Before P. C. Jain & Surinder Singh, JJ.

FAQIR CHAND,—*Petitioner.*

versus

RAM KALI,—*Respondent.*

Civil Revision No. 82 *of* 1981.

July 12, 1982.

Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—Sections 11 *and* 13*—Portion of a residential building got vacated from a tenant—Such portion converted by the landlord for a non-residential use—Permission of the Rent Controller under section* 11 *for such change in user—Whether necessary—Landlord later seeking ejectment of another tenant from a portion of the same building on the ground of personal necessity—Ejectment on such ground—Whether could be ordered.*

Held, that a landlord can use part of his residential building as non-residential building without the prior permission of the Rent Controller and it cannot be said that the residential building had then become non-residential building when the same was let out for a non-residential purpose. There is a distinction between a case where a landlord converts his residential building to a non-residential building for his own use and a case where *a* residential building is let out to a tenant for user as non-residential building. In the former case, the provisions of section 11 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 would not be attracted as it would not at all be necessary to seek permission of the Rent Controller, but in the latter case, permission of the Rent Controller as required under the Act would be necessary, otherwise the landlord would be guilty of penal consequences. (Para 8).

Held, that the conversion of a portion of the residential building by the landlord into a non-residential one, does not disentitle the landlord to seek ejectment of a tenant of another portion of the building on the ground of personal necessity. (Para 8).

Petition under section 15 *of the Haryana Urban (Control of Rent and Eviction) Act,* 1973, *for revision of the order of the Court of Shri S. D. Bajaj, District Judge, Ambala (Appellate Authority) Ambala, dated the* 14*th October,* 1980 *affirming that of Shri C. R. Goel, Rent Controller, Ambala, dated the* 30*th January,* 1980 *passing an order of ejectment with costs in favour of the petitioner and*

against the respondent, thereby directing the respondent to vacate the demised premises (a portion of House No. 4497, Bajaja Mohalla, Ambala Cantt.) and to deliver its vacant possession to the petitioner and granting three months time to vacate the same, dismissing the appeal with costs and allowing three months time to vacate possession of the tenancy premises.

S. K. Goyal, Advocate, *for the Petitioner.*

Ashok Aggarwal, Advocate, *for the Respondent.*

JUDGMENT

Prem Chand Jain, J.

(1) Faqir Chand, petitioner, is occupying a portion of house No. 4497, situated in Bazaza Mohalla/Shivala Mohalla, Ambala Cantt, as a statutory tenant, on payment of rent at the rate of Rs 6.50 per month under the respondent, who filed a petition for eviction of the petitioner on the grounds of non-payment of rent and bona fide requirement for her own personal use and occupation. The petition was contested by the petitioner on various grounds. As arrears of rent were duly tendered, the ground of default in payment of rent was abandoned by the respondent. The only issue that survived for decision was the bona fide personal requirement of the landlady. On consideration of the evidence led by the parties, the learned Rent Controller accepted the claim of the landlady and ordered ejectment of the petitioner,—*vide* his order, dated 30th January, 1980.

(2) Feeling aggrieved from the order of eviction the tenant preferred an appeal. The learned Appellate Authority did not find any merit in the appeal and dismissed the same.

(3) Still dissatisfied, the present petition has been filed by the tenant. Initially, the petition came up for hearing before M. R. Sharma J., on 14th January, 1981, when a contention was raised on behalf of the petitioner on the basis of a Single Bench Judgment of this Court in *Tara Chand Chandani* v. *Shashi Bhushan Gupta, Chartered Accountant* (1), that it was not open for a landlord to convert a residential building into a non-residential building and that as the landlady-respondent after getting a portion of the building vacated from another tenant, had converted

(1) 1980 Current Law Journal 231.

that portion into a tea-shop and dry-cleaning shop, the ejectment of the petitioner could not be ordered from the premises in dispute even if personal necessary of the landlady was proved. Finding some merit in the contention, notice of motion was issued. In response to the notice of motion, the respondent put in appearance. When the matter was heard by the learned Judge, a Division Bench judgment of this Court in *Chattar Sain* v. *M/s. Jamboo Parshad* (2), was cited for the proposition that with regard to residential building which was not occupied by a tenant, no permission was required by the owner for converting its user to non-residential building. Finding a conflict between the judgments of *Tara Chand Chandani's case* (supra) and *Chattar Sain's case* (supra) the learned Judge admitted the petition to a hearing by a Division Bench. It is in these circumstances that the matter has been placed before us for decision.

