
(2017) 11 BOM CK 0096
In the Bombay High Court
Case No : 6464 of 1999

Prafulkumar Damaji Gala

APPELLANT

Vs

Shri. Narayan Govind Gavate

RESPONDENT

Date of Decision : 28-11-2017

Acts Referred:

Bombay Rent Act, 1960, Section 13(1)(a), Section 5(8) -
Transfer of Properties Act, 1882, Section 108(o) -
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(3)(c), Section
10(3)(a)(III)

Citation : (2017) 11 BOM CK 0096

Hon'ble Judges : G.S. Kulkarni

Bench : SINGLE BENCH

Advocate : Prathamesh Kamat, T.N. Tripathi, Mandar Limaye, Yatin Malvankar

Judgement

1. This is a tenant's petition assailing the judgment and order dated 11th August, 1999 of the learned Additional District Judge, Thane whereby the civil appeal of the respondentlandlord against the judgment and order dated 15th October 1996 in Regular Civil Suit No.218 of 1993 passed by the Joint Civil Judge (Senior Division), Thane, dismissing the respondents" suit stands set aside. By the impugned judgment, the respondents" eviction suit is partly decreed interalia directing to the petitioner to deliver to the respondent vacant possession of the "back side suit residential premises".

2. In nutshell the facts are :The respondent Narayan Govind Gavate (since deceased) was the owner of the chawl situated at Survey No.365/52 known as Gavate Chawl situated at Vithawa Taluka and District Thane, which is within the limits of Thane Municipal Corporation. In this chawl, a tenement consisting of three rooms was let out to the petitioner in the year 1976 (for short "the suit premises"). The total area of these three rooms/suit premises was 300 sq.ft. The suit premises were let out to the petitioner for the purpose of business and residence. In the front room, the petitioner was undertaking business of a grocery shop, while in the rear two rooms as averred in the plaint, the petitioner

was residing with his family members. Respondents 1(a) to 1(d) are the legal heirs and representatives of Narayan. For convenience the legal heirs who represent the landlord are referred as "the respondent".

3. There is something which is very peculiar about this tenancy, which the respondentlandlord has subsequently ratified. The respondent has averred in the plaint that at the inception of the tenancy, the petitioner was minor and his father had taken the suit premises on rent in the name of his minor son. Since inception of the tenancy, the suit premises were used for conducting grocery shop in the front room and the rear two rooms were used for residence. The father of the petitioner was managing the said business. However, on the petitioner becoming a major, he is accepted as a tenant by the respondentlandlord.

4. The rent of the suit premises was Rs.100/per month excluding the taxes and permitted increases. Initially, the suit premises were in the Grampanchayat area. In 1982, the area of Vithawa came to be merged in the area of the newly formed Thane Municipal Corporation. Thereafter, the petitioner willingly started paying rent at the rate of Rs.200/per month.

5. The case of the respondent in the plaint is that the petitioner was not ready and willing to pay monthly contractual rent regularly. The respondent therefore had issued a notice dated 14.10.1985 to the petitioner terminating his tenancy on various grounds. The petitioner replied to the said notice taking false pleas. However, after the receipt of the said notice, the petitioner paid the amount of arrears of rent at the rate of Rs.200/per month. The respondent averred in the plaint that the petitioner had obtained an alternate residential accommodation in Gunsagar Cooperative Housing Society at Kalwa, which was a suitable and convenient accommodation for the petitioner and his family members. This alternate accommodation was comprising of selfcontained two rooms and a kitchen being a flat of an area of 575 sq.ft. The petitioner had shifted to this new premises with his family members and was residing therein. Thus, the petitioner was not in a need of the suit premises.

6. The respondent's case in the plaint was also on the petitioner having changed the user of the suit premises, for which they were let out to him. After shifting to the new alternate premises at Kalwa, the petitioner had started using the entire suit premises for commercial purpose that is for the shop, without the permission and the consent of the respondent. This was objected on several occasions by the respondent. The petitioner had also demolished the wall dividing the two residential rooms and had converted the same in one room. This act of removal of the wall was an act of damage to the suit premises as well as to the chawl. These acts on the part of the petitioner were hit by the provisions of Section 108(O) of the Transfer of Property Act read with Section 13(1)(a) and (b) of the Bombay Rent Act. The petitioner was thus liable to be evicted from the suit premises for changing the user of the rooms as well as causing damage/waste to the suit premises. The petitioner had changed the entire nature of the suit

premises by converting two rear rooms into one big room.

