
(2016) 09 SHI CK 0099
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 125 of 2006

Oriental Insurance Company Ltd.

APPELLANT

Vs

Dr. Chaman Lal Gupta

RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 14(2)(iii)

Citation : (2016) sup HimLR 2954

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. Neeraj Gupta, Advocate, for the Respondent; Dr. Lalit K. Sharma, Advocate, for the Petitioners

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J. - By way of this revision petition, the petitioners have challenged the judgment passed by the Court of learned appellate authority, Solan in C.M.A. No. 10-S/14 of 2005 dated 22.05.2006, whereby learned appellate authority dismissed the appeal filed by the present petitioners against order dated 25.05.2004 passed by the Court of learned Rent Controller, Solan in Rent Petition No. 34/2 of 1998 vide which, the eviction petition filed by the landlord against the tenant Company was allowed.

2. Brief facts necessary for the adjudication of the present case are that Dr. Gyan Parkash, land owner filed an application under Section 14 of the H.P. Urban Rent Control Act, 1987 for ejectment of the present petitioners on the grounds that he had let out three rooms, latrine, bathroom and lobby, situated on the first floor from the road level of The Mall Solan, H.P. in building known as Mamoore bearing No. 63, The Mall Solan, H.P. to the present petitioners/tenants on monthly rent of Rs.875/- on 01.02.1978 and tenants had damaged the joint structural wall separating the buildings of landlord (i.e. respondent in the present case) and that of Dr. Chaman Lal Gupta by breaking a portion of the joint structural wall in between two buildings, one belonging to him and the other belonging to Dr.

Chaman Lal Gupta and had opened a window in the first room and similarly had damaged a part of the same joint structural wall and had left a big portion 4" X 7" lying open, thus connecting the two separate buildings, one belonging to him and other belonging to Dr. Chaman Lal Gupta and had converted it into a single unit while he had given on rent his building separately on separate date by a different rent note at different rate of rent. Landlord thus sought the eviction of the tenant-company on the ground that the tenant-company had without the written consent of the landlord damaged the main joint wall dividing two different properties, one belonging to him and other to Dr. Chaman Lal Gupta, details of which had already been given above and had thus connected two separate/different buildings into a single building and had materially impaired the utility of building of the landlord as well as Dr. Chaman Lal Gupta. As per the landlord, said demolition of the joint wall and opening of the window and leaving gap was without his written consent and thus, the tenants were liable to be evicted on the above mentioned grounds.

3. Before proceeding further, it is clarified that the tenants before the Court of learned Rent Controller were present petitioners and respondent before this Court was the landlord. Hereinafter, the present petitioners shall be referred to as "the tenants" and the present respondents shall be referred to as "the landlord".

4. In its reply filed to the eviction petition, the stand taken by the tenants was that no structural change had been carried out in the premises and the premises in fact were in the same shape and condition in which these were let out to the tenants by the landlord. As per the tenants, the alleged changes were in fact made by the landlord at the time of renting out second set to the tenants in the year 1981. As per the tenants, the eviction petition had been filed with a malafide intention/ulterior motive to have the rent increased. It was further mentioned in the reply that no alteration whatsoever had been made by the tenant at any stage and, therefore, the question of any written consent did not arise at all. As per the tenants, one set comprising of three rooms, bath room and latrine were taken on rent by the tenants from the Dr. Gyan Prakash in the year 1978 and thereafter in the year, 1981, brother of Dr. Gyan Prakash, i.e. the present landlord, who was owning the same accommodation in the adjoining set approached the then Branch Manager of the tenant-company along with Dr. Gyan Prakash and proposed to rent out the said accommodation to them. As per the tenants, both the present landlord as well as Dr. Gyan Prakash were asked to make some changes in between the sets so that both sets could be used as one unit so as to make it convenient to the tenants to use the property as a single office. This was agreed to by the landlord and Dr. Gyan Prakash, his brother and they accordingly carved out one passage in the shape of an open door in the common wall separating the sets. They also opened one small service window in the said wall. As per the tenants, these minor changes were made by the landlord and his brother of their own free will. As per the tenants, as per the desire of the two brothers, two separate rent deeds were made in respect of their

separate rent accommodations and the same were in fact in occupation of the tenants since 1981. On these basis, it was contended by the tenants, that no additions or structural changes had been made by them at any point of time. According to the tenants, the landlord as well as his brother were frequently visiting the Branch Office premises ever since the inception of their respective tenancies and they were fully aware of the structural position of the premises. On these basis, the tenants denied the claim of the landlord.

