(3) In dealing with the point in issue, it must be appreciated that when a chasis is purchased and bus is built upon it and then sold, it would indeed be straining ones credibility to hold that what is sold is precisely what had been bought. There can be no manner of doubt that chasis and buses are two different and distinct commodities and must indeed be treated as such even though they may both come within the ambit of the expression "Motor Vehicle" in the relevant notification. It is a well-settled rule that even in the interpretation of taxing Statutes, the plain and ordinary meaning has to be taken unless the statute or the context prescribes otherwise, which is not the case here. The Tribunal was thus clearly correct in holding that a chasis was not the same thing as a bus for the purposes of Section 5 (1-A) and (b) of the Punjab General Sales Tax Act, 1948. The first question must thus be answered in the affirmative in favour of the revenue and against the assessee.

(4) As regards the other question, the judgment mentioned therein namely: *M/s Jawahar Lal Siri Chand* v. *Union Territory, Chandigarh and others* (1), is clearly not applicable and no relief is therefore available to the assessee by virtue thereof. This question is thus answered accordingly.

(5) This reference is disposed of in the manner indicated. There will, however, be no order as to costs.

R.N.R.

Before A. P. Chowdhri, J.

NATIONAL INSURANCE COMPANY LTD., CHANDIGARH,—*Petitioner.*

versus

R. HARCHARAN SINGH BHULLAR AND OTHERS,—*Respondents.*

Civil Revision No. 1458 *of* 1991.

30th August, 1991.

Code of Civil Procedure, 1908—*O.* 39, *rls.* 1 & 2—*Tenancy created by an instrument—Premises let described in detail—No presumption that upbuilt terrace forms part of tenanted premises—Landlord seeking interim injunction to raise construction on terrace—Balance of convenience in favour of landlord.*

(1) 1973 R.L.R. 52.

Held, that in order to make out a *prima facie* case, the plaintiffs were required to show that the open terrace is not included in the premises demised in favour of the tenant. When the parties take care to describe the demised portion in terms of rooms, W.C., store etc. and further to describe the area in terms of square feet, there can be no doubt or debate that anything more than what is described was let out. *Prima facie* therefore, the unbuilt terraces in question were not included in the lease granted in favour of the petitioner. Nor can the open terrace be, *prima facie*, considered as an amenity going with the demised premises.

Held, further, that with regard to balance of convenience, judicial notice can be taken of the escalation in the cost of construction. This is in addition to the injury caused to the respondents in the form of loss of beneficial use of their property. Delays in the decision of civil disputes are notorious. It is anybody's guess how many years it will take before a matter is finally decided by the highest Court. The question, therefore, is of balancing the respective convenience or inconvenience of the parties. (Para 8)

Revision Petition under Section 115 C.P.C. for revision of the order of the Court of Shri S. S. Grewal, Additional Session District Judge, Amritsar, dated the 22nd April, 1991 affirming that of Shri D. S. Malwai, PCS, Sub-Judge 1st Class, Amritsar, dated the 22nd March, 1990, granting ad-interim injunction in favour of plaintiffs and against the defendant and the defendant is restrained from interfering in the construction of the plaintiffs stated to be started by the plaintiffs on the left side of the second floor including the terrace on right side and it is made clear that in case in the long run, the plaintiffs fail to establish their case, they will have to remove the construction at their own costs without claiming any compensation from the defendants. Additional District Judge, Amritsar, directing the parties through their counsel to appear before the trial court on 29th April, 1991.

CLAIM: Suit for permanent injunction Application under order 39, rule 1, 2, CPC/151. CPC.

CLAIM IN APPEAL : For reversal of the order of both the Courts below.

Munishwar Puri, Adv., *for the Petitioner.*

R. K. Chhibar, Adv. with Anand Chhibar, Adv., *for the Respondent.*

JUDGMENT

A. P. Chowdhri, J.

(1) This revision petition has arisen out of a suit instituted by the respondents against the petitioner for a perpetual injunction. The brief material facts are these.