7. The next contention of the respondent in the plaint was that the respondent was in bonafide requirement of the suit premises. He was a retired Government employee and had no source of income. His four sons were unemployed and they were entirely depending upon the respondents. The respondent had decided to start business of a grocery shop with the help of his sons. However, due to shortage of premises, he was not in a position to start the business and thus the respondents bonafide and reasonably required the suit premises for his business as well as for the residential purposes. It is further averred that also the existing residential accommodation of the respondent was not sufficient. It was stated that the financial position of the petitioner was sound and healthy and that no harm or prejudice would be caused to the petitioner, if decree of possession was passed against the petitioner. In paragraph 9 of the plaint, the respondent also averred that the petitioner was causing nuisance to the respondent and his family members as the petitioner was dumping waste material around the suit premises, the adjoining occupants on several occasions and made complaints in that regard. It is on these facts, the regular Civil Suit (Regular Civil Suit No.283 of 1999) was filed by the respondent before the Civil Judge (Senior Division), Thane.

8. The petitioner appeared and resisting the suit filed his Written Statement. The petitioner admitted the contents of paragraph 1 and 2 of the plaint, wherein the respondent had categorically averred that the suit premises consisted of three rooms and the front room was used for the purpose of business of conducting a grocery shop and the rear two rooms were used for the purpose of residence of the petitioner and his family members. As regards the alternate premises at Kalwa, the petitioner stated that he had no concern with the flat at Kalwa as he was residing and doing his business in the suit premises. He stated that he was also holding a ration card for the suit premises. In dealing with the averments in paragraph 6 of the plaint, the petitioner denied the change of user of the suit premises and that he had not converted the suit premises for commercial use. The petitioner averred that he was doing business in the part of the suit premises and was residing in the other part of the suit premises. The petitioner contended that he had not demolished the wall between the two rear rooms of the suit premises and that he had not caused any damage to the suit premises. The petitioner denied the case of the respondent on bonafide requirement. The petitioner further averred that the petitioner was paying monthly rent of Rs.200/ per month regularly. The petitioner, accordingly, prayed that the suit be dismissed, as there was no cause of action.

9. On the above rival pleas, the parties went on trial. The learned trial judge framed ten issues. The learned trial judge considering the evidence on record held that the petitioner was not a defaulter in payment of monthly rent. It was held that the respondent could not prove that the defendant had acquired suitable alternate accommodation at Kalwa. In reaching to the above conclusion,

the learned trial judge referred to the voters list of the area (Ward No.76 for the year 1995 and 1993) (Exh.24 and 25) wherein alongwith other family members, name of the petitioner and his wife finds a mention. However, on the contrary evidence produced on behalf of the respondent, it was observed that the name of the petitioner was recorded in the voters list of both the constituencies namely of the alternate premises at Kalwa and where the suit premises are situated. The learned trial judge further held that the alternate premises were not acquired by the petitioner, but by his father, and therefore, there is no case for petitioner to be evicted from the suit premises under Section 13(1)(I) of the Bombay Rent Act. The learned trial judge held that the respondent could not prove that the petitioner had changed the user of the premises and was using the entire suit premises for commercial purpose without the permission of the respondent. In reaching to this conclusion, the learned trial judge referred to the report of the Court Commissioner. On the basis of this report, the learned trial judge came to the conclusion that the report indicated that the Commissioner found small bed, racks, some utensils and some household articles as cups and saucer, plates, spoons, refrigerator etc., which were sufficient to come to the conclusion that the petitioner was residing in this suit premises. The learned trial judge observed that the suit premises were taken predominantly for commercial purposes and thus if some commercial articles are kept in the rear side of the suit premises it did not matter. As regards the removal of the wall dividing two residential rooms, the learned trial judge observed that this was a new ground, invented by the respondent for the eviction of the petitioner, as the termination notice dated 14.10.1985 did not mention about removal of the wall dividing two residential rooms. It was observed that the report of the Commissioner (Exh.51) showed that there are still two rooms divided by a wall with one door, and therefore, the story of conversion of the three rooms into one room cannot be accepted on evidence. The learned trial judge observed that as there was no document in writing, it cannot be said that the main purpose of letting out the suit premises was residential use. It was held that the dominant purpose to let out the suit premises was for a grocery shop. As regards the bonafide requirement and hardship of the respondent, the same was answered against the respondent. On these observations, the learned trial judge dismissed the suit of the respondent by the judgment and order dated 15th October 1996.

10. The respondent being aggrieved by the said judgment and order passed by the learned trial judge filed an appeal before the Court of Additional District Judge at Thane (Civil Appeal No.6 of 1997).