5. In the rejoinder, landlord categorically denied that any changes had been made in the property by him at the time of renting out of his set to the tenants in the year 1981 as was being alleged by the tenants. It was also denied that the petition had been filed either with the malafide intention or ulterior motive to increase the rental value. It was reiterated by the landlord that the tenant-company had damaged the main wall and had materially impaired value and utility of the building and it was emphatically denied by the landlord that the alterations had been made by him as alleged by the tenant company. In the rejoinder, landlord categorically denied that he was the brother of Dr. Gyan Prakash and stated that he was brother of father of Dr. Gyan Prakash. He also denied that he along with Dr. Gyan Prakash had approached the then Branch Manager of the tenant-Company and proposed to them to take on rent his accommodation and thereafter he and Dr. Gyan Prakash had made changes in their sets so that both sets could be used conveniently by the Company as a single office. It was further denied by the landlord that changes effected were only minor in nature. As per the landlord, the unilateral changes/alterations carried out by the tenant-Company were major changes and structural changes had been carried out by them without the written consent of the landlord as well as Dr. Gyan Prakash. It was also denied that the landlord and his uncle had been frequently visiting the Branch of the premises as was alleged by the tenant Company.

6. On the basis of the pleadings of the parties, learned Rent Controller framed the following issues:

"1. Whether the respondents have committed such acts by damaging structure wall separating the building of the petitioner which act as such has impaired the value and utility of the building as alleged? OPP

2. Relief."

7. On the basis of material produced on record by the respective parties, the issues so framed were answered in the following terms by learned Rent Controller:

"Issue No. 1: Yes. Relief: The petition stands allowed as per operative portion of the order."

8. It was held by the learned Rent Controller that material changes were carried out in the premises in question by the tenants without the approval of landlord

and said changes were not carried out in the year 1981, but were rather carried out subsequently. It was further held by learned Rent Controller that landlord Dr. Chaman Lal who entered the witness box as PW-1 had categorically stated that the premises in issue were rented out to the tenant-Company on 01.03.1981. This witness further categorically deposed that the tenant-Company demolished the wall of the premises in question and open space measuring 4 feet X 7 feet was carved out in the form of a passage and one window was also opened from one room. This was done by the tenant Company in order to convert two sets of accommodation into one unit. This witness further stated that window was opened in the joint wall belonging to him and Dr. Gyan Prakash and thus structural changes were carried out by the tenant-Company without his consent, which had otherwise also caused intensive damage to the building in question and had impaired its utility. Learned Rent Controller further held that though the said witness was subjected to lengthy cross-examination, however, he emphatically denied that the changes in issue were in fact carried out in the premises in question before the building of landlord was rented out in year 1981. He also disputed that service window and passage was opened with his consent. Learned Rent Controller took note of the fact that specific stand taken by the tenant-Company was that though the structural changes were carried out in the shape of opening of window and passage, but the same was done with the consent of the landlord before the set of landlord was taken on rent. Learned Rent Controller further held that the contention of the tenant-Company that the landlord had agreed for the conversion of two sets into one unit stood disputed and, therefore, it was apparent that structural changes were carried out by the tenant-Company without the consent of the landlord. Learned Rent Controller also took note of the agreement executed between the tenant-Company and Dr. Gyan Prakash, in which it was clearly recited in Para Nos. 6 and 7 that the tenants will not make any structural changes in the premises in question and the tenants were permitted to erect wooden partitions, counters and cabins without causing any damage or change to the structural position of the leased premises. On these basis, it was held by the learned Rent Controller that neither joint wall was permitted to be demolished nor window was permitted to be opened nor passage was permitted to be carved out. Accordingly, it was held by the learned Rent Controller that the tenant-Company had carried out structural changes without the consent of the landlord which were material in nature and which had affected the value and utility of premises and on these basis, learned Rent Controller allowed the eviction petition.

9. Feeling aggrieved by the order passed by the learned Rent Controller, Solan, the tenant-Company filed an appeal before the learned appellate authority. Vide its judgment dated 22.05.2006, learned appellate authority while concurring with the findings returned by learned Rent Controller, Solan dismissed the appeal so filed by the tenant-Company and affirmed the order passed by learned Rent Controller dated 25.05.2004

10. The judgment so passed by the learned appellate authority has been

challenged by way of present revision petition, so also the application filed by the landlord under Section 14(2)(iii) of the Himachal Pradesh Urban Rent Control Act, 1987.

