

M/S. Atul Castings Ltd vs Bawa Gurvachan Singh on 20 April, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1684, 2001 AIR SCW 1711, 2001 (3) SCALE 454, 2001 (2) LRI 782, 2001 (5) SCC 133, 2001 SCFBRC 347, 2001 HRR 269, 2001 (5) SRJ 480, (2001) 5 JT 109 (SC), (2001) 1 RENCJ 532, (2001) 1 RENCJ 532, (2002) 1 LANDLR 228, (2002) 3 PUN LR 404, (2001) 1 RENTLR 494, (2001) 4 SUPREME 244, (2001) 3 SCALE 454, (2001) WLC(SC)CVL 403, (2001) 2 CURLJ(CCR) 526

Author: Shivaraj V. Patil

Bench: D.P. Mohapatra, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 2900 of 2001

PETITIONER:
M/S. ATUL CASTINGS LTD.

Vs.

RESPONDENT:
BAWA GURVACHAN SINGH

DATE OF JUDGMENT: 20/04/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T...J The issue that has come up for consideration and decision in this appeal is whether use of one room to attend some office files at home in a building leased for residential purpose, renders a tenant liable for his eviction from the building under Section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act, 1949.

This appeal is filed by the tenant who has suffered an order of eviction under Section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act, 1949 (for short the `Act). The respondent herein, the landlord, filed a petition for eviction of the appellant from the premises on the ground of non-payment of arrears of rent and using the premises for the purpose other than residence stating that the change of user had been effected without written consent of /the landlord. However, during the pendency of the proceedings, the landlord did not press the eviction petition on the ground of non-payment of arrears of rent. The Rent Controller ordered eviction of the appellant from the premises accepting that he was using a part of the premises as office contrary to the purpose stated in the lease-agreement. The appellant filed the appeal before the appellate authority challenging the order of the Rent Controller. The appellate authority dismissed the appeal agreeing with the Rent Controller. The appellant approached the High Court by filing a revision petition questioning the validity and correctness of the order of the appellate authority confirming the order of eviction passed by the Rent Controller. The High Court by impugned judgment and order upheld the order of eviction by dismissing the revision. Hence the appellant has filed this appeal.

Dr. A.M. Singhvi, learned Senior Counsel appearing for the appellant, urged that the order of eviction passed against the appellant is patently unsustainable both on facts as well as in law; merely because in a six bed room house, in one of the rooms, certain office files brought home were disposed of; a table and a chair was put in the room for that purpose where even the children and members of the family used that room for study, did not change the classification or character of the premises from residential to non-residential; the interpretation placed on Section 13(2)(ii)(b) of the Act by the authorities and the High Court was too narrow and restricted, running contrary to the very object and purpose of the provision.

Shri Gopal Subramaniam, learned Senior Counsel appearing for the respondent, made submissions supporting the order of eviction passed against the appellant. He contended that the concurrent findings of facts recorded by all the courts below do not call for any interference at the hands of this Court in exercise of jurisdiction under Article 136 of the Constitution. He emphasized on the terms of the agreement in particular inviting our attention to the words that the premises was to be used for the purpose of residence only; since one room was used as office, Section 13(2)(ii)(b) was attracted for eviction of the appellant.

We have considered these submissions of the learned counsel for the parties. It will be useful to notice a few provisions of the Act which will have bearing in deciding the issue that has arisen for our consideration.

Section 2. Definition - In this Act, unless there is anything repugnant in the subject or context :-

- a)
- b)
- c)
- d) Non-residential building means -

- i. a building being used solely for the purpose of business or trade;
- ii. a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence.

Explanation - For the purpose of this clause, 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-in Chd.]

e)

f)

g) residential building means any building which is not a non-residential building;

h) Scheduled building means a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule I to this Act, partly for his business and partly for his residence.

Section 13. Eviction of tenants -

(1)

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied:

i)

ii) That the tenant has after the commencement of this Act without the written consent of the landlord -

a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof, or

b) used the building or rented land for a purpose other than that for which it was leased, or

iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or Since finding is recorded as to the change of user of the building on the so called admission of the appellant in the written statements, it is necessary to notice the relevant pleadings. Para 6 of the original eviction petition reads :-

That the premises has been let out for residential purposes only. That the respondent has started using the premises recently for purposes other than residence.