11. The appellate Court reversed the findings of the learned trial judge in the impugned Judgment and Order dated 11th August 1999, and held that the petitioner had changed the user of the suit premises. It was held that the petitioner had acquired alternate vacant possession of the suitable residence viz. the premises at Kalwa. It was further held that the petitioner had committed an act of waste by removing the wall between the two rear rooms. As regards case of bonafide requirement of the respondent, as also the issue of nuisance as being

urged by the respondent, it was answered in favour of the petitioner. In considering the report of the Court Commissioner, it was observed that merely because a bed and some utensils like cups, saucers, plates, wooden stools, etc. were found in the suit residential premises, it cannot be said that the suit premises have been used for the residential purpose. It was observed that the Court Commissioner found a huge refrigerator in the suit residential premises and that the same was used for commercial purpose as the petitioner was selling milk and bottles of soft drink and other eatables, which also indicated that there was change of user of the residential premises to a commercial use. It was observed that there was no necessity to keep such refrigerator for the respondent to stay alone in the residential portion of the suit premises when there was no dispute that the petitioners' wife had expired and case of the petitioner that he was staying alone in the suit premises. It was further observed that the respondent had stored notebooks, sacks containing foodgrains and articles meant for sale in the said residential portion of the suit premises. It was also observed that it was not in dispute that the suit premises originally comprised of three rooms in a row, first room was being used for the shop and two backside rooms were used for residence as evident from paragraph 2 of the plaint and the reply of the petitioner to paragraph 2 in the written statement. The learned appellate judge thus observed that the evidence on record was clear to the effect that the suit premises was found to be comprising of two rooms, one front room wherein the grocery shop was being conducted and the rear comparatively big room, created by removal of the one middle wall between the middle room and the rear room, thereby connecting two rooms into one single room. The learned appellate judge held that the removal of the wall amounted to an act of committing waste of the leased premises. The appellate Court by its Judgment and Order dated 11th August 1999 thus partly decreed the suit in the following terms : "ORDER

The appeal is partly allowed with proportionate costs. The Judgment and decree passed by the lower Court are set aside and the suit is partly decreed with proportionate costs. The respondent do deliver vacant possession of the backside suit residential premises to the appellate with proportionate costs of the suit and the appeal and been his own costs. The respondent has given time till the end of December 1999, to deliver vacant possession of the suit residential premises. An enquiry may be held under Order 20 Rule 12(1)(c) of the Code of Civil Procedure, to determine future mesne of the suit residential premises from the date of the suit till the delivery of the possession. The Appeal and the suit are dismissed far as the front room used for the shop is concerned.

Decree shall be drawn up accordingly."

12. Being aggrieved by the judgment and order passed by the appellate Court, the petitioner is before this Court in the present proceedings.

13. The learned Counsel for the petitioner in assailing the impugned judgment and decree of the Appellate Court has made the following submissions: (i) The

appellate Court has erred in recording a finding that the petitioner had acquired alternate vacant possession of suitable premises. It is submitted that the suit premises were let out by the respondent to the petitioner on a composite tenancy i.e. for residence as well as business. It is submitted that the decree on the ground of acquiring alternate suitable premises is a decree under Section 13(1)(I) of the Bombay Rent Act 1947, which is not applicable to a composite tenancy as the same is restricted to tenancy which is given for residential purposes. To support this submission, reliance is placed on the decision of a learned Single Judge of this Court in the case of "Tarachand Hassaram Shamdasani v. Durgashankar G. Shroff & Ors., 2004 (Supp.1) Bom.C.R.333,". (ii) The petitioner has not changed the user of the suit premises. This issue has been decided by the appellate court on inference. The report of the Court Commissioner (Exh.51) was appropriately considered by the learned trial Judge. However, the same report has been considered differently by the learned appellate Judge. Thus, the findings of the learned appellate Judge are perverse as the learned appellate Court was not justified in substituting its view for the view of the trial Judge on the same evidence.

(iii) The findings of the appellate Court that the petitioner was guilty of causing acts of waste is erroneous, in as much as there was no admission as regard demolition of the wall. At the most, the admission was for the number of rooms, which were admitted by the petitioner to be three rooms. There was no express admission admitting demolition. On the contrary, the petitioner had expressly denied in paragraph 6 of the written statement of the demolition of the wall as alleged by the respondents. The respondent could not succeed in proving his case that the wall is demolished by the petitioner. Thus, the appellate Court ought not to have decreed the suit based on inference as drawn in the report of the Court Commissioner, which indicated that the suit premises had two rooms. The inference being that one wall must have been pulled down by the petitioner. It is submitted that there was no direct evidence on pulling down of the alleged wall. So as to attract Section 13(1)(a) of the Bombay Rent Act, the respondent was required to plead and prove damage to the property. However, there was no evidence to show that there was any damage to the structure. In support of this submission, reliance is placed on the decision in case "(i) Dattatraya Ramchandra Sapkal Vs. Gulabrao Tukaram Bhosale, 1978 BCI 68, (ii) Waman Limbaji Ashtekar & Co. & Anr. V. Kantilal Maganlal Parekh & Anr., 1984(1) Bom.C.R.546, (iii) Narayan Bansilal (deceased) v. Bright Brothers & Ors., 1979 Bom C.R.288, (iv) Ratanlal Bansilal & Ors. V. Kishorilal Goenka & Ors., AIR 1993 Cal 144 (FB), (v) Om Pal v. Anand Swarup, (1988) 4 SCC 545 ."

