
**Jainath Matadin Chourasia and Premchand Chourasia Vs Gopikishan
Ramgopal Garg and Smt. Anusaya Gopikishan Garg**

Civil Revision Application No. 925 of 2012

Court: Bombay High Court

Date of Decision: March 18, 2013

Acts Referred:

Maharashtra Rent Control Act, 1999 &” Section 16(1)(a)#Transfer of Property Act, 1882 &”
Section 108, 108(o)

Citation: (2013) 4 ABR 1314 : (2013) 3 ALLMR 616 : (2013) 5 BomCR 224 : (2013) 3 MhLj 154

Hon'ble Judges: S.C. Dharmadhikari, J

Bench: Single Bench

Advocate: P.S. Dani, for the Appellant; R.A. Thorat instructed by y Mr. P.J. Thorat, for the
Respondent

Judgement

S.C. Dharmadhikari, J.

Rule. The Respondents waive service. By consent, Rule made returnable forthwith. This Civil Revision Application

challenges the judgment and decree of the lower Appellate Court in Appeal No. 114/2010 dated 28.09.2012.

2. The lower Appellate Court by the order under challenge has proceeded to confirm the judgment and decree of the Trial Court in
RAE Suit No.

139/2005 dated 28.01.2010 on the ground of change of user of the premises by the present Applicants/original Defendants.

3. The Trial Judge had decreed the suit by holding that the Respondents have proved that the premises were not used for a period
of more than six

months prior to the date of filing of the suit and that the Applicant/Defendant No. 1 has changed the user of the suit premises and
from residential

to commercial, that he has acquired alternate residential premises and which are suitable for him and that he had also illegally
parted with

possession of the premises to the Defendant No. 2 in contravention of the provisions of the Rent Control Legislation. Equally, the
ground of

nuisance and annoyance being caused to the Respondents, is also proved. However, the Trial Court held that the acts of the

Applicants/Defendants have not resulted in any damage to the suit premises nor has reduced life of the same although these acts came within the

purview of Section 108(o) of the Transfer of Property Act, 1882. Lastly, the ground of bonafide and reasonable requirement of the landlord is also

held to be proved.

4. It is aggrieved by such a decree that appeal was filed before the Appellate Bench and which appeal has been allowed in part. As a result of

which, the decree of the Trial Court has been set aside to a substantial extent, but is confirmed on the ground of change of user of the suit premises

by the Applicants.

5. Before proceeding to consider rival contentions, it would be proper to note the allegations in the plaint with regard to change of user, which read

as under:-

6. The Plaintiffs state that the Defendant No. 2 above named has been using the said premises for the purpose of storing cloth packages and is

conducting the said premises for the purpose of his business of cloth. The Plaintiffs state that heavy packages and bales of clothes are being stored

in the suit premises and the Defendant No. 2 has also been keeping big packages and bales of cloth in the common passage and he is also storing

the said bales in the common passage with the result that there is nuisance and annoyance caused to the Plaintiffs and to the neighbouring tenants

and occupiers and free ingress and egress to and from their respective premises is being hampered and in fact obstructed.

7. The Plaintiffs further states that during the mango seasons the Defendant No. 2 conducts business of storage and sell of mango and heavy crates

of mango are being stored by the Defendant No. 2 in the suit premises and also in the open passage. The Plaintiffs state that several persons come

to the property for the purpose of purchasing cloth and mangoes during the season due to which there is excessive user of the property. The

Plaintiffs state that the said property is about 100 years old and due to the storage of heavy cloth bales and mango crates the property is being

deteriorated and heavy damage is caused to the same. The Plaintiffs state that due to constant storage and removal of heavy bales and crates the

flooring of the suit premises and that of the passage outside has been damaged and the surface thereof has become uneven. Further as there are

heavy crates the workers of the Defendant No. 2 drag the said crates on the floor, the passage and also down the staircase which has resulted in

damage to the flooring of the premises, common passage and also the staircase. There is also nuisance caused due to the dry hay and grass and

also used papers falling out of the crates and being strewn all over the property. Further rotten mangoes are also weeded out and strewn in the

passage which invites rats and rodents which caused great damage to the property. Further due to the same unhealthy conditions are created in the

property which is hazardous to the life of the occupant of the property.

8. The Plaintiffs state that the Defendants and/or any of them have carried out structural additions and alterations of a permanent nature into and/or

upon the said premises and have thereby committed acts contrary to the provision of Section 108(o) of the Transfer of Property Act, 1882. The

Plaintiffs state that the suit premises is a double room with half partition wall in between. The Plaintiffs state that in the rear portion of the suit

premises the Defendants or any of them have put up a permanent platform admeasuring 6''' x 2 1/2''' with an height of 1 1/2 ft. the same is

constructed of brick missionary with black kudappa stone fitted above the same. The Plaintiffs state that the said construction of a platform has

increased the loading on the property of the Plaintiff which is very old and the property of the Plaintiff has been damaged and the life of the same

has considerably reduced. The Plaintiffs state that the Defendants or any of them have constructed a permanent loft in the suit premises in both the

portions of the said premises. The said loft is constructed by embedding heavy wooden beams in the walls with wooden planks above the same.

The said loft which has been constructed in both the portion of the premises is being used for storage of heavy bales of cloth and mango crates.

The Plaintiffs state that the walls of the premises have been damaged and cracks have found to have occurred in the walls due to the heavy loading

of the loft. The Plaintiffs thus state that the Defendants and particularly the Defendant No. 1 has committed the breach of the terms and conditions

of tenancy and the Defendants are therefore liable to vacate the premises and hand over possession of the same to the Plaintiffs.