11. Dr. Lalit K. Sharma, learned counsel appearing for the petitioners/tenant-Company has argued that the judgment passed by learned appellate authority as well as the order passed by learned Rent Controller, Solan were not sustainable in the eyes of law as the findings returned by both the Courts below were perverse, erroneous "absurd" and based upon misleading, misconstruing and misinterpretation of evidence led by the respective parties. Dr. Sharma argued that the judgment passed by learned appellate authority as well as the order passed by learned Rent Controller were not sustainable as both the learned Courts below erred in not appreciating that the landlord when he entered the witness box as PW-1 himself admitted the fact that the common wall between the demised premises and the adjoining set was still intact and the factum of opening of passage from the common wall by the tenant-Company had not been proved on record by the landlord nor was it supported by any of his witnesses. On these basis, it was submitted by Dr. Sharma that the findings arrived at by both the learned Courts below to the effect that the passage and a window were carved out by materially impairing the value and utility of the premises or the landlord were perverse findings. Dr. Sharma further argued that the learned Courts below had erred in concluding that it stood proved on record that the alleged alterations took place in the year 1987, whereas according to him, it was the landlord himself who had carried out the alterations before the adjacent set was taken on rent by present petitioners from him. It was further contended by Dr. Sharma that both the learned Courts below erred in not appreciating that the petition in fact had been filed with a malafide intent for getting the rent increased by 100% and the intent with which the petition was filed has escaped the notice of both the learned Courts below. It was further urged by Dr. Lalit Sharma that neither proper issues were framed nor any material was produced on record by the landlord to substantiate that any material alterations had been carried out by the tenant-Company which had materially impaired the value of the property of the landlord. He further argued that the testimonies of the witnesses of the tenant-Company were also ignored by both the learned Courts below in a cursory manner without appreciating that their testimonies duly proved that no structural changes were in fact made/carried out by the tenant-Company. Accordingly, on these grounds it was argued by Dr. Sharma that the judgment passed by learned appellate Court as well as the orders passed by learned Rent Controller were perverse and not sustainable in the eyes of law and the same were liable to be set aside and the application filed by the landlord under Section 14(2)(iii) of the Himachal Pradesh Urban Rent Control Act was liable to be rejected. No other point was urged.

12. On the other hand, Mr. Neeraj Gupta, learned counsel appearing for the landlord/respondent vehemently argued that there was no merit in the present revision petition and in fact the contention of the learned counsel for the

petitioners that the findings arrived at by both the Courts below were perverse was totally incorrect. Mr. Gupta argued that it stood established from the records that the premises subject matter of the present revision petition were let out to the tenant-Company in the year 1981 by way of an independent agreement. Mr. Gupta further argued that right from the day when the tenant-Company was inducted as a tenant till the filing of the application under Section 14 of the Himachal Pradesh Urban Rent Control Act, no written consent whatsoever was ever given by the landlord to the tenant-Company to carve out either any passage or to create any window in the walls of the let out premises to connect the same with the other premises, which were even otherwise independently taken on rent by the tenant-company from one Dr. Gyan Prakash and that too by an independent agreement before the year 1981. Mr. Gupta further argued that in fact the contentions of the learned counsel for the petitioners were self contradictory and self destructive. According to Mr. Gupta, on one hand it was being urged by the petitioners that both the Courts below erred in not appreciating that the landlord failed to prove on record that any passage or window was in fact carved out from the common wall at all and on the other hand, the case being put forth by the petitioners was that either everything was done by the landlord himself or it was done with express consent of the landlord. It was further argued by Mr. Gupta that in the present case, the act of the tenant-Company had resulted in opening of a passage and window from the common wall of the set of the present landlord and that of Dr. Gyan Prakash resulting in these two sets becoming one and by creating an opening in such a manner so as to connect the premises let out by the present landlord with those of another is nothing but an act which materially impaired the value and utility of the premises of the landlord which was let out to the tenant-Company. Mr. Gupta further argued that even otherwise keeping in view the fact that both the learned Courts below had come to the conclusion that the tenant-Company had carried out material alterations which impaired the value and utility of the property without the consent of the landlord, the findings so arrived at did not warrant any interference by this Court in exercise of its revisional jurisdiction. According to Mr. Gupta, the findings so returned by both the Courts below were duly borne out from the records of the case and the petitioners had failed to point out any perversity or jurisdictional error committed while adjudicating the case by both the Courts below. He further argued that learned counsel for the petitioner wanted this Court to re-appreciate the entire evidence which was not possible in exercise of its revisional jurisdiction. On these basis, it was urged by Mr. Neeraj Gupta that there was no merit in the revision and the same be dismissed.