(iv) It is next submitted that the decree of the Appellate Court tantamounts to splitting of tenancy. The Appellate Court having rejected the respondent's case of bonafide requirement, has rejected decree qua the premises used by the petitioner for commercial purposes, and a decree has been granted by the appellate Court in respect of the rear rooms of the suit premises which was used by the petitioner for residential premises. Such a decree is not permissible as it

tantamounts to splitting of tenancy. It is submitted that a composite tenancy entitles the tenant to use any part of premises for residential or commercial purposes and the same can be used interchangeably. The Court could not pass a partial decree of this nature which literally splits the tenancy. Unless law permits, no Court can pass a decree thereby splitting the tenancy. In support of this submission, reliance is placed on the decisions in "T.S. Subramanian (Dr.) v. Andhra Bank Ltd., AIR 1989 SC 1420, and S. Sanyal v. Gian Chand, AIR 1968 SC 438.

14. On the other hand, learned counsel for the respondent in support of the findings of the appellate Court has made the following submissions : (i) Admittedly, the suit premises comprised of three rooms as let out to the petitioner in the year 1976. There was no dispute that the front room was to be used for commercial purpose and the rear side two rooms were to be used for residential purpose. To this effect, specific averments in paragraph 1 and 2 of the plaint are admitted by the petitioner. It is submitted that when such original nature of the suit premises when the tenancy was created, was disturbed and not in existence, the only conclusion which can be drawn was that the petitioner had indulged in making permanent alterations to the suit premises and in the present case, without the prior written permission of the landlord. Thus, on the clear evidence on record, the respondent was entitled to a decree under Section 13(1)(a) of the Bombay Rent Act. (ii) It is submitted that the appellate Court considering the evidence has rightly held that the petitioner had demolished the innerwall in between the two residential rooms and had converted three rooms into two rooms. The appellate Court thus has appropriately reached to the conclusion that the petitioner had also changed the user of the premises by using the rear portion of the suit premises for commercial purpose by storing the goods and thus the respondent's case was clearly within the purview of Section 13(1) (a) of the Bombay Rent Act.

(iii) The findings as recorded by the appellate Court that the actions on the part of the petitioner to demolish the wall between the two residential rooms also amounted to waste cannot be said to be perverse. The removal of the wall was clearly an act of waste and within the purview of Section 13(1)(a) of the Bombay Rent Act.

(iv) The appellate Court has rightly interfered with the findings as recorded by the learned trial Judge who had erroneously held that the dominant purpose for which the premises were let out was commercial purpose.

(v) It is submitted that the learned trial judge was in an error in recording a finding relying on the notice of the respondent dated 14.10.1985 to observe that removal of the wall was not referred in the said notice. It is submitted that no notice was required under the Bombay Rent Act to determine a tenancy and thus, the findings of the learned trial Judge in this regard were erroneous and rightly interfered by the appellate Court. This submission is being supported by relying on the decision of the Supreme Court in the case of "V. Dhanpal Chettiar

Vs. Yesodai Ammal, (1979) 4 SCC 214".

(vi) The learned trial Court was not correct to apply the principles of dominant and servient user as it was not germane to the issue involved in the facts of the case as the tenancy was clearly defined for a composite purpose and the tenant had admitted that the front room was used for commercial purpose and the rear two rooms were used for residential purpose.

15. I have heard learned counsel for the parties and with their assistance, I have also perused the impugned judgment of the learned trial judge as also the judgment of the appellate Court. I have also perused the records and proceedings.

16. At the outset, it needs to be observed that as seen from the averments made in paragraph 1 and 2 of the plaint and the reply to it in paragraph 2 of the written statement the petitioner has not disputed that the suit premises consisted of three rooms. The front room being used by the petitioner for doing business of grocery shop, while the rear two rooms being used for residence. There is thus a clear bifurcation of the suit premises for commercial and residential purpose. Such admission of the nature of tenancy cannot be overlooked. Proceeding on this admission of the petitioner and to ascertain the correctness of the rival pleas, the learned trial judge had appointed a Court Commissioner to undertake an inspection of the suit premises and to make a report to the Court. Accordingly, the Court Commissioner made his report dated 09.08.1996 (Exh.51) setting out a complete description in regard to the structure of the suit premises and its user by the petitioner. There is no dispute on the report of the Court Commissioner. As seen from both the judgments of the Courts below, it appears that there is no dispute that though the suit premises as let out to the petitioner consisted of three rooms, however, what actually existed as on the date of the visit of the Court Commissioner were only two rooms. The existence of two rooms could only be by removal of one of the wall between the two residential premises, thus is an appropriate observation of the learned appellate judge on appreciation of evidence and cannot be said to be perverse.