6. In the Written Statement, the Applicants/Defendants in paragraph 3 urged that the suit premises have been let out for the purpose of residence

and the dominant user of the same continues to be residence. While dealing with paragraphs 6, 7 and 8 of the plaint, it was stated that the premises

were not used for the purpose of storing cloth packages. The cloths are stored in racks in one part of the outer room of the suit premises which is

not a commercial or business activity and they are stored in day time. The premises continue to be used for residence. Insofar as paragraphs 7 and

8 of the plaint is concerned, what has been stated in paragraphs 7 and 8 of the Written Statement is as under:-

7) With reference to para 7 of the plaint, it is vehemently denied that he is carrying on any business of storing and selling mangoes in the mango

season as falsely alleged. It is denied that heavy crates of mangoes are being stored by the Defendant No. 2 in the suit premises and also in the

open passage as falsely alleged. It is vehemently denied that several persons come to the property for the purpose of purchasing cloth and

mangoes during the season due to which there is excessive user of the property is falsely alleged. The Defendants deny that due to storage of heavy

cloth bales and mango crates the suit property is being deteriorated and heavy damage is being caused to the same as falsely alleged. The

Defendants deny that due to constant storage and removal of heavy bales and crates the flooring of the suit premises and that of the passage

outside has been damaged and the surface thereof has become uneven as falsely alleged. The Defendants submit that as they do not store any

heavy crates as alleged the question of any workers of the Defendant No. 2 dragging the crates on the floor of the passage and also the staircase

does not arise. It is submitted that the allegations are a product of the wild and fertile imagination of the Plaintiffs and the said allegations have been

made with a mala fide view to prejudice the mind of the Hon"ble Court and to create a ground of nuisance when there is not any. It is denied that

there is any nuisance caused due to the dry hay and grass and used papers as falsely alleged. It is denied that any rotten mangoes are weeded out

and strewn in the passage that invites rates and rodents which cause great damage to the property. In fact the said allegations are baseless,

vexatious and frivolous to the knowledge of the Plaintiffs as even though the building is 100 years old as per the admission of the Plaintiffs

themselves it is in an absolute state of dis-repair. The Plaintiffs being the landlords have not fulfilled their part of the duty and responsibility of

maintaining the suit building and are falsely blaming the Defendants. It is vehemently denied that the Defendants are instrumental in creating any

unhealthy conditions in the property that is hazardous to the life of the occupants of the property as alleged.

8) With reference to para 8 of the plaint, it is denied that the Defendants have carried out structural additions and alterations of a permanent nature

into and/or upon the said premises and have committed any acts contrary to the provision of Section 108(o) of the Transfer of Property Act as

alleged. The Defendants submit that the suit premises is in the same form and structure as it was from the inception of tenancy with the knowledge

of original landlord from whom Plaintiff has purchased the suit property. The defendants submit that the loft has been in existence from the

inception of tenancy and that these defendants have not carried out any structural additions and alterations beyond permissible and tenantable

repairs. The defendants submit that the kitchen platform has been erected for the better and more beneficial use of the suit premises. In fact it is

pertinent to note that when it is the case of the Plaintiffs that a platform for kitchen purpose is erected the allegation of usage of the suit premises for

business purpose is unbelievable. The Defendants deny that by any stretch of imagination erection of kitchen platform can be said to increase the

loading on the property of the Plaintiffs as alleged and have caused any damage to the said property as alleged. The defendants deny that they have

constructed a permanent loft in the suit premises in both the portions of the suit premises as alleged. It is submitted that the loft has been in

existence from the inception of tenancy. It is denied that the loft is used for storage of heavy bales of cloth and mango crates as alleged. It is

submitted that the loft is used for storage of normal household items as the space available to the Defendants is very less and the defendant No. 1

is residing in the suit premises with three of his family members therein. The Defendants vehemently deny that the walls of the suit premises have

been damaged and cracks have been found to have occurred in the walls due to the heavy loading of the loft as alleged. The defendants deny that

they have committed any breach of the terms and conditions of tenancy as alleged. The defendants deny that they are liable to vacate the premises

and hand over possession of the same to the Plaintiffs as alleged.

7. On the above allegations, the issues came to be framed and the Plaintiff No. 1 Gopikishan Garg filed his affidavit in lieu of examination-in-chief.

In that affidavit he deposed with regard to the allegation of change of user by stating that the suit premises were let out at monthly rental of Rs. 60/-

. They had been let out to the Defendant No. 1 for the purpose of residence only. He has not been residing in the premises and has illegally and in

contravention of the provisions of the Rent Act allowed the same to be used for business purpose. He has then deposed that the Defendant No. 2

has been inducted in the premises and he is using the premises illegally for storing cloth packages and heavy packages and bales of cloth are stored

in the premises and same are also being kept in the common passage as a result there is nuisance and annoyance caused to the Plaintiffs and to the

neighbouring tenants and occupants.

8. He deposed that during the mango season every year, the Defendant No. 2 conducts business of storage and sale of mango and heavy crates of

mango are stored by the Defendant No. 2 in the suit premises and also in the open passage. Several persons come to the property for the purpose

of purchasing cloth and the mangoes during the season, due to which, there is excessive user of the property. The property is about 100 years old

and due to storage of cloth bales and mango crates, it is deteriorating and heavy damage is caused to the same. Due to constant storage and

removal of heavy bales and crates, the flooring of the suit premises and that of the passage outside the suit premises have been damaged and the

surface thereof has become uneven. The workers of the Defendant No. 2 drag heavy crates on the floor of the passage and also down the

staircase and which has resulted in damage to the flooring of the premises, common passage and also staircase. In these circumstances and by

pointing out as to how there are additions and alterations carried out that he sought to rely upon the fact that the premises have been given only for

residential use, but the user has been changed. The photographs are relied upon by him. He denied the contention that the dominant user of the

premises is residence. The premises have been let out for residential purpose only. What has come on record is that certain information was sought

under the Right to Information Act, 2005 concerning Electricity Meter which has been installed in the premises and in relation thereto, the witness

stated as under:-

26) I had on 27th July 2006 called for information under the Right to Information Act concerning the electric meter mentioned above. The B.E.S.

& T. Undertaking has addressed to me their letter bearing No.CS/DETS/46597/2206 dated 18th August, 2006 informing me that the said meter

was installed for residential purposes on 13th June 1989 and was changed to commercial use on 13th December, 2002. The said letter has been

received by me in the normal course of business. I am producing the said letter. It may be marked as an exhibit. It is tentatively being marked as

Item No. 6.