(4) It was vehemently contended by Mr. Goyal, learned counsel for the petitioner, that in view of the provisions of section 11 of the Haryana Urban (Control Rent and Eviction) Act, 1973 (hereinafter referred to as the Act), the landlady-respondent could not convert the portion of the building which she had got vacated from another tenant to a use which would make the building a non-residential building. It was further contended by the learned counsel that as, in the instant case, the landlady had admittedly converted the user of certain portion of the building to non-residential building, no ejectment order could be passed in her favour. In support of his contention, as earlier observed, reliance was placed mainly on *Tara Chand Chandani's case* (supra).

(5) After giving our thoughtful consideration to the entire matter, we find no merit in this contention of the learned counsel, as the same stands concluded against him by the judgment of the Division Bench in *Chattar Sain's case* (supra) where on a similar point, on consideration of the relevant provisions of the Statute, Jindra Lal J. (as he then was) speaking for the Court, observed thus:—

> "16. His main ground of attack is based on a combined reading of certain provisions of sections 11, 13 and 19 of the Act. Section 11 provides that no person shall convert a residential building into a non-residential

(2) 1965 Current Law Journal 143.

building except with the permission in writing of the Controller. Section 19 provides for penalties for a contravention of the provisions of section 11 and some other sections of the Act. It is the contention of Mr. Sarin that the respondent-landlords could not convert their residential building, in which they themselves were residing, into a non-residential building except with the permission in writing of the Controller. If they have done so, then in addition to their being liable under section 19, they are not entitled to any relief by the Rent Controller. By thus converting their residential building into a non-residential building, they cannot claim that the residential accommodation now left with them for their residential purposes is not sufficient and claim ejectment of the tenants from another residential building of theirs on that ground.

17. It appears to us that this argument is not sound. 'Building' as defined in section 2(a) of the Act means 'any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses etc. etc.' Sub-section (d) of section 2 defines 'non-residential building' as meaning 'a building being used solely for the purpose of business or trade'. The proviso to this sub-section does not concern us. 'Residential building' has been defined in section 2(g) as meaning any building is not a non-residential building.

18. It follows, therefore, that the expression 'building', 'non-residential building' or 'residential building' used in the Act, applies to a building, which is let. The Act does not concern itself with property residential or otherwise which is occupied by an owner himself, and which is not in the possession of tenants. No provisions of the Act appear to apply to such a property. In the case of such property no question of fixation of rent or eviction can, obviously, arise. Various other provisions of the Act like cutting or withholding of any amenities or failure to repair a building etc., etc. cannot also possibly apply to property which is occupied by the landlord himself. If this is, the correct reading of the Act, then it follows that

section 11 cannot apply to any property, which is not occupied by a tenant and an owner of such property can convert it to any use that he likes without the permission of the Rent Controller.

19. In the present case, therefore, to the property in the occupation of the respondents themselves, the provisions of section 11 cannot apply. Consequently, the respondents are entitled to use their own residential property for non-residential purposes without the permission of the Controller. The language of section 11, read with the definitions above, can only mean, that where the tenants are in possession of a 'residential building' it cannot be converted into a 'non-residential building' without the permission in writing of the Controller. One of the reasons for this is that in the case of 'residential buildings' the permissible increase of rent is much lower than the permissible increase for 'non-residential buildings'. A reference to section 4 of the Act makes it clear."