The reply to the said paragraph in the written statement is that:

That the contents of para 6 are admitted that the premises was let out for the purposes of residence but a part of the premises is being used for office purposes also as provided in the agreements. It is denied that the respondent has started using the premises for purposes other than residence. It is submitted that Sh. R. K. Aggarwal, the Managing Director of the company is living in the demised premises with his family from the inception of the tenancy and is still living there.

(emphasis supplied) Para 6 of the plaint was amended and after the amendment it reads:-

That the premises has been let out for residential purposes only. That the respondent has started using the premises recently for purposes other than residence. It is further submitted that change of user has been effected by the respondent without any written consent of the petitioner and after the commencement of the Act.

Amended written statement in relation to the same is to the following effect:-

That the contents of para no. 6 are wrong and hence denied. The respondent is not using any part of the building for the purpose of the office and has never used it as such. As a matter of fact, in one room, the respondent has kept office table and office equipment where he brings office work for its disposal. It cannot be termed as an office because no client comes there to the respondent. During the time the M.D. of the respondent company is away to his factory or office, the said office room is used as study room by his family members. The entire demised premises has been used continuously for the purpose of residence only and for no other purpose.

(emphasis supplied) The respondent in para 6 of the plaint, both original as well as amended, did not give particulars as to the change of use of the premises including from what period there was change in the use of the premises. As is evident from para 6 of the written statement both before and after the amendment the appellant specifically denied that he had started using the premises for the purposes other than the residence. It is explained that the Managing Director of the company was living in the demised premises with his family members; in one room an office table and office equipments were kept for disposal of office work at home;

the same room was being used as study room of his family members and that the premises has been continuously used for the purpose of residence only and for no other purpose. We fail to understand as to how it can be said or understood that the appellant had admitted the case of the respondent in regard to the change of user of the building for the purpose other than that was leased. To get an

order of eviction under Section 13(2)(ii)(b) of the Act a landlord has to plead and establish by proper evidence that the tenant has been using the building for a purpose other than that for which it was leased. It is yet a different issue as to whether use of one room in big building by the appellant for disposal of office files or for study of family members can be said to a change in use of the building for a purpose other than the residential.

In support of the eviction petition, the respondent has deposed that he let out the premises on 1.5.1988 through Exbt. P/1 and he never allowed the change of user of the premises from residential to non-residential and that the change of user came to his knowledge in the year 1990; he had not mentioned in his petition that any specific portion of the building was being used as office; he did not see any person working in the office but while he was standing outside the building, he saw some visitors; he admitted that the appellant used to have a regular office in SCO NO. 42, Sector 7-C, Chandigarh. The said office was closed somewhere in the year 1996. It may be noticed that the building was taken on lease by the appellant-company for the residence of its Managing Director; the address of the office of the appellant- company was given as SCO No. 42, Second Floor, Sector 7-C, Madhya Marg, Chandigarh in the eviction petition itself filed before the Rent Controller. It appears the appellant was served with the notice of the proceedings on the same address. The statement of the respondent that the appellant was using one room in the building as office since 1990 and that the office at SCO No. 42, in Sector 7-C, Chandigarh was closed in 1996 clearly indicates that the office of the appellant company was not in the building in question when the petition for eviction was filed. In para 27 of its judgment, the appellate authority has referred to the statement of R.K.Aggarwal, (RW-1) (the Managing Director of the appellant-company). In his deposition, he has stated that he is residing in the house in question alongwith his wife, mother, two sons and their wives and children and the house is being used purely for residential purposes from the time it had been taken on rent; that he was keeping some important files relating to affairs of the company where he does some work relating to the files after office hours; no board or nameplate or hoarding of the company is displayed in the house in question; the office of the company was in House No. 2163, Sector 21-C Chandigarh from where it was shifted to SCO No. 84-85 Sector 17-C, Chandigarh. Thereafter, it was again shifted to SCO No. 42, Sector 7C, Madhya Marg, Chandigarh and at present, the office is located in the factory premises of the company, Nalagarh. The Rent Controller as well as the appellate authority expected the appellant to lead negative evidence to prove that part of the building was not being used as office. This approach is opposed to settled principle of law in regard to discharge of burden of proof. The authorities have proceeded to accept the case of the respondent mainly on the basis of so-called admission said to have been made by the appellant in the written statement. A reading of statement made in written statement in the context has to be integrated and not truncated. If para 6 of the written statement is read as a whole instead of picking up one sentence or part of it, there would be no scope to say that the appellant admitted the case of the respondent as to change of user of the building. There is no other evidence to support that there has been a change of user of the building. In our view, the Rent Controller as well as the appellate authority committed a manifest error in proceeding to order eviction of the appellant in the absence of evidence supporting the ground of change of user of the building. The findings in the absence of necessary pleading and supporting evidence cannot be sustained in law. It is not a case of concurrent findings based on the evidence; it is a case of concurrent error. Unfortunately, the High Court has failed to see this basic shortcoming in the case of the respondent. Hence, we have no