27) I say that the B.E.S. & T. Undertaking has also addressed to me another letter dated 15th September 2006 informing me that the Defendant

has thereafter and only June 2006 get the said tariff converted to residence. I have received the said letter in the due course of business. I shall

crave leave to refer to and rely upon the said letter. I may be marked as an exhibit. It is tentatively being marked as Item No. 7.

28) I have now obtained another electricity bill of the Defendant which is for the month of October 2006 which will show that the same is now

converted for residential purposes. I thus say that only for the purpose of this suit and at this late stage, the Defendant has managed to get the bill

converted from business to residential purposes. I however say that even as of today business is being carried out in and from the suit premises,

and even today it is not being used for residence.

9. After this extensive examination-in-chief by way of affidavit dated 03.02.2007, the cross-examination of the witness was commenced on

18.04.2007 and in the cross-examination which also went on for several days, he has stated that he is residing in the suit building since 1978. He is

doing the business of yarn. He states that the business has been done in the suit building. The office of business is in Room No. 89-A. That

business is going on from that room for 10 years. Prior to 10 years, he was doing the business of cloth. The witness stated that he is residing in the

Room Nos. 18 and 18A with his wife. He gives information about the family members, on being questioned and insofar as the change of user is

concerned, in the cross-examination it has been stated that it is true that the wife of Defendant No. 1 is no more. He states that the Defendant No.

1 is doing business of mango and Pan. He states that the construction is old as 72-80 years. He states that it is true that in the suit building there are

several commercial premises, but people are doing unauthorized commercial work. Then it is stated that it is not true that all premises were given

on rent for residential purpose, but the landlord granted permission to use them for commercial purpose. He states that it is not true that he is

deposing false with regard to usage of the premises. He states that in the line of the suit premises, every premises are used for commercial purpose.

It is denied that all tenants are keeping their goods in front of the suit premises. It is stated that the Defendant No. 1/tenant has been inducted in the

premises 35-40 years back and by the original owner. However, it is not correct to state that the previous owner let out the premises for both

commercial and residential use. There are certain suggestions given as to the usage of 18 rooms on the first floor and it was tried to be elicited from

him that most of them are for commercial purpose. But, the witness stated that there may be more than 5 rooms for residential purpose. It has been

then stated that several suits are filed. Then he was questioned with regard to business in the name and style Ashish Packing. It is stated that the

area of the suit premises is 210 sq. feet and there is one room having two compartments. It is true that there is a kitchen platform in the premises.

Then it is admitted that all places adjacent to the suit premises are being used for commercial purpose of cloth business. It is true that cloth is

always packaged. Then he stated that he has submitted evidence to show that the Defendant No. 2 is engaged in selling mangoes in mango season.

He has also been questioned with regard to the Electricity Bills. Rest of the cross-examination is not material for the purpose.

10. There are other witnesses examined including the photographer.

11. There is also evidence which has been given by one Surendranath Dubey and the Office Assistant of BEST has also been examined. The

question has been put to one of the witnesses with regard to the business being conducted in the name and style Ashish Packing and the witness

answered that there is Board in the name and style Ashish Packing. Then the Defendant No. 2 entered the witness box and he states that the

Defendant No. 1 is doing business of selling of Pan as a hawker since the beginning at Mulji Jetha Market. It is his case that it is not correct that he

is carrying on business in the name and style Ashish Packing. However, in his affidavit in examination-in-chief at paragraphs 19 to 22 the witness

states as under:-

19) I deny that I have been using the suit premises for the purpose of storing cloth packages as alleged. I deny that the defendant No. 1 or I is

using the suit premises for purpose of conducting any business whatsoever. I deny that heavy packages and bales of clothes are being stored in the

suit premises and in the common passage as falsely alleged. I say that neighbours on both sides of the suit premises are doing business from their

respective premises. The allegations made against the defendants are false. I deny that any nuisance and annoyance is caused to the Plaintiffs and

to the neighbouring tenants as falsely alleged. I deny that ingress and egress, by the Plaintiffs and/or other neighbouring occupiers/ tenants, to and

from their respective premises is being hampered and/or obstructed as falsely alleged. I say that we stack our clothes in one part of the outer room

in the suit premises, which is not commercial or business activity or the purpose of our business during the day. I say that no material is stored in

the suit premises as the suit premises are used by us Defendants for the purpose of our residence. I say that five of us are residing in the suit

premises and the two rooms in our possession are not sufficient for our accommodation, the question of carrying on business from the suit premises

does not arise.

20) I deny that any business of storing and selling mangoes in the mango season is being carried on from the suit premises as falsely alleged. I say

that apart from the suit premises all other tenements on the first floor of the suit building are used for commercial purposes. I say that all these

people are permitted by the Plaintiffs to do their business from their respective premises as well as use the common corridor which is a source of

nuisance and annoyance to me.

21) I say that the Plaintiffs are obtaining huge amount of money unofficially without issuing receipts to these persons and thus they have permitted

them to do business at their whim and fancy.

22) I say that during the mango season the Plaintiffs permit mango sellers to sit in and use the corridor portion of the suit building on all the floors. I

say that the photographs showing the Defendant No. 1 and my son-Ashish clearing the portion of the corridor cannot by any stretch of imagination

be said to show that the Defendants are doing any business of mangoes in the suit premises. I deny that the Defendant No. 1 or I ever carried out

any business of mangoes at any time. I say that the Plaintiffs are interested in evicting us from the suit premises to enable them to make monetary

gains there from by giving the suit premises on license basis to different parties at present commercial rates.

12. He alleges that by colluding with the BEST officials, the Plaintiffs got the Electricity Bill changed from that of residential to commercial user.

There is written complaint filed by him to the Supervisor, C Ward, Consumer Department, BEST, Mumbai on 06.01.2004 stating that the

Electricity Bill charge was converted from residential to commercial wrongfully and for reversing the entries in that behalf. He states that the BEST

did not pay any heed to the complaint dated 06.01.2004. The matter was followed up and later on the BEST converted the Bill from commercial

to residential in or around 2006. He denied the suggestion with regard to the premises being wasted and any case made out u/s 108(o) of the

Transfer of Property Act, 1882. In his cross-examination, he states that there is no cloth business of the Defendant No. 1. His rest of the cross-

examination is not such as needs to be referred to.