(2) The respondents own a multi-storied commercial building bearing municipal No. 103 called Bhullar Market at Lawrence Road, Amritsar. By lease deed dated September 18, 1974, 2000 square feet of constructed area, being on the left side of the first floor, was leased out to the petitioner. The demised area comprised two halls, balcony, W.C. and bath-room. By a subsequent lease deed dated December 4, 1979, further portion was leased out in favour of the petitioner-company. The portion thus leased out was on the right side of the first floor and some constructed part of the second floor. The second lease covered a demised area of 2127.56 square feet and comprised four rooms, one hall, store, balcony, W.C. and bath-room on the first floor, and two rooms and a bath-room on the second floor. Except two rooms and a toilet, the remaining second floor is lying unconstructed and vacant. The petitioner appears to have installed there a diesel engine and an electric motor for drawing water from the municipal water supply system illegally. The respondents wanted to carry out construction on the vacant terrace portion of the second floor. This was objected to and prevented by the petitioner and accordingly the respondents filed the aforesaid suit for perpetual injunction, seeking a prohibitory injunction restraining the petitioner from obstructing the plaintiffs in carrying out construction on the open terrace and for a mandatory injunction directing the petitioner to remove the aforesaid diesel engine, electric motor etc.. in order to enable the respondents to undertake the construction. Along with the suit, the respondents made an application for temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure. By order dated March 22, 1990, Sub Judge 1st Class, Amritsar, allowed the application of the respondents and granted a temporary injunction, as prayed for. It was further directed that if the plaintiffs ultimately failed to establish their suit, they shall be bound to remove the construction at their own cost, without claiming any compensation from the defendant, the petitioner herein. Aggrieved by the order, the petitioner filed an appeal. By order dated April 22, 1991, the Additional District Judge, Amritsar, dismissed the appeal. The petitioner assails the order passed by the trial Court and confirmed by the Additional District Judge, Amritsar, in revision in this Court.

(3) Mr. Munishwar Puri, learned counsel for the petitioner, has advanced a number of contentions, placing reliance on a large number of authorities in support of those contentions. The various

points made by him may be conveniently summarised as follows:—

(i) Roof is part of the tenancy, both as a matter of initial presumption, as well as in the facts and circumstances of this case. That being so, the respondents have no right to make any construction unless they secure an order of ejectment against the petitioner.

(ii) The granting of injunction in the facts and circumstances of the case would amount to granting of ultimate relief in the suit and once the construction is made, its demolition will be *well nich* impossible and for all practical purposes, the suit will stand decreed at the threshold. This is not permissible under law.

(iii) The broad and basic object of a temporary injunction is to maintain or restore *status quo*. Mandatory injunction is rarely, if ever, granted because the Courts maintain the property in its present state pending adjudication of the rights of the parties. The granting of injunction in this case will tantamount to disturbing the *status quo* in favour of the respondents and to the detriment of the petitioner. This is against the basic concept of the law on the subject.

(iv) The petitioner is in possession of the open terrace. Unless the respondents recover possession in accordance with the procedure established in law, the petitioner cannot be deprived of the use of the terrace. Alternatively, the terrace was an amenity all along enjoyed by the petitioner and the petitioner cannot be deprived of the same especially during the pendency of the suit.

(v) Permitting the respondents to carry on the construction will necessarily cause disturbance in the quiet and peaceful enjoyment of the lease which is contrary to the provisions of section 108 of the Transfer of Property Act; and

(vi) The Courts below had failed to properly interpret the contents of the lease deeds, more specially the later lease deed in which the whole of the first and second floors had been expressly leased out in favour of the petitioner.

The Courts had failed to record the reasons why there was a *prima facie* case in favour of the respondents; how the balance of convenience was in their favour and what was the irreparable injury which they would have suffered if the injunction were refused. Merely saying that these requirements had been satisfied could not be accepted and in that sense both the orders showed lack of application of mind.

(4) Mr. R. K. Chhibbar, Senior Advocate, learned counsel for the respondents, refuted each one of the above contentions of Mr. Munishwar Puri. He contended that this was a case of a multistoried commercial building. It could not be argued that roof was comprised in the demised premises, and, in any case, precise area leased out had been carefully specified in the lease deeds and there was hardly any room for any doubt or debate as to what was included in the demised premises and what was not. He submitted that there was escalation of prices and the respondents having established to the satisfaction of the Courts below, the three essential ingredients for the grant of injunction, there was no justification for (a) denying the respondents from beneficial enjoyment of their property and (b) interfering in the judgments of the Courts below in the exercise of powers under section 115 of the Code of Civil Procedure.

(5) I have carefully considered the respective contentions of the learned counsel and have gone through the case law cited at the Bar. Though reference was made to a large number of authorities on either side, I would make a reference to only those authorities which are considered necessary.

(6) In *Dorab Cawasji Warden* v. *Commi Sorab Warden and others* (1), the apex Court reiterated the all too familiar guiding principles for the grant of a temporary injunction, including a mandatory injunction, thus:—

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction.