hesitation in holding that the change of user of the building as a fact was not established to apply Section 13(2)(ii)(b) of the Act.

Now we will focus our attention to the issue as to whether use of one room to do some home work relating to office and use of the same room as study room by the members of the family in the absence of Managing Director of the appellant amounts to change in user of building having regard to the facts of the case on hand. The map at Annexure R/3 shows that the building is a big one with bed rooms, dining, drawing etc., unmistakably showing that it is a residential building. One small room is shown as office. Introductory para 2 of the agreement to let (Exbt. P/3) dated 1.1.1992 shows that the respondent agreed to let out the premises to the appellant for a period of 11 months from 1.1.1992 for the residence only on the terms and conditions mentioned below under the said paragraph. There are as many as 16 terms and conditions. Out of them, conditions 7 & 8 read thus :-

7. That the second party will not sublet or part with the possession of premises in favour of any body without the written consent of the party of the first part.

8. That the second party shall not make any addition or alteration in the premises without the written consent of the first party.

There is no specific clause in the agreement that the appellant shall not use even one room as study room for the members of the family or he shall not use one room to do any office work at home. The respondent having chosen to incorporate conditions 6 & 7 in the agreement (Exh.P-3) relating to sub-letting and addition or alteration in the premises has not chosen to add a specific clause prohibiting use of any portion of the building in a particular manner although it is stated in the introductory para of Exh.P-3, that the premises is leased for the residence only. There is no evidence to show that in one room the office of the appellant-company was functioning or that any transactions used to take place in that room relating to the appellant-company or any regular business of the company was carried out or that officials or other members of the public used to visit the building as the office of the company. It is not uncommon that the officials, executives, officers, businessmen, industrialists and people engaged in the other vocations may have some home work to do. In these days computers, internet and other like facilities are kept at home for convenience and use. In residential buildings where persons live with family members, a room may be used for the purpose of doing home work relating to office files or study of children or allied or ancillary use in a building leased for residential purposes. So long as in a residential building, there is no regular commercial activity or carrying on of business and regular office with interaction of the public and customers, etc. it is not possible to say that use of one room for doing home work or study itself will change the user of the building and that the classification and character of the building is changed. But it continues to remain a residential building so also its purpose remains as residential. Use of a room in a residential building for personal purpose should be distinguished from use of such a room for business, industry or other commercial activity or as a regular public or professional office. We must add that each case has to be considered on its own facts on the basis of the pleadings and evidence to find out as to whether there has been a change of user in the building from residential to non-residential as it is not possible to give exhaustive list of situations as to change of user of buildings.

Section 13(2)(iii) and (iv) take care of situations where tenant has committed such acts as are likely to impair materially the value or utility of the building or the rented land or where the tenant has been guilty of such acts as are a nuisance to the occupiers of buildings in the neighbourhood.