13. The Trial Court, on appreciation of this oral and documentary evidence, came to the conclusion that the Defendant No. 1 has not stepped into

the witness box. As far as the Defendant No. 2 is concerned, he was cross-examined and from the material on record including the photographs,

what emerges is that the Defendant No. 2 started his business in the new premises since 2005, but prior thereto from 1992 to 2005, he was doing

the business of cloth in the suit premises. Thus, it is proved that the Defendant No. 2 has been using the suit premises for the purpose of business of

cloth and storage of mangoes. Therefore, even if he is family member of the Defendant No. 1, still the premises have been let out for residential

purpose only and they were used for business purpose and thus, the change of user is proved. The learned Judge observed that the Defendants in

the Written Statement stated that the suit premises have been let out for the purpose of residence and user continues to be as residence. In these

circumstances what has been held is that the suit can be decreed on the ground of change of user and after extensively referring to the argument of

the Defendants, the learned Judge held that the suit premises are being used for the commercial purpose. The learned Judge, accordingly, decreed

the suit.

14. The lower Appellate Court has reversed the Decree of the Trial Court on all counts save and except on the ground of change of user and in

that behalf with regard to point No. 3, the lower Appellate Court observed that the change of user of the premises by the tenant enables the

landlord to seek his eviction. As far the issue of change of user is concerned, the lower Appellate Court referred to the pleadings and particularly

with regard to the change of user from residential to commercial by storing heavy bales/packages of cloth in the portion of passage for the ingress

and egress to the suit premises, storing mangoes in the mango season in the part of such passage and they are doing so for the purpose of carrying

on business from the suit premises. These business activities are then referred to and after appreciation of the oral and documentary evidence what

the lower Appellate Court found is that the storage of cloth is in one part of the outer room of the suit premises. Therefore, the argument was

canvassed that the dominant user of the suit premises is for the purpose of residence. The learned Judges, therefore, held that there cannot be so

called dominant user of the suit premises for residential purpose as claimed by the Applicants because Section 108(o) of the Transfer of Property

Act, 1882 does not contemplate part exclusion of any premises from its scope wherein such premises are used for the purpose other than the

purpose for which letting out is done. Then, the electricity bills and other materials are relied upon by the lower Appellate Court and it held that

there is no doubt that the premises are being used for the business and commercial purpose rather than residential.

15. Mr. Dani, learned counsel appearing for the Applicants/Defendants, has assailed this finding of the Courts below by submitting that the lower

Appellate Court has held that even though the original Defendants are residing in the suit premises, but the simultaneous use by them for the

commercial and business purpose does not take their case out of Section 108(o) of the Transfer of Property Act, 1882. Mr. Dani submits that

implicit in this finding is the fact that the residential user is established. If the findings on the issues of nuisance and annoyance and permanent

construction are perused, he submits that, it is clear therefrom that the dominant user of the premises continues to be for residence. Mr. Dani

submits that for the purpose of recording the finding on the issue of permanent additions and alterations to the suit premises and causing nuisance

and annoyance, the Courts below have held that there is no proof that there is any damage or wastage caused and that finding is relevant for the

purpose of determining as to whether there is any change of user. Mr. Dani, therefore, submits that once there is an element of dominant user and

that in this case is proved to be of residence, then, by taking assistance of the findings on the issue of wastage and damage, it can safely be held

that the essential ingredients of Section 108(o) of the Transfer of Property Act, 1882 which are appearing in Section 16(1)(a) of the Maharashtra

Rent Control Act, 1999, have not been established and proved. Mr. Dani submits that the test of dominant user is relevant and he relies upon the

judgments of the Supreme Court in that behalf. If the user of residence is not given go by and the Applicants continue to reside in the premises

and there is no nuisance or destruction, then, the lower Appellate Court should have dismissed the suit in its entirety.

16. Mr. Dani submits that in any event for a Decree to be passed on the grounds available u/s 16(1)(a) of the Maharashtra Rent Control Act,

1999 corresponding to Section 108(o) of the Transfer of Property Act, 1882, it must be established and proved that the value of the premises has

diminished on account of the impugned acts of the tenants causing waste to a great or substantial extent. This aspect has been completely omitted

from consideration by the Courts below. Therefore, the Decrees be set aside.

17. On the other hand, Mr. Thorat, learned counsel appearing for the Respondents/landlords, submits that this is a Civil Revision Application. It

will not be possible for this Court to reappraise and reappraise the oral and documentary evidence on record. In this case when there is

admission in the Written Statement that the suit premises have been let out for the purpose of residence, then, there is no question of dominant

user. If they are let out for residence, then, the law prohibits any commercial activity being carried on leave alone any business. If the nature of the

user has been fundamentally changed, then, it is not open for the Applicants to urge that either dominant user theory or the test of diminishing of

value of the premises should be applicable and must be, therefore, fulfilled. Mr. Thorat has invited my attention to the concurrent findings and in

that behalf he refers to the order of the lower Appellate Court. It has been established and proved not only with reference to the photographs

produced on record, but on the basis of the finding thereon that the storage of cloth has been done regularly in one part of the suit premises. Mr.

