case, the respondent-tenant is granted a period of One year from today to vacate and hand-over possession of the petition premises to the petitioner-landlord. 20. In the circumstances of the case, there is no order as to costs.