13. I have heard the learned counsel for the parties and also gone through the records of the case as well as the order passed by the Court of learned Rent Controller and judgment passed by learned appellate Court.

14. Firstly, I will deal with the issue raised by Dr. Lalit K. Sharma, learned counsel for the petitioners that the impugned order and judgment passed by the Court of learned Rent Controller and learned appellate Court respectively are

perverse and not sustainable in law on the grounds that both the learned Courts below erred in not appreciating that landlord as PW-1 himself admitted the fact that the common wall between the demised premises and the adjoining set was still intact and the factum of opening of passage from the common wall by the tenant-Company had not been proved on record by the landlord. In other words, the contention of Dr. Sharma is that very edifice of the case of the landlord was without any basis as neither the common wall between the demised premises and the adjoining set was altered at all by the tenant-Company nor any passage from the common wall was carved out. In my considered view, this argument of the learned counsel for the petitioner deserves outright rejection. This is for the reason that the argument raised by learned counsel for the petitioners is contrary to the pleadings. A perusal of the reply filed by the tenant-Company to the eviction petition filed by the landlord demonstrates that the case set up by the tenant-Company therein was that the alleged changes in fact had not been carried out by the tenant-Company, but had been made by the landlord at the time when his set was taken on rent by the tenant-Company in the year 1981. If the averments made in the reply so filed by the tenant Company are to be believed, then the arguments of Dr. Sharma to the effect that the landlord admitted in the witness box that the common wall is intact and no passage has been carved out is contrary to the pleadings. Even a perusal of the statement of PW-1 demonstrates that he has nowhere stated therein that the common wall of the demised premises and that of the adjoining set was either intact and no passage has been carved out. On the contrary, in his cross-examination, suggestions given to the landlord by the tenant-Company were to the effect that he and Dr. Gyan Prakash had agreed that in order to make the two sets as a compact unit, they will provide a service window and a passage between the same, which suggestion was denied by the landlord. Therefore, in my considered view, there is no merit in the contention of Dr. Sharma that the edifice of the case of the landlord is without any genesis as the argument of Dr. Sharma to the effect that in fact the landlord had no cause of action because he had admitted that the common wall was intact and no passage was carved out from the same is contrary to the records and sans merit.

15. Now, I will come to the second contention of learned counsel for the petitioners, which is that passage and common wall were not carved out from the demised premises and adjoining set by the tenant Company without the consent of landlord, but it was the landlord who himself had carried out these alterations as was verbally agreed by him with the tenant-Company. The argument of Dr. Sharma to the effect that it was the landlord who himself had carried out the alterations in his common wall in the year 1981 has been disbelieved by both the learned Courts below. No credible evidence save and except the self serving statements of its employees which are also uncorroborated has been produced on record by the tenant-Company to substantiate this contention of their's. It is a matter of record that no written document has been produced by the tenant-Company on record from which it could be inferred that the passage and the

window were carved out from the common wall either by the landlord on the asking of the tenant-Company or by the tenant-Company with the consent of the landlord. No evidence has been led by the tenant-Company from which it could be inferred that the said alterations were in fact carried out by the landlord voluntarily on the asking of the tenant-Company in the year 1981 when his set was taken on rent by the tenant-Company. On the other hand, landlord on the basis of evidence placed by him on record has duly proved and established that the alterations were carried out by the tenant-Company without his consent written or otherwise. This assumes importance in view of the fact that it is an admitted position that the adjoining set did not belong to the present landlord but was owned by some other person, who incidentally also filed an eviction petition against the tenant Company on the ground of materially impairing the value of the rented premises by carving out a passage and a window from the common wall of his set and of the present landlord without his consent. Therefore, there is no merit in the contention of Dr. Sharma that the passage and window in the common wall were not carved out by the tenant-Company unilaterally without the consent of the landlord, but these alterations were voluntarily done by the landlord on the verbal asking of the tenant Company in the year 1981. Therefore, in my considered view, the findings which have been returned by both the Courts below that the alterations in question were in fact carried out by the tenant-Company unilaterally and without the consent of the landlord are correct findings as not even an iota of evidence had been produced on record by the tenant-Company to the contrary.