Thorat has submitted that the electricity meter installed in the suit premises for residential purpose was changed to commercial purpose. The BEST

may have acted on the basis of the application made by the original Defendants and once again changed the user, but what one finds is that the suit

premises were used for commercial or business purpose rather than residential purpose. Equally, the request to change the tariff from commercial

to residential establishes and proves that the premises were being used for business purpose. Mr. Thorat submits that nothing much can be made of

the observations of the lower Appellate Court in paragraph 18 of its judgment. These observations have been made in the context of considering

the submissions of the Applicants that they continue to reside in the premises. They may have been using the premises for commercial or business

purpose, but since they continue to reside therein, the dominant user is residence. In considering that argument the lower Appellate Court has firstly

held that non examination of the original Defendant No. 1 is fatal. Secondly, what the lower Appellate Court has observed and rightly is that the

concept of dominant user or subservient user cannot be read into the Maharashtra Rent Control Act, 1999. Apart therefrom, Mr. Thorat submits

that the lower Appellate Court has observed that the Applicants have abandoned the earlier user of the premises and have been using them for

commercial or business purpose. In that behalf what has come on record is that the business in the name and style Ashish Packing is being carried

on. If Ashish Packing is the business that is being carried on from the premises, then, it is clear that they are using the same for commercial and

business activity. Therefore, he submits that finding of fact in this case need not be disturbed in revisional jurisdiction and same is not vitiated by any

error of jurisdiction or exercise thereof is neither proved to be illegal or vitiated with material irregularity. Therefore, the Revision Application be

dismissed.

18. With the assistance of the learned counsel appearing for the parties, I have perused the Revision Application and all annexures thereto including

the impugned orders. I have also noted that in this case the Trial Judge has decreed the Suit on the grounds of non user, change of user, acquisition

of alternate suitable residential premises, unlawful and illegal parting with possession of the suit premises and nuisance and annoyance. Equally, the

Suit was decreed on the ground of reasonable and bonafide requirement. Insofar as the finding on the issue of change of user is concerned, that

alone is maintained by the lower Appellate Court. The Suit is dismissed on all other grounds. Insofar as that finding is concerned, both the Courts

below have concurrently held that the premises have been used for commercial purpose.

19. I have reproduced the plaint averments in details. These allegations in paragraphs 6 to 8 are sufficient for the purpose of asserting the ground of

change of user.

20. In relation thereto, the Written Statement proceeds on the footing that the suit premises have been let out for the purpose of residence.

However, the dominant user continues to be residence is further assertion. I have also reproduced the relevant paragraphs of the Written

Statement and which would denote that the essential allegations of storage of cloth and mangoes are not seriously disputed. They are reiterated in

the oral evidence. Then what is relied upon are the photographs which would show that the business in the name and style Ashish Packing has

been carried out. These are concurrent findings. Mr. Thorat is justified in placing reliance on the evidence led and the information provided by the

BEST shows that the electricity meter was installed for residential purpose on 13.06.1989 and was changed to commercial user on 13.12.2002.

Mr. Thorat is justified in complaining that it is only when this was noticed and the suit came to be instituted that the Electricity Company was

approached and tariff was converted to residence. In these circumstances what one finds is that the attempt is to show that there is residence which

is maintained and the dominant user is that of residence. The suggestion given to the landlord while he was in the box that no business in the name

and style Ashish Packing was carried out or done in the suit premises, has been denied by him and he firmly stood the cross-examination. The

cross-examination itself is suggestive and the attempt is not to deny the change of user, but to justify the act by questioning the landlord and his

witnesses that there are other rooms or tenements in which commercial activities are going on. It has been denied that the storage of heavy goods is

not in the suit premises, but in the passage. It has been throughout found that this storage is in the suit premises. Even the witness who has taken the

photographs has proved that fact.

21. As far as the Applicants' evidence is concerned, the original Defendant No. 1 did not enter the witness box. The Defendant No. 2

(Premchand Chaurasia) entered the witness box and in his examination-in-chief itself he stated that the suit premises have been let out for the

purpose of residence and the user of the suit premises continues to be for residence. He does not assert as stated in the Written Statement that the

dominant user continues to be residence. He states that the premises are used as residence. However, he merely denies that any business in the

name and style Ashish Packing is carried out or that heavy packages/bales of cloth are stored in the suit premises.

22. It is very material to refer to his statement in his examination-in-chief at paragraph 19 running page 139 of the paper book where he states that

I say that we stack our clothes in one part of the outer room in the suit premises, which is not commercial or business activity or the purpose of

our business during the day. I say that no material is stored in the suit premises as the suit premises are used by us for the purpose of our

residence." It is then stated that five persons are residing in the suit premises and two rooms in possession are not sufficient for accommodation. At

the same time, there is denial of any business of storing mangoes in the season is carried out. There is justification that all other tenements on the

first floor are used for commercial purpose. When such is the stand taken in the examination-in-chief, naturally in the cross-examination nothing

much was required to be elicited, but there is an admission therein that the Defendant No. 2 is doing the work related to clothes and cutting and

again returning the same, since 1992. In such circumstances both the Courts did not commit any error in holding that there is no plea of any

composite user. If the Defendant No. 1 did not appear and it is only the Defendant No. 2 who contested the matter and he admitted the case that

the premises were let out for residence, then, I do not see how both the Courts below can be faulted for decreeing the suit on the ground of change

of user.

23. Mr. Dani's arguments are based on the judgment of the Honourable Supreme Court in AIR 1975 1297 (SC) . There the premises were shop

and the Appellant before the Supreme Court was a tenant of the shop. There was demand made for vacating the shop by the Respondents before

the Supreme Court and in the suit which was filed for seeking possession, one of the grounds therein was u/s 13(1)(a) of the Bombay Rent Act,

1947 which is on par with Section 16(1)(a) of the Maharashtra Rent Control Act, 1999. There the allegation was that though the shop was let out

to the Appellant for the purpose of business, he started using it for residence. There was admission that the Appellant was residing in the rear

portion of the shop from July, 1961 as his toe had to be operated upon on account of gangrene and he found it difficult to walk to the shop from

his residence. However, his case was that he never ceased to use the shop for the purpose of business and he carried on business and later on his

son as well, from the very shop. It is in that context that the Honourable Supreme Court considered the findings on the point of dominant user and

held that the District Court's findings on the two issues ought to have been maintained. The High Court was not justified in reversing them. It is in

this context that the dominant or primary user having not undergone any change, the decree of the lower Appellate Court was maintained and the

order of the High Court was reversed. This judgment cannot be of any assistance to Mr. Dani.