(1) A.I.R. 1990 S.C. 867.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

(7) In order to make out a *prima facie* case, the plaintiffs were required to show that the open terrace is not included in the premises demised in favour of the tenant. Fortunately, there is no need to depend on any initial presumption with regard to the fact whether the open terrace in question was comprised in the tenancy or not. Admittedly, both the lease deeds were reduced to writing. It has been stated while giving the facts of the case that the portion let out was described in detail in each lease deed. The leased portion was further described in terms of precise square feet area including fraction of a square foot in the case of the second lease. When the parties take care to that extent, it is idle to try to construe the contents of the lease with the help of initial presumptions. Learned counsel for the petitioner strongly relied on the words "whole of first floor and second floor at a monthly rent of Rs. 2,200" occurring in the lease deed dated December 4, 1979. His contention is that the plain language used in the said lease deed indicated that not only the whole of the first floor but the whole of the second floor had been let out as a result of the second lease deed. The above words have been torn out of context. It will be recalled that by the lease deed dated September 18, 1974, the half side of the first floor on the left side of the building had been let out. By the second lease deed dated December 4, 1979, the remaining half i.e. right side of the first floor and certain specified rooms etc. of the second floor, was let out. In other words, with the letting out under the second lease the whole of the first floor stood let out in favour of the petitioner and the construction existing on the second floor was also let out. When the parties take care to describe the demised portion in terms of rooms, W.C., store etc. and further to describe the area in terms of square feet, there can be no doubt or debate that anything more than what is described was let out. It is not disputed by the learned counsel that if the area of the various rooms etc. is worked out and added together, the total area let out tallies with the area of demised portion mentioned in the two lease deeds. *Prima facie*, therefore, the unbuilt terraces in question were not included in the lease granted in favour of the petitioner.

(8) With regard to balance of convenience, judicial notice can be taken of the escalation in the cost of construction. This is in addition to the injury caused to the respondents in the form of loss of beneficial use of their property. Delays in the decision of civil disputes are notorious. It is anybody's guess how many years it will take before a matter is finally decided by the highest Court. The question, therefore, is of balancing the respective convenience or inconvenience of the parties.

(9) In order to determine whether the plaintiff would suffer irreparable injury, the Court has to see whether in the event of success in the suit, the plaintiff can be adequately compensated by awarding damages. Applying that test, *prima facie*, it seems to me that the plaintiffs in the present case will suffer an irreparable injury. In *Films Rover International Ltd.* v. *Cannon Film Sales Ltd.* (2), Hoffmann, J. observed:—

> "..... The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense I have described.. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle."

Again at page 781 the learned Judge observed:

> "..... If it appears to the court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would be in fact carry a greater risk of injustice than granting it even though the court does not feel a 'high degree of assurance' about the plaintiff's chances of establishing his right, there cannot be any rational basis for withholding the injunction."

(2) (1986) 3 All E.R. 772.

The above test was approved by our Supreme Court in *Dorab Cawasji Warden's case* (supra).

(10) Applying the above test, I find myself in agreement with the Courts below that there is a lower risk of injustice even if it is ultimately found that the decision proved to be wrong.

(11) In fairness to Mr. Munishwar Puri, learned counsel for the petitioner, I may briefly deal with the contentions raised by him.

(12) The authority *Bhal Singh Malik* v. *Dr. Nazar Singh* (3), relied on by Mr. Puri is of no assistance. That case related to a single-storied house and all that was held was that the initial presumption in the absence of a contract to the contrary, was that the roof was comprised in the tenancy. This aspect of the case has already been dealt with in sufficient detail above. There is no need to fall back on presumptions when what is let out is reduced to the form of a lease deed, as in this case. It is unnecessary to mention the other rulings on the point cited by Mr. Puri.

(13) For the proposition that granting of temporary injunction would amount to decreeing the plaintiffs' suit at the threshold, Mr. Puri relied on *The Election Officer, Gujrat* v. *Abdul Ghani, etc.* (4) and *Rochiram, A. Amesur.* v. *Municipal Corporation, Karaching and another* (5). Both these cases related to an election matter and are hardly applicable to the case in hand. Moreover, it is not an invariable rule of thumb and the Court has to decide the matter according to the facts and circumstances of each case. Thus, in *Mrs. Amarjit Kaur Sandhu and others* v. *M/s Malabar Cane Furniture Sector 22-B, Chandigarh* (6), it was held by this Court in the facts and circumstances of that case that the landlord was entitled to injunction even if that was the relief claimed ultimately in the suit.