16. Now, I will deal with the last contention raised by Dr. Lalit Sharma, which was to the effect that even if it is assumed that the alterations were in fact carried out unilaterally by the tenant-Company, even then, the eviction petition filed by the landlord was liable to be dismissed on the ground that the landlord had failed to prove that the alterations so carried out by the tenant-Company had materially impaired the utility of the building of the landlord.

17. The details of material alterations which were carried out by the tenant-Company in the premises of the landlord which were let out by the landlord to the tenant-Company have already been discussed above and the same are not being reiterated. Before proceeding further, it is relevant to take note of the judgments passed by the Hon"ble Supreme Court of India as well as this Court as to what amounts to "materially impairing" the value or utility of the premises. Section 14(2)(iii) of the Himachal Pradesh Urban Rent Control Act, 1987 provides for eviction of tenant on the ground that the tenant has committed such acts as are likely to impair materially the value or utility of the building or tented land.

18. The Hon"ble Supreme Court in *Om Prakash v. Amar Singh and other* (1987) 1 Supreme Court Cases 458 while interpreting Section 14 of the U.P. Cantonment Rent Control Act, 1952 has held:

"5. The Act does not define either the word "materially" or the word "altered". In the absence of any legislative definition of the aforesaid words, it would be useful

to refer to the meaning given to these words in dictionaries. Concise Oxford Dictionary defines the word "alter" as change in character, position. "Materially" as an adverb means "important" essentially concerned with matter not with form. In Words and Phrases (Permanent Edition) one of the meanings of the word "alter" is "to make change, to modify, to change, change of a thing from one form and set to another. The expression "alteration" with reference to building means "substantial" change, varying change the form or the nature of the building without destroying its identity". The meaning given to these two words show that the expression "materially altered" means "a substantial change in the character, form and structure of the building without destroying its identity". It means that the nature and character of change or alteration of the building must be of essential and important nature. In Babu Manmohan Das Shah v. Bishun Das, this Court considering the expression "material alterations" occurring in Section (1)(c) of U. P. (Temporary) Control of Rent and Eviction Act, 1947 observed: "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.

6. In determining the question the Court must address itself to the nature, 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. The legislature intended that only those constructions which bring about substantial change in the front and structure of the building should provide a ground for tenants' eviction, it took care to use the word "materially altered the accommodation". The material alterations contemplate change of substantial nature affecting the form and character of the building. Many a time tenants make minor constructions and alterations for the convenient use of the tenanted accommodation. The Legislature does not provide for their eviction instead the construction so made would furnish ground for eviction only when they bring about substantial change in the front and structure of the building. Construction of a Chabutra, Almirah, opening of a window or closing a verandah by temporary structure or replacing of a damaged roof which may be leaking or placing partition in a room or making similar minor alterations for the convenient use of the accommodation do not materially alter the building as in spite of such constructions the front and structure of the building may remain unaffected. The essential element which needs consideration is as to whether the constructions are substantial in nature and they alter the form, front and structure of the accommodation."

19. The Hon'ble Supreme Court in Om Pal v. Anand Swarup (1988) 4 Supreme Court Cases 545 has held:

"9???..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* (at SCC P. 463) 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 verandah 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. It would therefore follow that when a construction is alleged to materially impair the value or utility of a building, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building."

20. The Hon^{ble} Supreme Court in *Vipin Kumar v. Roshan Lal Anand and others* (1993) 2 Supreme Court Cases 614 has held:

"1. This appeal by Special Leave arises against the order of the Punjab and Haryana High Court in Civil Revision No.11-25 of 1984 dated July 18, 1984 confirming the decree of eviction passed by the Rent Controller and confirmed by the Appellate Authority under the provisions of the East Punjab Urban Rent Restriction Act, 1949 for short "the Act". The ground for eviction ultimately upheld by the Courts below was that the appellant had constructed a wall in the verandah of the demised premises and put up a door which materially impaired the value or utility of the building. Shri Prem Malhotra, learned counsel for the appellant contended that the appellant had not constructed the offending construction. Even if it is so there is no proof adduced by the landlord that by such a construction the value or utility of the building had materially impaired. As such the decree of eviction is clearly illegal. In support thereof he placed reliance on a judgment of this court reported in *Om Prakash v. Amar Singh & Anr.*, A.I.R. 1987 SC 617. The question, therefore, is whether the finding of Courts below concurrently found that the appellant had constructed a wall in the verandah which materially effected the value or utility of the shop is vitiated by law. The building consists of two shops and the appellant was inducted into one such shop. He constructed the wall in the verandah and put up the door. Therefore, it is a finding of fact which we cannot evaluate the evidence and upset that finding. It was also found that the wall was constructed without the permission of the landlord. Due to construction the value or utility of the building have been materially affected. Section 13(2)(iii) provides thus:- "A tenant in possession of a building of rented land shall not be evicted therefrom in an execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the

provisions of this Section (or) in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947 as subsequently amended)".