24. Then Mr. Dani placed reliance upon other judgment in the case of Sant Ram Vs. Rajinder Lal and Others, . There the Appellant before the

Supreme Court was lessee of a small portion of the shop in Shimla. The Lease Deed discloses no purpose. The suit was filed by the landlord for

eviction on the ground that the premises were being used for the purpose other than one for which they were let out. The Appellant on some days

cooked his food and stayed at night in the rear portion of the shop. It is in that context that the Honourable Supreme Court held that any minor

variation and which does not result in the premises being used for residence as well, will not lead to the eviction of the tenant. It is in that context

the Honourable Supreme Court held that the purpose does not become different. The Honourable Supreme Court clarified that the Appellant

continued to be cobbler and stayed in the shop at night on days when he was running his shop, but left for his home on shop holidays. He has not

converted his user from commercial to residential nor commenced any other business or commercial activities. Therefore, this judgment is of no

assistance to Mr. Dani.

25. Faced with this difficulty, Mr. Dani sought to urge that the judgment of the Honourable Supreme Court in the case of Gurdial Batra Vs. Raj

Kumar Jain, would show that even if any ground u/s 16(1)(a) of the Maharashtra Rent Control Act, 1999 read with Section 108(o) of the Transfer

of Property Act, 1882 is to be made out, it will have to be established that there is injury to the premises. Mr. Dani, therefore, relies on the

concept of injury as a foundation for applicability of clause (o) and that being the basis for the tenant's eviction.

26. Once having dealt with Mr. Dani's argument that this is not a case of dominant user, but complete shift or change of use of the premises from

residence to that of business or commercial activities, then, there is no difficulty in rejecting this argument as well.

27. Mr. Dani is not wholly right in urging that the judgment of Honourable Justice V.C. Daga (as His Lordship then was) of this Court reported in

Suresh Vasant Malegaonkar Vs. Ramabai Keshav Gokhale and Others, culls out a test of the above nature.

28. A closer look at that judgment would show that the facts therein were that the suit premises were let out for running a Typewriting Institute and

Shorthand classes. The tenant carried out these activities for sometime, but in order to supplement his income, he entered into partnership with the

Defendant No. 2 and started running Photo Studio in a part of the said premises in the name and style Raghuvir Art Studio. It is in that context, the

allegations of change of user have been considered. Although the learned Single Judge referred to the decisions in the case of Gurdial Batra v/s Raj

Kumar Jain (supra), prior decision in the case of Mohan Lal Vs. Jai Bhagwan, , so also, the judgment of the Division Bench of this Court in Bright

Brothers (Pvt.) Ltd. and Company Vs. Venkatlal G. Pittie and others, , but referred to the fact that the suit premises before him were and are

continued to be used for the purpose of running business. In that context, the learned Single Judge made the following observations in paragraphs

17, 18 and 19:-

17. It is not in dispute from the narration of facts and the findings recorded by both the Courts below, that the suit premises were and are being

continued to be used for the purposes of running business, even though, subsequent to the creation of tenancy the defendant No. 1 entered into

some arrangement like alleged partnership for running business of photography. The Supreme Court in Gurdial Batra Vs. Raj Kumar Jain, has

observed:

6. Letting of a premises can broadly be for residential or commercial purpose. The restriction which is statutorily provided in Section 13(2)(ii)(b) of

the Act is obviously one to protect the interest of the landlord and is intended to restrict the use of the landlord's premises taken by the tenant

under lease. It is akin to the provision contained in Section 108(o) of the Transfer of Property Act dealing with the obligations of a lessee. That

clause provides:

The lessee may use the property and its products, if any, as a person of ordinary prudence would use them if they were of his own; but he must not

use or permit another to use the property for a purpose other than that for which it was leased....

A house let for residential purpose would not be available for being used as a shop even without structural alteration. The concept of injury to the

premises which forms the foundation of Clause (o) is the main basis for providing Clause (o) in Section 13(2)(ii) of the Act as a ground for the

tenant's eviction. The Privy Council in AIR 1929 108 (Privy Council) adopted the same consideration. The Kerala High Court has held that

premises let out for conducting trade in gold if also used for a wine store would not amount to an act destructive of or permanently injurious to the

leased property (1977 Ker.L.T. 417). Similarly, the Bombay High Court has held that when the lease deed provided for user work and the lessee

used the premises for business in plastic goods, change in the nature of business did not bring about change of user as contemplated in Section

108(o) of the Transfer of Property Act, Dattatraya Ramchandra Sapkal Vs. Gulabrao Tukaram Bhosale, .

7. The landlord parts with possession of the premises by giving a lease of the property to the tenant for a consideration. Ordinarily, as long as the

interest of the landlord is not prejudiced, a small change in the user would not be actionable.

Similarly, in paragraph 7 of the judgment in the case of Mohan Lal v. Jai Bhagwan, the Supreme Court has observed:-

7. Our attention was drawn to a decision of this Court in (Maharaj Kishan Kesar v. Milkha Singh), Civil Appeal No. 1086 of 1964 decided on

10th of November, 1965. That was a decision under the East Punjab Urban Rent Restriction Act, 1949. There on the facts the Court found that

selling petrol was an allied business of the workshop and as such it is a part of the business. The Court held that there is no evidence to show that

in the trade a petrol pump is not regarded as a part of motor workshop business. The sale of petrol is an allied business and would not amount to

conversion to a different business or change of user. There is nothing in the said decision which would give any assistance to the respondent in the

case. The business purposes must be adjudged in the light of the purposes of the Rent Act in question which is to control the eviction of tenants

therefrom. In the expanding concept of business now-a-days and the growing concept of departmental stores. We are of the opinion that it cannot

be said that there was any change of user in the facts of this case which, would attract the mischief of the provisions of Section 13(2)(ii)(b) the Act.

The building was rented for purpose of carrying on a business, using it for another business, it will not in any way impair the utility of damage the

building and this business can be conveniently carried on in the said premises. There was no nuisance created.

It is clear from the above judgments of the Supreme Court that the law laid down by this Court in the case of Bright Brothers v. Venkatlal (supra)

has undergone sea change.

18. In the case of Bright Brothers v. Venkatlal (supra), this Court while interpreting provisions of Section 108(o) of the Transfer of Property Act

was of the view that five categories of the prohibited acts under the second part of Clause (o) are distinct in nature and independent of each other.