The interpretation of provision must be purposive and not unduly restrictive or narrow. If we interpret Section 13(2)(ii)(b) in a restricted and narrow manner, it will be difficult for any tenant occupying a residential building to protect himself from arbitrary eviction and even to have freedom to use the building even for residential purpose as he wants. Such interpretation will defeat the intent and purpose of the Statute.

This Court in *Gurdial Batra Vs. Raj Kumar Jain* (1989 (3) SCC 441) had an occasion to consider the very question of the change of user within the meaning of Section 13(2)(ii)(b) of the Act. That was a case in which the appellant had taken the premises on rent from the respondent for running a repair shop of cycles and rickshaws. He carried on side by side selling televisions in the premises for about seven months but had to stop the same as it was not viable. The Rent Controller rejected the eviction petition. The appellate authority at the instance of the landlord granted eviction. The High Court declined to interfere when moved by the tenant. Dealing with the question whether there has been a violation of the terms of tenancy by using the premises for a purpose other than that for which it had been leased, this Court in para 6 & 7 stated thus:-

6. Letting of a premises can broadly be for residential or commercial purpose. The restriction which is statutorily provided in Section 13(2)(ii)(b) of the Act is obviously one to protect the interests of the landlord and is intended to restrict the use of the landlords premises taken by the tenant under lease. It is akin to the provision contained in Section 108(o) of the Transfer of Property Act.

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A house let for residential purpose would not be available for being used as a shop even without structural alteration. The concept of injury to the premises which forms the foundation of clause (b) is the main basis for providing clause (b) in Section 13(2)(ii) of the Act as a ground for the tenants eviction. The Privy Council in *U.Po. Naing vs. Burma Oil Co.* (AIR 1929 PC 108) adopted the same consideration. The Kerala High Court has held that premises let out for conducting trade in gold if also used for a wine store would not amount to an act destructive of or permanently injurious to the leased property. Similarly, the Bombay High Court has held that when the lease deed provided for user of the premises for business of fret work and the lessee used the premises for business in plastic goods, change in the nature of business did not bring about change of user as contemplated in Section 108(c) of the Transfer of Property Act.

7. The landlord part with the possession of the premises by giving a lease of the property to the tenant for a consideration. Ordinarily, as long as the interest of the landlord is not prejudiced, a small change in the user would not be actionable.

In para 5 of the same judgment, referring to observations of Lord Diplock, J. in Dupport Steels Ltd. vs. Sirs ((1080) 1 All ER 529, it is stated thus:-

While respectfully agreeing with the said observations of Lord Diplock, that the Parliament legislates to remedy and the judiciary interpret them, it has to be borne in mind that the meaning of the expression must be found in the felt necessities of the time. In the background of the purpose of rent legislation and inasmuch as in the instant case the change of the user would not cause any mischief or detriment or impairment of the shop in question and in one sense could be called an allied business in the expanding concept of departmental stores, in our opinion, in this case there was no change of user which attract the mischief of Section 13(2)(ii)(b).

This judgment supports the case of the appellant.

In Bishamber Dass Kohli (dead) by Lrs. Vs. Satya Bhalla (Smt.) (1993 (1) SCC 566), this Court held that change in use of a part of the premises as lawyers office without seeking permission of the landlord amounted to change in user from residential to scheduled building and it constituted a valid ground of eviction under Section 13(2)(ii)(b) of the Act; change in user may be even in respect of a small portion and need not be in respect of the entire building or a substantial part thereof. Facts of the case were that the suit premises was let out to the respondent solely for residential purpose; the respondents husband, a lawyer, established his office in a part of the suit premises and started using the same for that purpose. The Rent Controller ordered eviction under Section 13(2)(ii)(b) of Act. The appellate authority affirmed it. The learned Single Judge of the High Court in revision set aside the order of eviction holding that the building let out as a residential building had become a `scheduled building by use of a part thereof as lawyers office by the tenants husband. This Court stated that Section 4 of the Act deals with the fixation of fair rent and for that purpose `scheduled building is treated differently from a residential building and that the same is the position with regard to the ground of eviction contained in Section 13(2)(ii)(b) wherein change in user of the building is alone significant for constituting the ground. The object is that the parties must remain bound by the terms of the lease. Para 8 of the said judgment is to the following effect:-

8. It is clear that if the change in user of the building is of the kind that it makes the residential building let out for residential purpose alone change its character and become a `scheduled building as defined in Section 2(h) of the Act without the written consent of the landlord, the ground of eviction under Section 13(2)(ii)(b) is made out.