Clause 3 of sub-section (2) of Section 13 provides that "if the tenant has committed such acts as are likely to impair materially the value or utility 643 of the building or rented land", the Rent Controller may make an order directing the tenant to put the landlord in possession of the building or rented land. If the Controller is not so satisfied, he shall make an order rejecting the application. It is, therefore, clear that if the tenant had committed such acts as are likely to impair materially the value or utility of the building, he is liable to ejectment. The finding recorded by the Controller is that on account of the construction of the wall and putting up a door the flow of light and air had been stopped. He removed the fixtures. So the value of the demised shop has been impaired and utility of the building also is impaired. The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of Clause 3 of sub-section (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb is of the utility or value of the building has been materially impaired. The acts of the tenant must be such that by erecting the wall had materially impaired the value or utility of the demised premises. It is contended by Mr. Prem Malhotra that the landlord should prove as to how it is materially effected and that there is no evidence adduced by the landlord. We find no force in the contention. By constructing the wall, whether the value or utility of the building has materially been impaired is an inferential fact to be deduced from proved facts. The proved facts are that the appellant without the consent of the landlord had constructed the wall and put up a door therein as found of the Rent Controller, the flow of air and light has been stopped. He removed the fixtures. From these facts it was inferred that the value or utility of the building has been materially effected. It is then contended that sub-section (2) of Section 13 gives discretion to the Rent Controller to order eviction while the cases covered under Subsection (3) of Section 13 it is made mandatory to direct eviction of the tenant. Therefore, the Rent Controller has to independently consider and exercise discretion vested in him keeping in view the proved facts to decree ejectment. It is for the landlord under the circumstances to prove such facts which warrant the Controller to order eviction in his favour. The landlord had not proved such facts in his favour. Therefore, the Court had committed illegality in granting the decree of ejectment We find no force in the contention. Undoubtedly the statute, on proof of facts, gives discretion to the court, by Section 13(2) and made mandatory in case covered by Section 13(3), to order eviction. In a given set of facts the Rent Controller, despite finding that the tenant committed such acts which may impair the value or utility of the building yet may refuse grant the relief of eviction. It is for the tenant to plead and prove that the circumstances are such as may not warrant eviction and then the burden shifts on to the landlord to rebut those facts or circumstances. Then the Rent Controller is to weigh pros and cons and exercise the discretion. No such attempt was made by the appellant. So no fault can be laid at the Rent

Controller's failure to exercise the discretion."

21. The Hon'ble Supreme Court in *Gurbachan Singh and another v. Shivalak Rubber Industries and others* (1996) 2 Supreme Court Cases 626 has held:

12. Section 13(2) (iii) of the Act which provides a ground for eviction of tenant reads as under :-

"13(2) (iii).-The tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land". A plain reading will go to show that it contemplates that a tenant is liable to eviction who has committed such acts as are likely to impair materially the value or utility of the building or rented land. The meaning of the expression "to impair materially" in common parlance would mean to diminish in quality, strength or value substantially. In other words to make a thing or substance worse and deteriorate. The word "impair" cannot be said to have a fixed meaning. It is a relative term affording different meaning in different context and situations. Here in the context the term "impair materially" has been used to mean, considerable decrease in quality which may be measured with reference to the antecedent state of things as it existed earlier in point of time as compared to a later stage after the alleged change is made or affected suggesting impairment. Further the use of the word "value" means intrinsic worth of a thing. In other words utility of an object satisfying, directly or indirectly, the needs or desires of a person. Thus, the ground for eviction of a tenant would be available to a landlord against the tenant under Section 13(2) (iii) of the Act, if it is established that the tenant has committed such acts as are likely to diminish the quality, strength or value of the building or rented land to such an extent that the intrinsic worth or fitness of the building or the rented land has considerably affected its use for some desirable practical purpose. The decrease or deterioration, in other words the impairment of the worth and usefulness or the value and utility of the building or rented land has to be judged and determined from the point of view of the landlord and not of the tenant or any one else. This Court while dealing with the provisions of Section 13(2) (iii) of the Act in the case of *Vipin Kumar v. Roshan Lal Anand & On.*, [1993] 2 SCC 614 expressed the view as follows:

"The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of clause III of sub-section (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb is of the utility or value of the building has been materially impaired. The acts of the tenant must be such that erection of the wall had materially impaired the value or utility of the demised premises".