17. As observed by the Courts below the front room as used for conducting the shop, appears to be intact, and on the rear side, there is now only one room which is a bigger room instead of two rooms. In my opinion, considering the evidence on record, the appellate Court has correctly negatived the findings as recorded by the learned trial judge on the issue of the petitioner changing the nature of the suit premises by converting into two residential rooms into one big room without the prior written consent of the respondentlandlord as the law would require, thereby causing damage to the suit premises. The observation and findings of the learned trial judge in answering issue No.4 were patently erroneous and were rightly interfered by the appellate Court. The learned trial judge on the sole basis of the respondent's notice dated 14.10.1985 could not have come to a conclusion that the removal of the wall was a new theory and/or an afterthought and was subsequently introduced by the respondent, when there

was a clear admission on the part of the petitioner in the written statement, in accepting the description of the suit tenancy as granted being of three rooms. However, the clear position on record was that there were only two rooms in existence. The Petitioner could not prove that this was not the correct factual position. There was no explanation from the petitioner much less acceptable, to show as to how the nature of the suit premises changed from three rooms into only two rooms. Thus the indefeasible conclusion which could be drawn was that the petitioner had removed one wall to convert the two residential rooms into a one bigger room. There cannot be any other conclusion, which could be deduced from the evidence available on record and as rightly observed by the appellate Court. It is significant that there was no material to show that the petitioner had taken prior permission to undertake any structural change or removal of the wall between the two residential rooms and thus as held by the appellate Court, rightly the provisions of Section 13(1)(a) of the Bombay Rent Act were applicable. The contention as urged on behalf of the petitioner that such structural alteration would not amount to waste of the suit premises to seek eviction under Section 13(1)(a) of the Bombay Rent Act, also cannot be accepted. This for the simple reason that the petitioner could not have made a permanent structural alteration of such nature to the suit premises, demised to him. The law does not confer any right on a tenant to act in such manner unless permitted by the landlord to undertake such changes, which only the landlord can do.

18. Thus, it was not open to the petitioner to structurally alter the suit premises by converting two rear rooms into one room by removing one wall. The wall is admittedly part of a building and definitely act of removal of wall amounts to causing a damage to the suit premises and a permanent injury to the larger premises of which the suit premises is a part. Further the nature of the structural alteration, as undertaken by the petitioner has substantially changed the character of the demised premises and thus, necessarily such acts on the part of the petitioner amounted to waste of the suit premises attracting Section 13(1)(a) of the Bombay Rent Act and entitling the respondent to a decree of eviction of the residential premises.

19. The change of user from residential to commercial is also corroborated from the fact that the petitioner was not residing in the two residential rooms in the suit premises and in fact was using the suit premises partly as commercial premises by not residing in the rear two rooms. The petitioner had admitted in the cross examination that his father is head of the family and at the relevant time prior to the acquisition of the alternate premises, the petitioner alongwith his father was residing in the suit premises. There is evidence on record that the notice dated 14.10.1985 (Exh.22) terminating the tenancy was received by the petitioner at the address of the alternate premises at Gunsagar Coop. Housing Society at Kalwa. The petitioner admitted in the cross examination that this notice was issued at the address of the said residential premises and at that time, the age of the petitioner was about 15 years (a minor) and thus the observation that a child of 15 years cannot be said to be residing separately, in

my opinion, is a plausible observation as derived from the evidence on record. The new residential premises were admittedly purchased by the father of the petitioner, when the petitioner was aged about 15 years, at that point of time, the father of the petitioner was conducting the suit shop as shop license was in the name of the petitioner's father. Even in the application, which was filed by the petitioner for fixing of standard rate (MA No.400/1991) the petitioner had stated his address of the said new premises namely flat at Antariksh Building, Gunsagar Society.

20. Resultantly, there was no infirmity in the appellate Court reaching to a conclusion considering the nature of the evidence, that as the residential use of the two rooms was changed by the petitioner to a commercial user, the respondent had become entitled to a decree of possession under Section 13(1) (a) of the Bombay Rent Act.

21. The Bombay Rent Act certainly would not afford a protection to such dubious acts of holding to the suit premises in some manner. In fact in the present case it is clear that it is the Petitioner's father who was the person conducting business as the shop license stood in his name. The Petitioner was a minor of five years of age when the tenancy was created, although respondent has not raised any objection overlooking that the basic creation of the tenancy in favour of the minor was itself an illegality. The Court in this petition filed under Article 226 and 227 of the Constitution would certainly be under an obligation to consider the admitted factual matrix and its non perversity in exercising jurisdiction under these provisions.