But this does not solve the problem as Mr. Aggarwal learned counsel, had submitted that the judgment in *Chattar Sain's case* (supra) did not lay down a correct law and deserved to be reconsidered. In support of his contention, the learned counsel had drawn our attention to a Single Bench judgment of this Court in *Tara Chand Chandani's case* (supra). At this stage, it would not be out of place to emphasise that the admission of this petition to Division Bench was as a result of the alleged conflict, it may further be stressed that besides the judgment of the Single Bench in *Tara Chand Chandani's case* (supra), Mr. Aggarwal did not urge any other ground, nor did he bring out any other point for showing that *Chattar Sain's case* (supra) did not lay down correct law.

(6) 'We have thoroughly gone through the judgment of the learned Single Judge in *Tara Chand Chandani's case* (supra) and find that the same does not help the learned counsel for the petitioner, nor does it in any way take a contrary view on the point debated before us. The facts of that case are that the demised premises formed part of a residential building known as 'Lakshmi Vishnu Bhawan'. *Vide* rent note, dated 26th July, 1962, the premises in dispute consisting of three rooms, i.e., one office room on the first floor and two rooms on the second floor with bath, latrine,

kitchen, store etc., was given on rent on a monthly rent of Rs. 138. The landlord filed an ejectment application on the ground that the demised premises was *bona fide* required by him for his personal use. The tenant contested the petition and raised a plea that the premises in dispute is not a residential building as the same was being used solely for business and, therefore, the landlord was not entitled to get the premises vacated on the ground of his personal necessity. The Rent Controller came to the conclusion that the plea of *bona fide* necessity for his own occupation by the landlord was not established. It was further found that the premises in dispute was non-residential building as the same had never been occupied by the tenant for his residence and he was using the same solely for the purpose of his business, i.e., running his office as Chartered Accountant. On appeal, the learned Appellate Authority affirmed the second finding of the Rent Controller and in view of that, no finding was recorded on the question of *bona fide* requirement. Thereafter the landlord filed a revision this Court. The contention that was raised on behalf of the landlord before the learned Single Judge was whether the premises which were let out to the tenant to run his office as Chartered Accountant became non-residential building as contemplated under section 2(d) of the Act. On consideration of the relevant provisions and the case law on this aspect of the question the learned Judge rejected the contention and held that the building used by the tenant for the purpose of his profession as Chartered Accountant, had not become a non-residential building and that the landlord was entitled to eject the tenant if he could prove that the *bona fide* required the premises for his own use and occupation. The relevant observations appear at page 237 of the report and read as under:—

> "Reverting back to the provisions of the East Punjab Urban Rent Restriction Act, it has to be seen that if the premises are rented out to a Chartered Accountant for running his office, whether such a building will be said to be a non-residential building or it continues to be a residential building as provided under the Act? As observed earlier, section 2(h) of the Act defines the word 'Scheduled building'. The word 'profession' as well as the word 'business' have been used in the said definition. If the word 'business' occurring in section 2(d) of the Act included 'professions' as well, there was no necessary for creating a third category of buildings known as 'scheduled 'building'. In that

case any building being used solely for the purpose of business including professions therein, would have been a non-residential building, according to the definition. It appears that the legislature was aware of the distinction between 'business' and 'profession' and, therefore, it wanted to exclude certain buildings from the definition of non-residential buildings and thus the third category of scheduled buildings was created under the Act. Admittedly, in the schedule provided to this Act, Chartered Accountant is not one of the professions included therein. Under these circumstances, if a building is being used solely for the purpose of profession, it cannot be said to be a non-residential building as it is not being used solely for the purpose of business or trade. As observed earlier, the word 'profession' has been used is the Act as distinguished from 'the business' ....".