Secondly, it was held that first four categories mentioned therein being self descriptive. The concluding words were intended to furnish identity of

the fifth category of undescribed ""any other act"". Thirdly, it was noticed that all the five categories of these acts being separated by cases and

disjunctive ""or"" restricting the application of the descriptive concluding wording to the last category and disconnecting it from the earlier other four

categories. While dealing with and interpreting this part of the section, the Division Bench came to the conclusion that the concluding portion of the

Clause (o) was not applicable to the first four categories of the prohibited acts mentioned therein. In other words, it was applicable only to the fifth

category alone. This view of the Division Bench of this Court was subsequently followed by this Court in Kasturchand Panachand Doshi and

Others Vs. Yeshwant Vinayak Sainkar and Another, . The learned counsel appearing for the respondent Nos. 2 to 7 placed reliance on these two

judgments of this Court.

19. The Apex Court in the case of Gurdial Batra v. Raj Kumar Jain (supra) while dealing with the above part of the submission, which was also

made before it, held as under:

... The concept of injury to the premises which forms the foundation of Clause (b) is the main basis for providing Clause (b) in Section 13(2)(ii) of

the Act as a ground for the tenant's eviction. The Privy Council in AIR 1929 108 (Privy Council) adopted the same consideration. The Kerala

High Court has held that premises let out for conducting trade in gold if also used for a wine store would not amount to an act destructive of or

permanently injurious to the leased property (1977 Ker LT 417). Similarly, the Bombay High Court has held that when the lease deed provided

for user work and the lessee used the premises for business in plastic goods, change in the nature of business did not bring about change of user

as contemplated in Section 108(o) of the Transfer of Property Act.

In view of the law laid down by the Apex Court in Gurdial Batra v. Raj Kumar Jain (supra), the judgment of this Court in the case of Bright

Brother and/or Kasturchand Panachand (both cited supra) cannot be said to be a good law. Thus the findings recorded by the lower Appellate

Court, that the premises were used for the purpose other than that for which it was let out, cannot stand to the scrutiny of law. In view of this, the

findings recorded by the lower Appellate Court with regard to breach of Section 13(1)(a) of the Bombay Rent Act will have to be set aside. The

plaint did not make out any case falling within the sweep of Section 108(o) of the Transfer of Property Act. Consequently, no evidence was led to

the effect that the change of business was destructive of the purpose for which the premises was leased, the adverse findings on this issue recorded

by the Courts below are thus set aside.

29. In this behalf, it would be proper to consider as to what is the position in law as emerging from several decisions of the Honourable Supreme

Court after the Gurdial Batra's case (supra). At least, one decision of the Honourable Supreme Court is delivered prior to the judgment of the

learned Single Judge of this Court in Suresh Vasant Malegaonkar (supra). Hon"ble Mr. Justice Daga delivered his judgment on 10.07.2001.

However, the Honourable Supreme Court in the case of M. Arul Jothi and Another Vs. Lajja Bal (Deceased) and Another, referred to all the

decisions cited before Honourable Mr. Justice Daga and held as under in paragraphs 10, 11, 14 and 15:-

10. Having heard learned counsels for the parties in our considered view the case cited on behalf of the appellants were all those where there was

no specific clause restricting the use of the tenanted accommodation. On the other hand, in the case in hand, there is specific prohibition clause in

the rent deed. In the present case there is specific clause which states shall be used by the tenant only for carrying on his own business and the

tenant shall not carry on any other business than the above said business. By the use of the words only with reference to the tenant doing business

coupled with the last three lines, namely, the tenant shall not carry on any other business than the above said business, clearly spells out the intend

of the parties which restricts the user of the tenanted premises, only for the business which is stated therein and no other. In order to meet this,

learned counsel for the appellant referred to section 108(o) of the Transfer of Property Act and language of Section 10(2)(ii)(b) which are similar

hence he submits interpretation has to be given in a broader perspective, that is the use of building by the tenant should not be such as to damage it

or diminishes its value and restriction if any could be that if it was given for business it should not be used for residential purpose and vice versa.

We have no hesitation to reject this. If such an interpretation is given, it would make any specific term of a valid agreement redundant. Once parties

enter into a contract then every word stated therein has to be given its due meaning which reveals the rights and obligations between the parties.

No part of the agreement or words used therein could be said to be redundant. Such restriction could only be if any statute or provisions of the

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 specifies, which is none. Nor we find any restriction by Section 108 of the Transfer of

Property Act. In fact, Section 108 of the Transfer of Property Act starts with the words in the absence of a contract or local usage to the contrary.

In other words, it permits contract to the contrary mentioned under that Section.

11. So, we come to the conclusion that use of the words in the rent-deed not to use it for any other purpose, it has to be given effect to and hence

Section 10(2)(ii)(b) has to be interpreted to mean that use of building shall not be for a purpose other than that for which the shop was given.

There is specific clause restricting its user thus it has to be used for the purpose given and no other.

12. ...

13. ...

14. However, we find in *Bishamber Dass Kohli (Dead) by Lrs. Vs. Satya Bhalla (Smt)*, where this question was raised that change of business

was not in the substantial part of the building. The Court held (para 6 of AIR):

Shri Mahajan contended that to constitute the ground u/s 13(2)(ii)(b), the change in user should be in respect of at least a substantial part of the

building if not the entire building. The comparison of sub-clause (b) with sub-clause (a) shows that the omission of the word entire before the word

building in sub-clause (b) when the word entire has been used before the word building in sub-clause (a) is deliberate. For this reason, the change

in user of the building required to constitute the ground under sub-clause (b) need not be of the entire building, the word entire being deliberately

omitted in sub-clause (b). Faced with this difficulty, Shri Mahajan submitted that the change of user should be of a substantial part of the building

let out even though not of the entire building. This argument also cannot be accepted in this context. The definitions in Section 2 of the Act show

that even though a scheduled building continues to be a residential building as defined in Section 2(g), a residential building of which even a part is

used for a scheduled purpose, becomes and is called a scheduled building when user of the building is significant or the criterion. Thus, where user

of the building is of significance, a distinction is made in the Act between a residential building which is not a scheduled building and that which is a

scheduled building. This is so in Section 4 of the Act dealing with determination of fair rent wherein fixation of rent is made on the basis of user and

for that purpose a scheduled building is treated differently from a residential building which is not a scheduled building. Same is the position with

regard to the ground of eviction contained in Section 13(2)(ii)(b) wherein change in user of the building is alone significant for constituting the

ground.