According to us, this judgment is on the facts either admitted or established in that case. The building was let solely for residential purpose; husband of the tenant established his office as lawyers office in a part of the suit premises, hence it became a `scheduled building within the meaning of Section 2(h). In terms of para 8 of the judgment extracted above, a building let out for residential purpose alone, changes its character and becomes a scheduled building as defined under

Section 2(h) of the Act, without the written consent of the landlord, the ground of eviction under Section 13(2)(ii)(b) is made out. Section 2(d), 2(g) and 2(h) define `non-residential building, `residential building and `scheduled building respectively and they are three different categories. Scheduled building is one which is being used by a person engaged in one or more of the professions specified in schedule I of the Act partly for his business and partly for his residence. In the case on hand, the facts are entirely different. The appellant even if it is taken as using one room as office for his personal purpose to do homework, it does not convert the building into a scheduled building in as much he did not use the building partly for his business and partly for his residence. Hence the decision aforementioned has no application to the facts in the present case.

The case of M. Arul Jothi & Another vs. Lajja Bal (deceased) and Another (2000 (3) SCC 723) also does not support the case of the respondent as it is on the facts of that case dealing with a specific clause contained in the lease deed. In that case, eviction petition was filed under Section 10(2)(ii)(b) of T.N. Building (Lease and Rent Control) Act, 1960 on the ground that the appellant was using building for a purpose other than that for which it was leased. There was a specific prohibition clause in the rent deed which stated that the premises shall be used by the tenant only for carrying on his own business and the tenant shall not carry on any other business than the above-said business. Looking to the use of the words only coupled with the other sentences that the tenant shall not carry on any other business than the one specified, in para 10 of this judgment the Court has observed thus:-

Having heard learned counsel for the parties in our considered view of the cases cited on behalf of the appellants were all those where there was no specific clause restricting the use of the tenanted accommodation. On the other hand, in the case in hand, there is a specific prohibition clause in the rent deed. In the present case there is a specific clause which states shall be used by the tenant only for carrying on his business and the tenant shall not carry on any other business than the abovesaid business. By the use of the word only with reference to the tenant doing business coupled with the last three lines, namely, the tenant shall not carry on any other business than the abovesaid business, clearly spells out the intent of the parties which restricts the user of the tenanted premises, only for the business which is stated therein and no other.

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The learned Senior Counsel for the respondent emphasizing as to the use of the words for residence only in the lease agreement submitted that the aforementioned case fully supports the respondent. We do not think so, for the reasons more than one. That was a case where the shop, a non-residential building, was let out on condition to carry on only a specified business and no other business; although in the lease deed in the case on hand it is stated that the premises was taken for residence only; there is no other clause specifically prohibiting the use of a room in the building even for either study or to carry on some home work of the office. On facts also, as already noticed above, change of user of the premises has been neither properly

pleaded nor established. Paragraph 10 extracted above, was more on the point dealing with a specific prohibitory clause in the lease deed. The Court looking to the word only coupled with other specific prohibitive clause took that view.

In this case, with which we are concerned, there is no specific clause in the lease agreement prohibiting use of even a room in the building for disposal of some files at home pertaining to his office and for the study of family members. The fact is that the appellant is living with the members of his family; the building did not cease to be a residential building and the purpose and character of the use of the building also did not change. As a matter of fact also, the respondent, as already noticed above, has failed to establish the change of user of the building by necessary pleading and evidence.

Under these circumstances, the issue is answered in the negative. In the result for the reasons stated hereinabove, the impugned judgment and order of the High Court are set aside. The appeal is allowed and the petition filed for eviction by the respondent is dismissed with no order as to costs.