(7) However, it appears that an argument was also raised before the learned Judge that the user of the residential building could not be changed to that of a non-residential building except with the permission in writing of the Controller. On this aspect the learned Judge observed thus:—

"There is another aspect of the matter as well. Section 11 of the Act, as reproduced earlier, says that no person shall convert a residential building into a non-residential building except with the permission in writing of the Controller. In the present case, admittedly, the rented premises are a part of a portion of a residential building known as 'Lakshmi Vishnu Bhawan'. The portion other than the rented one is being used by the landlord for his own residence. Under these circumstances, could the landlord convert a part of the residential building into a non-residential one without the permission in writing of the Rent Controller ? Since there is a bar provided under the Act itself and under section 19 of the Act penalty for the breach of the same has been provided, it is quite clear that a residential building as such could not be converted into a non-residential building by letting it out to a Chartered Accountant for running his office therein. Anything done in contravention of the provisions of the Act cannot bind the landlord or the tenant. In this view of

the matter also it cannot to held that the premises have become non-residential building because it is being used solely for the purpose of running the office by the tenant as Chartered Accountant. This also indicates that the Legislature used the expression 'profession' as distinguished from the expression 'business' or a 'trade' under the Act."

(8) Mr. S. K. Goyal, learned counsel, had placed great reliance on the aforesaid observations, in support of his contention, but we find that the same do not at all help the learned counsel, nor do they go counter to the judgment of the Division Bench in *Chattar Sain's case* (supra). A little study of the above-mentioned observations would show that what has been held by the learned Judge is that a landlord could not convert a part of the residential building into a non-residential building without the permission in writing of the Rent Controller. But these observations have been made in the context of the facts of that case where a plea was being put forth that by letting out the portion of a building to a Chartered Accountant, the user of the building had been changed to non-residential building. We fail to understand as to how these observations help the learned counsel and can be read to mean that even a landlord cannot use part of his residential building as non-residential building without the prior permission of the Rent Controller. Moreover, the abovementioned observations were made to repel the contention of the learned counsel that the residential building had become non-residential building when the same was let out to a Chartered Accountant. It may be emphasised that a distinction has to be drawn between a case where a landlord converts his residential building to a non-residential building for his own use and a case where a residential building is let out to a tenant for user as non-residential building. In the former case, the provisions of Section 11 of the Act would not be attracted as it would not at all be necessary to seek permission of the Rent Controller; but in the latter case, permission of the Rent Controller as required under the Act would be necessary; otherwise the landlord would be guilty of penal consequences. Thus, viewed from any angle, there is no merit in the contention of the learned counsel for the petitioner.

(9) Having arrived at the aforesaid conclusion on the question of law, the only other point that needs determination is whether the order of eviction passed by the Rent Controller and affirmed on

appeal by the learned Appellate Authority on the question of personal necessity, can be legally sustained or not. On this aspect, again, we had heard the learned counsel at great length and find that on consideration of the entire material on the record, it had been found as a fact that the landlady required the premises *bona fide* for her personal requirement. M. Goyal learned counsel for the petitioner, could not persuade us, on the basis of the evidence available on record, to take a contrary view. The reasons given in the order of the learned Appellate Authority are quite weighty and we have no hesitation in affirming the same.

(10) No other point was urged.

(11) For the reasons recorded above, this petition fails and is dismissed, but in the circumstances of the case, we make no order as to costs. The petitioner is granted one month's time to vacate the premises and handover its possession to the landlady.

Surinder Singh, J.—I agree.

N. K. S.

Before J. V. Gupta, J.

ASSA NAND,—*Petitioner.*

versus

HARISH KUMAR AND OTHERS,—*Respondents.*

Civil Revision No. 968 *of* 1982.

July 16, 1982.

Code of Civil Procedure (V of 1908)—*Sections* 35-*B*, 115(2) *and Order XX Rule* 6-*A*—*Costs imposed on the plaintiff for seeking an adjournment—Costs not paid on the adjourned date and the proceedings allowed to continue—Application by the defendant for the dismissal of the suit long after the date on which the costs were required to be paid—Such application—Whether competent—Order allowing such application and dismissing the suit—Whether revisable under section* 115—*Such order—Whether falls within the ambit of 'any case which has been decided'.*

Held, that an order allowing an application and dismissing the suit on the ground of non-payment of costs would clearly fall