22. Now I discuss the decisions as relied on behalf of the petitioner in assailing the decree of the appellate Court under Section 13(1)(a) of the Bombay Rent Act. The reliance on behalf of the petitioner on the decision of this Court in Waman Limbaji Ashtekar & Co. (supra) is not well founded. In this decision the Court had come to the conclusion that there was no evidence to show that the pillars were cut and in the absence of any evidence of pillars having been cut, the mere refusal on the part of the defendant could not be the basis for an adverse inference against the defendant. Such are not the facts of the present case. The present case is not a case where on a mere interference the Court has recorded the findings against the petitioner under Section 13(1)(a) of the Act. In my opinion, this decision would also not assist the petitioner, in view of the clear admission on the part of the petitioner that the suit premises consisted of three rooms and from the material on record the assertion of the respondent is found to be correct that only two rooms existed, which was obviously a consequence of removal of one wall. There is no evidence on record to prove that the landlord undertook any alteration of the suit premises. In view of the clear admission on the part of the petitioner as clear from paragraph 2 of the written statement, there is no reason for this Court to interfere in this admitted factual position.

23. The decision in Dattatraya Ramchandra Sapkal (supra) would also not assist the petitioner. This was a case where there was nothing in the plaint, nor there

was anything in the evidence of the plaintiff to prove his case, that the use of the defendant was damaging the premises and was destructive or permanently injurious to the property. It is in this context, the Court held that the essential ingredients of Section 108(o) of the Transfer of Property Act were neither pleaded nor proved and both the Courts seem to have lost sight of this requirement which is required to be satisfied in a case where the landlord wants to invoke the provisions of Section 13(1)(a) of the Bombay Rent Act, read with Section 108(o) of the Transfer of Property Act. However, at the same time, the Court reaffirmed that the change of user contemplated by Clause (o) of Section 108 of the Transfer of Property Act would include change from user of one kind to another, involving waste, alterations, destruction or damage of the property etc. or amounting to an act of nuisance.

24. The learned counsel for the petitioner in supporting his contention that the appellate Court could not have acted on a mere inference of the learned trial judge being erroneous in appreciating the evidence has placed reliance on the decision of the Division Bench of this Court in *Panjikaran Paulose Joseph & Ors. Vs. Mrs. Kusum Vithal Patil & Anr.*, 1993(2) Bom CR 61. It is contended that only if the findings of the trial Court were to be perverse, then the appellate Court could interfere. In my opinion, there cannot be any dispute on the proposition that any perverse finding would be interfered by either the appellate Court or this Court under the jurisdiction of Article 226 and 227 of the Constitution of India. However, the fact remains that in the present case the appellate Court on a review of the evidence to which it was entitled to undertake, has come to a conclusion that the findings which were arrived by the learned trial judge were *ex facie* perverse and contrary to the evidence on record and/or were supported by the evidence on record. In my opinion this decision thus would certainly not assist the petitioner.

25. In supporting the contention that there is no act of waste as committed by the petitioner, the learned counsel for the petitioner has placed reliance on the decision in the case "*Om Pal v. Anand Swarup (supra)*". The contention of the petitioner is that even if it is to be accepted that the petitioner has removed the wall, it has not materially impaired the value or utility of a building. However, the facts are completely different in the case in hand. Undoubtedly in the present case, there was ample evidence for the Court to come to the conclusion that the petitioner had undertaken permanent structural alteration to the suit premises, thereby changing the nature and character of the suit premises. If the contention as urged on behalf of the petitioner is accepted, then it would be a situation that the tenant enjoys the suit premises as if he is the owner and there is no fetter on his rights to enjoy the tenanted premises. This is neither the legal position nor acceptable under any law. The sanctity of the landlord's right as conferred by law cannot be left to be breached and thus such proposition being made on behalf of the petitioner deserves to be rejected.

26. The reliance on behalf of the petitioner in the case *Ratanlal Bansilal & Ors. V.*

Kishorilal Goenka & Ors. more particularly paragraphs 154 and 157 is not well founded as the evidence on record is clear that the nature of the suit premises has been permanently altered by removing the wall between two residential rooms of the rear portion of the suit premises.

27. On the other hand, the learned counsel for the respondent is correct in relying on the decision of the learned Single Judge of this Court in *Basantilal Chhaganlal Gujrathi Vs. Bhavaribai Raghunath Sikachi*¹¹, which holds that once there is a change of user, then the decree needs to follow, as held in paragraph 8 of the decision, which reads thus : "In the present case, the rentnote specifically mentions that the premises are leased out for dual purposes, viz., the residence and business and trade. In this connection it has got to be noted that the suit premises were used for running a business and as a godown. The learned trial Judge on the appreciation of the evidence rightly came to the conclusion that having regard to the suit premises and in my view rightly held that the respondent was entitled to a decree for eviction on the said ground."