(14) The second limb of the argument was that once the construction is allowed to be made, it will be impossible to remove the same. Reliance was placed on *Gangubai Bablya Chaudhary and*

(3) 1976 Current L.J. 140.
(4) A.I.R. 1923 Lahore 47.
(5) A.I.R. 1934 Sind 134.
(6) 1979 (1) Rent L.R. 732.

others v. *Sitaram Bhalchandra Sukhtankar and others* (7). The observations occurring in the above decision must be confined to the facts of that case and are not meant to be of general application.

(15) The next contention is that the broad and basic object of injunction is to maintain *status quo*. Reliance was placed on *Nandan Pictures Ltd.* v. *Art Pictures Ltd.* (8), which was followed in *Ramchandra Tanwar* v. *M/s Ram Rakhmal Amichand and another* (9) and *Durg Transport Co. Private Ltd. Durg* v. *Regional Transport Authority, Raipur and others* (10). Again the general proposition is not disputable but where the plaintiff makes out a case and the Court finds the three guiding principles to be satisfied, there is no reason why the injunction should be refused only because granting the injunction will depart from the position of *status quo*. Ultimately it will depend on a balancing of the respective convenience or inconvenience of the parties.

(16) The next contention of Mr. Puri was that the petitioner is in possession of the open terrace and, in any case, open terrace was an amenity provided to the petitioner as a part of the lease and the same cannot be withdrawn or withheld. An ancillary contenition is that the work of construction will necessarily involve some disturbance in the quiet and peaceful enjoyment of the property in contravention of section 108 of the Transfer of Property Act in so far as the petitioner is concerned. From the discussion in the earlier part of this order, it has been seen that *prima facie* terrace is not comprised in the demised portion. There is, therefore, no reason to hold that the petitioner-tenant is in possession of the terrace. Nor can the open terrace be *prima facie* considered as an amenity going with the demised premises.

(17) In my view, no case has been made out by the petitioner, justifying interference in the order recorded by the Courts below. The scope of the powers of revision under section 115 of the Code of Civil Procedure is well settled in *M/s D.L.F. Housing and Construction Co. (P) Ltd.* v. *Sarup Singh and others* (11) and *The Managing*

(7) A.I.R. 1983 S.C. 742.
(8) (1956) A.I.R. 1956 Cal. 428.
(9) A.I.R. 1971 Raj. 292.
(10) A.I.R. 1965 M.P. 142.
(11) A.I.R. 1971 S.C. 2324.

Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another v. *Ajit Prasad Tarway* (12), Clause (c) of sub-section (1) of section 115 of the Code of Civil Procedure relating to exercise of jurisdiction illegally or with material irregularity has been interpretted to mean illegality or material irregularity committed in respect of the exercise of jurisdiction and not otherwise. Undeniably, the Courts below had the jurisdiction to grant or refuse the injunction in question and no illegality was pointed out in the exercise of the said jurisdiction.

(18) During the hearing of the revision, efforts were made to find an acceptable solution to the problem. One of the suggestions made on behalf of the plaintiff-respondents was that the building activity is carried on only through the North-Western staircase to the exclusion of the staircase situated on the South-Western side of the building. Though an agreed solution was not possible to reach, it appears quite fair that the injunction order should be made conditional upon the plaintiff-respondents using only the North-Western staircase for carrying on the building operation on the terrace on the second floor. It is also directed that the plaintiff-respondents shall file in the trial Court an undertaking, in writing, that in case the suit is ultimately dismissed, they will remove the offending construction at their own expense. The undertaking shall be filed within one month from the date of appearance in the Court. The revision petition is disposed of in these terms.

(19) The parties through their counsel are directed to appear in the trial Court on September 7, 1991, for further proceedings according to law.

S.C.K.

(FULL BENCH)

Before A. L. Bahri, A. P. Chowdhri & J. B. Garg, JJ.

STATE OF HARYANA,—Appellant.

versus

BANWARI LAL,—*Respondent.*

Criminal Appeal No. 640-DBA of 1986.

7th February, 1992.

Prevention of Food Adulteration Act, 1954-Ss. 7 & 16(1)(a)(i)—Taking sample of Haldi—Requirement of mixing the total quantity of food—Such requirement, if mandatory.

(12) A.I.R. 1973 S.C. 76.