13. In the instant case before us as discussed in the foregoing paragraphs it is distinctly clear that the tenant-respondents have constructed a lintel roof over all the S shops No. 2 to 6 by removing their original roof and they not only removed the intervening or partition walls of the shops but also removed the doors of the 5 shops and converted them into sheds, store and kothries. They also converted

the verandah in front of the shops into sheds by closing it from the front by masonry work. The door of shop No. 2 has been removed altogether and instead a small window with iron grills has been affixed in the front. The full size door of shop No. 3 has also been removed and a door measuring 3 x 7" has been installed in front of the verandah by merging the shop No. 3 into that part of the verandah. Similarly shop No. 4 has also been merged with the verandah by removing the door of the shop and fitting a door in the verandah itself in order to make it a godown. Shops No. 5 and 6 have also been merged with the part of the verandah in front of those shops with masonry work. The 17 ft long and 5 ft 9 inches high boundary wall existing on the western side of the demised land touching the kothi of Chander Muni respondent No. 1 A has been demolished so as to facilitate a passage from the Kothi of respondent No. 1 A to demised premises by fixing one big wooden door and another steel door in place of the demolished boundary wall, A small triangular shaped kothri has also been constructed and a brick stair case has been raised in order to facilitate an access from the courtyard of respondent No. 1 A to the roof of the shed made over the demised land as a direct approach.

14. Thus, from the above mentioned facts it is clear that even if it is assumed that the tenant respondents raised the construction of shed over the part of the open land of the demised premises with the written consent of the landlord as may be spelt out from the rent note Ext. A/1, then the rest of the construction, additions and alterations of the 5 shops and the verandah in front of the said shops of a permanent nature, will certainly amount to acts as have or likely to have impaired materially the value or utility of the building/premises let out to them. The nature of the construction is relevant consideration in determining the question of material impairment in the value or utility of the building or the demised premises. In the present case the removal of the roof of the shops partition walls and the doors, laying of a roof, merging of the verandah with the shops, closing the doors and opening new doors and windows and converting the premises altogether, giving totally a new and a different shape and complexion by such alteration would certainly be regarded as one involving material impairment of the premises affecting its Fitness for use for desirable practical purpose and intrinsic worth of the demised premises from the point of view of the appellant-landlords within the meaning of Section 13(2) (iii) of the Act. The High Court, therefore, fell in patent error in dismissing the revision in limine without going into the correct legal position involved in the case. Having regard to the facts and circumstances discussed above, we are of the firm view that this is a case which squarely falls within the mischief of the provisions contained in Section 13(2) (iii) of the Act which make the tenant-respondents liable for eviction from the demised premises."

22. The Hon'ble Supreme Court of India in Waryam Singh v. Baldev Singh (2003) 1 Supreme Court Cases 59 has held that order for eviction can be passed only if the landlord proves (a) that the tenant had carried out the construction, (b) that the same was without the consent of the landlord and (c) that the value

or utility had been materially impaired.

23. The Hon"ble Supreme Court of India in *Purushottam Das Bangur and others v. Dayanand Gupta* (2012) 10 Supreme Court Cases has held:

"20. To sum up, no hard and fast rule can be prescribed for determining what is permanent or what is not. The use of the word "permanent" in Section 108 (p) of the Transfer of Property Act, 1882 is meant to distinguish the structure from what is temporary. The term "permanent" does not mean that the structure must last forever. A structure that lasts till the end of the tenancy can be treated as a permanent structure. The intention of the party putting up the structure is important, for determining whether it is permanent or temporary. The nature and extent of the structure is similarly an important circumstance for deciding whether the structure is permanent or temporary within the meaning of Section 108 (p) of the Act. Removability of the structure without causing any damage to the building is yet another test that can be applied while deciding the nature of the structure. So also the durability of the structure and the material used for erection of the same will help in deciding whether the structure is permanent or temporary. Lastly the purpose for which the structure is intended is also an important factor that cannot be ignored.