28. There can be no dispute when the learned counsel for the petitioner, relying upon the decision of the learned Single Judge of this 11. 1979 Bom.R.C.35 Court in *Tarachand Hassaram Shamdassani (supra)*, contends that the provisions of Section 13(1)(I) of the Bombay Rent Act would not be applicable when the tenancy is a composite tenancy namely commercial and residential. In this regard, the findings of the learned appellate Judge on the provision of Section 13(1)(I) being point no.4 as discussed in the judgment of the appellate Court cannot be sustained. However, as noted above, there was no impediment for the application of Section 13(1)(a) of the Bombay Rent Act, in the facts in hand when the respondent had come with a specific case asserting application of Section 13(1)(a) of the Bombay Rent Act. In fact, the decree granted by the appellate Court only pertains to the residential premises, which attracts Section 13(1)(a) of the Act, and thus is required to be sustained on the respondent proving the grounds falling under Section 13(1)(a) of the Bombay Rent Act. This for the reason that there was plentiful evidence on record to indicate the permanent structural alteration as undertaken by the petitioner by changing the nature and character of the suit premises from three rooms to two rooms.

29. It may not be correct for the learned counsel for the petitioner to contend that the decree as passed by the appellate Court under Section 13(1)(a) of the Bombay Rent Act would amount to splitting of tenancy, as there is no dispute on the fact that only the front room of the suit premises was being used for the purpose of shop and the rear two rooms were to be used for residence. Thus, there is no cause for any confusion as to why the decree could not have been passed under Section 13(1)(a) of the Bombay Rent Act, in regard to the residential premises, when the respondent had succeeded to prove the permanent structural alteration as undertaken by the petitioner, amounting to waste of the suit premises. The contention as urged on behalf of the petitioner that the decree in question would tantamount to splitting of tenancy, in my

opinion, is also not well founded for the basic reason that the respondent had filed the suit in question seeking a decree on two grounds firstly on the ground of petitioner having acquired alternate suitable accommodation a ground as available under Section 13(1)(l) of the Bombay Rent Act. The second ground as asserted by the petitioner was under Section 13(1)(a) of the Bombay Rent Act, of the petitionertenant having committed an act contrary to the provisions of clause (a) of Section 108 of the Transfer of Properties Act,1882. Admittedly the Appellate Court had awarded a decree under both of these provisions. However, as noted above as Section 13(1)(l) is applicable only to the residential premises, if the decree was to be solely under Section 13(1)(l) of the Bombay Rent Act for the entire premises (which included both commercial and residential) then, it may have amounted to a decree contrary to Section 13(1)(l). However, this is not the position in the present case as the respondent had asserted a ground under Section 13(1)(a) of the Bombay Rent Act to assert that the petitioner had caused permanent alteration to the suit premises without the prior permission of the respondent. It is not in dispute that the provisions of Section 13(1)(a) of the Bombay Rent Act would apply to both the residential and commercial premises as clear from the definition of premises as contained under Section 5(8) of the Bombay Rent Act. Thus, there was no impediment for the appellate court to decree the suit as regards the residential premises more particularly when there was admittedly no dispute between the parties on the demarcation of the suit premises into commercial and residential.

30. On the issue of split tenancy, the reliance of the petitioner on the decision of the Supreme Court in the case of *S. Sanyal v. Gian Chand* (supra) and *T.S. Subramanian (Dr.) v. Andhra Bank Ltd.* (supra) would also not assist the petitioner. In *S. Sanyal v. Gian Chand* (supra) the Court was concerned with the application of the provisions of Section 13(1)(e) of the Delhi and Ajmer Rent Control Act,1952 which was applicable to the premises let out for residential purposes This was a case where part of the suit premises was used for girls" school and rest for residential purpose. The respondentlandlord had instituted a suit for eviction of the petitioner seeking a decree of ejectment in respect of the house and not the nonresidential premises. The relevant ground as asserted was the bonafide requirement. The trial court had dismissed the suit and the same was confirmed by the Senior Subordinate Judge. However, the High Court in a revision petition. The case pertains to the ground raised under Section 13(1)(e) of the Delhi and Ajmer Rent Control Act,1952 which pertains to recovery of premises let for residential purpose and as required bonafidely by the landlord for occupation as a residence for himself or his family. In considering the application of the provision of Section 13(1)(e) in the facts of the case, the Supreme Court in paragraph (3) held as under:

"In the present case the First Appellate Court held that the house was "let out for running a school and for residence". The High Court held that where there is a composite letting, it is open to the Court to disintegrate the contract of tenancy, and if, the landlord proves his case of bona fide requirement for his own

occupation to pass a decree in ejectment limited to that part which "is being used" by the tenant for residential purposes. In so holding, in our judgment. the High Court erred. The jurisdiction "of the Court may be exercised under s. 13(1) (e) of the Act only when the, premises are let for residential purposes and not when the premises being let for composite purposes, are used in specific portions for purposes residential and nonresidential. The contract of tenancy is a single and indivisible contract, and in the absence of any statutory provision to that effect it is not open to the Court to divide it into two contracts one of letting for residential purposes, and the other for nonresidential purposes, and to grant relief under s. 13(1)(e) of the Act limited to the portion of the demised property which "is being used" for residential purposes." However, as noted above the factual matrix in the present case is completely different and clearly the petitioners cannot dispute the applicability of Section 13(1)(a) of the Bombay Rent Act and there is no dispute on the demarcation of the suit premises into commercial and residential.

31. The decision in T.S. Subramanian (Dr.) v. Andhra Bank Ltd.(supra) in my opinion militates against the submissions on behalf of the petitioner on splitting of tenancy. This was a case where the ground floor was leased to the respondent Andhra Bank for a term of ten years. Respondent bank was running one of its branches in the demised premises. The appellant landlord along with the members of his family residing on the first floor of the building. The landlord had sought eviction of the respondent bank on the ground envisaged under Section 10(3)(a) (iii) and 10(3)(c) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The front portion of the ground floor was used for the purposes of business and the back portion which was a small portion was used for the purpose of the agent of the bank to reside. The appellant by an affidavit filed before the Supreme Court had given up his case falling under Section 10(3)(a)(iii) of the Act qua the front premises and thus the landlord's claim had remained only for recovery of possession on the ground of bonafide requirement in respect of the small portion of the residential premises. The appellant ? landlord had succeeded before the Rent Controller as also before the appellate Authority. However, in a revision before the High Court the concurrent findings of the Courts below were set aside. It is in this context the Supreme Court considered as to whether the front portion of the ground floor was substantial or major part of the ground floor and if it was not, then, whether eviction in respect of entirety of the ground floor could be ordered despite the fact that bonafide and reasonable requirement has not been established in respect of the said front portion. The Court in accepting the plea as urged on behalf of the appellant landlord in paragraph 9 held as under: "What emerges, therefore, is that the landlord has established his bonafide and reasonable requirement of the ground floor except the "front portion". Can the eviction petition be dismissed on the ground that the need has not been shown to cover every portion of the leased premises? Or can the Court, where partial eviction is not permissible, make an order granting possession respecting the entire premises, if the need respecting a substantial part of it is established

- The answer to these questions must need to take into account the particularities of the facts of each case and whether the need is held established is in respect of a substantial or unsubstantial portion of the premises. Some observations made in *Mattulal v. Radhe Lal* could be of some assistance. The question arose whether where bonafide requirement of the landlord is established in respect of a part alone of the demised premises and where partialeviction was not enabled by the statute the landlord could ask for possession for whole of the premises. This Court observed :

...The Lohia Bazar shop was given on rent under a single tenancy and even if the requirement of the respondent extended only to a portion of this shop, he had no other option but to terminate the tenancy and seek to recover possession of the whole shop.... Several High Courts have taken the view which appears to us to be proper that where bonafide need for a substantialportion of the leasedpremises is established, and such need respecting a small portion is not shown, the decree for possession of the entire premises may have to be passed, if the provisions of the statutes do not contemplate or enable a splittingup. In the present case, we think that, prima facie, the High Court was not justified in equating the "front portion" referred to in the evictionpetition as intended for the son's business as equitable to the entire portion in which the bank was currying on its banking business. Shri P.P. Singh, learned Counsel, was not able to show to us with reference to the material on record, that the "front portion" represented a substantial portion of the groundfloor. Smt. Kumaramangalam, learned Counsel for the petitioner, submitted that having regard to the very structural disposition and layout of the groundfloor, the "front portion" could only mean the front verandah and, perhaps, a front, room in addition, at the worst. In any case the "front portion" could not, it is urged, constitute a substantial or major part of the ground floor. The conclusion of the." High Court would not be supportable unless it was held that the effect of Dr. Subramainan's affidavit was to delete the "front portion" from the schedule of the evictionpetition.

That may not be a correct construction or understanding of the effect of the affidavit which merely did not press one of the legal grounds. The question which really required to be considered was whether the "front portion" of the groundfloor was a substantial or major part of the Groundfloor and if it was not, then whether eviction in respect of the entirety of the Groundfloor could be ordered despite the fact that bonafide and reasonable requirement had not been established in respect of the said "front portion".

32. In view of the above discussion, eviction decree as granted by the appellate Court on the ground under Section 13(1)(a) of the Bombay Rent Act needs to be sustained and requires no interference. The Writ Petition subject to what is held above, accordingly stands dismissed. No order as to costs.

33. The petitioner shall hand over the suit premises subject matter of the decree of the appellate Court to the respondent within a period of eight weeks from today.