21. Applying the above tests to the instant case the structure was not a temporary structure by any means. The kitchen and the storage space forming part of the demised premises was meant to be used till the tenancy in favour of the respondent-occupant subsisted. Removal of the roof and replacement thereof by a concrete slab was also meant to continue till the tenancy subsisted. The intention of the tenant while replacing the tin roof with concrete slab, obviously was not to make a temporary arrangement but to provide a permanent solution for the alleged failure of the landlord to repair the roof. The construction of the passage was also a permanent provision made by the tenant which too was intended to last till the subsistence of the lease. The concrete slab was a permanent feature of the demised premises and could not be easily removed without doing extensive damage to the remaining structure. Such being the position, the alteration made by the tenant fell within the mischief of Section 108 (p) of the Transfer of Property Act and, therefore, constituted a ground for his eviction in terms of Section 13(1)(b) of the West Bengal Premises Tenancy Act, 1956.

22. We may at this stage refer to the decision of this Court in *Ranju alias Gautam Ghosh v. Rekha Ghosh and Ors.* (2007) 14 SCC 81 where this Court found that cutting of a collapsible gate by 5/6" and replacing the same without the consent and permission of the landlord was tantamount to violation of Section 108 (p) of the Transfer of Property Act read with Section 13 (1)(b) of West Bengal Premises Tenancy Act, 1956. It is thus immaterial whether the structure has resulted in creating additional usable space for the tenant who carries out such alteration and additions. If addition of usable space was ever intended to be an essential requirement under Section 108 (p) of the Act, the Parliament could have easily

provided so. Nothing of this sort has been done even in Section 13 (1) (b) of the State Act which clearly shows that addition of space is not the test for determining whether the structure is permanent or temporary."

24. A perusal of the judgments referred to above clearly and categorically demonstrate that when a building is given to a tenant for accommodation on rent, it is not open to the tenant to alter it in any manner without the permission of the landlord. Further, when that is the ground for eviction, it is for the Court to find out whether the value or utility of the building has been materially impaired from the point of view of the landlord who is owner of the building. It has been further held by the Hon"ble Supreme Court that nature of construction carried out is a relevant consideration in determining the question of material impairment in the value or utility of the building or the demised premises. It has also been held by the Hon"ble Supreme Court that when a construction is allowed to materially impair the value or utility of a building, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building. Thus, it is apparent that words "materially altered" means "a substantial change in the character, form and the structure of the building without destroying its identity" and this also means that the nature and character of change or alteration of the building must be of essential and important nature. Another important aspect which has to be considered is as to whether the alterations are substantial in nature and they altered the form and structure of the accommodation.

25. In the backdrop of the law discussed above, when we come to the facts of the present case, in my considered view, the findings returned by both the learned Courts below to the effect that not only material alterations were carried out with the demised premises by the tenant Company without the consent of the landlord, the alterations so carried out also had materially affected the value and utility of the premises cannot be faulted with. It has come on record that material impairment which had been carried out by the tenant-Company was that they had carried out the structural changes without the written consent of the landlord by carving out one passage in the shape of an open door in the common wall which separated the set of the landlord from the adjoining independent set and besides this, one small service window was also opened in the wall. Result of this material alteration was that it materially impaired the value and utility of the building because the changes so carried out by the tenant-Company converted two independent sets into a common unit and incidentally these two independent sets were not owned by common landlord. Therefore, in my considered view, it has been rightly held by both the learned Courts below that structural changes carried out by the tenant-Company had materially impaired the value and utility of the premises, which calls for eviction of the tenant Company. Even otherwise, in view of the fact that no perversity has been shown by learned counsel for the petitioners in the findings returned by both the Courts below and neither it has been demonstrated on record that the findings

returned by both the learned Court below are not borne out from the records of the case, in my considered view, no interference is required with the order passed by learned Rent Controller as well as with the judgment passed by learned appellate Court in exercise of its revisional jurisdiction by this Court.

26. It has been held by the Hon"ble Supreme Court in Hindustan Petroleum Corporation v. Dilbahar Singh (2014) 9 Supreme Court Cases 78 that the consideration or examination of the evidence by the High Court in revisional jurisdiction under Rent Control Acts is confined to find out that finding of facts recorded by the Court/authority below is according to law and does not suffer from any error of law. The Hon"ble Supreme Court further held that a finding of fact recorded by Court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, open to correction because it is not treated as a finding according to law.

27. None of the ingredients which have been specified by the Hon"ble Supreme Court warranting interference by this Court in exercise of its revisional jurisdiction could be substantiated by the learned counsel for the petitioners in the order passed by learned Rent Controller as well as in the judgment passed by learned appellate Court.

28. Therefore, in view of findings returned above, there is no merit in the present revision petition and the same is accordingly dismissed with costs. Miscellaneous application(s), if any, also stands disposed of.