(Emphasis supplied)

15. This is a decision by three Hon"ble Judges of this Court. This completely dissolves the submission for the appellant. Learned counsel for the

appellant attempts to distinguish this decision that this was a case u/s 2(h) of the East Punjab Urban Rent Restriction Act, 1949. It defines

scheduled building as one being used partly for business and partly for residence. So even if part is used for residence it continues to be scheduled

building. This distinction would not distract the law laid down therein which is evident from the last line of the aforesaid quoted lines which holds,

Same is the position with regard to the ground of eviction contained in Section 10(2)(ii)(b) wherein change in user of the building is alone significant

for constituting the ground.

30. In all the cases, thus, the emphasis was on the peculiar factual position and intent of the parties. If there was minor or small deviation from the

user, but the user remained essentially the same, then, the eviction was held not be justified, unless other elements of damage or diminishing in value

are proved. However, when the change of user is to such an extent that the premises let out for residence were used for commercial purpose or

the premises let out for business are utilized for a completely different business activity not agreed or intended by the parties, then, the Supreme

Court holds that in such cases there is no requirement of proving damage or diminishing value.

31. If any further reference is required to be made on this aspect, one can usefully refer to another judgment of the Honourable Supreme Court in

the case of Bharat Lal Baranwal Vs. Virendra Kumar Agarwal, . In this context, after referring to the provisions in the U.P. Urban Buildings

(Regulation of Letting, Rent and Eviction) Act, 1972, this is what the Supreme Court held in paragraphs 12, 16, 17 and 18:-

12. If the dominant purpose for which a building is let out is maintained, a tenant may not become liable to be evicted. But if the building is let out

for residential or business purposes and the tenant starts manufacturing activity or vis-a-versa, then it would amount to change of user subject to

the provisions of the Act in reference.

13. ...

14. ...

15. ...

16. For doing an act which was inconsistent, written consent of the landlord was not required, it could be presumed from the surrounding

circumstances or the conduct of the parties but in the case of change of use of the building for a purpose other than the purpose for which it was let

out obtaining of the consent of the landlord in writing was mandatory. For an act done, which was inconsistent with the purpose for which the

premises were let out the tenant was not required to take the written consent of the landlord, but where the premises were put to a use for a

purpose other than for which it was let out then written consent of the landlord was a must. After the amendment of clause (d) the tenant could

neither use the building nor do any act which was inconsistent with the purposes for which the premises was let out without the written consent of

the landlord. In all other respects the provisions of clause (d) remained the same.

17. Admittedly the premises were let out to the respondent for business purposes. He started manufacturing activity in the suit premises without

obtaining written consent of the landlord. This would be a change of use of the premises for a purpose other than the purposes for which it was let

out and not merely an act inconsistent with the purpose for which the tenant was admitted to the tenancy of the building. For change of use of the

building for a purpose other than the purpose for which it was let out written consent of the landlord was required to be obtained u/s 20(2)(d) of

the Act even prior to its amendment. So, the written consent of the landlord was required for change of user of the building for a purpose other

than it was let out prior to as well as after the amendment of clause (d) of Section 20(2) of the Act. The fact, for what purpose the premises was

let out and whether the tenant has changed the user of the premises is jurisdictional fact and it was open to the revisional court to go into the said

questions. In our view, High Court fell in error in holding that the trial court's finding that the premises was let out for operating stitching machine,

rolling machines being finding of Court could not have been set aside by the revisional court. The Revisional Court recorded a finding that even

prior to the amendment of the Act, the tenant used the premises for the purpose other than the premises was let out, without the consent of the

landlord.

18. As the tenant has changed the user of the building from business to manufacturing without the written consent of the landlord before and after

the Amendment of the Act, he became liable to be evicted u/s 20(2) (d) of the Act. High Court thus erred in reversing the well considered

judgment of the Revisional Court.

32. Once again in the case of Hari Rao Vs. N. Govindachari and Others, , a two Judge Bench of the Honourable Supreme Court referred to the

judgments in the field including M. Arul Jothi v. Lajja Bal (supra) and though its attention was not invited to Bharat Lal Baranwal v/s Virendra

Kumar Agarwal's case (supra), it was held in the context of the facts that letting was for the purpose of trade in leather goods. While carrying on

his business, the tenant used a part of the premises for carrying on trade in readymade garments and that does not amount to use of the premises

for other than permitted purpose. After referring to the Sections 10(2)(ii)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the

Supreme Court has held as under in paragraphs 5, 6, 7 and 8:-

5. Admittedly, the building was let out for the purpose of carrying on of a trade by the tenant. There is no lease deed executed by the parties

evidencing the transaction. The evidence indicates that at the relevant time, the tenant wanted to start a business in sale of leather goods,

particularly shoes, and for that purpose he took the building on lease. Exhibit B-1 letter, written by the landlord to tenant referred to and quoted by

the Rent Controller, shows that the tenant was entitled to "continue the tenancy with the present increased rent, on the premises, with all tenancy

rights including the rights of putting up boards and painting on the walls of the portion of the premises, No. 638 at Mount Road, Madras-6 under

your occupation". In his evidence as P.W.1, the landlord stated that he had let out the premises for running a shoe-mart and he had not entered

into any other agreement permitting the tenant to sell readymade garments in the premises. But, there was an agreement to allow him to sell

decoration materials but the tenant was not selling them. There was also a permission to sell fancy goods but that represented only leather goods.

Chappals and socks as well as shoes could be sold from the premises. There was no agreement by which the tenant was permitted to sell clothes

and T-shirts. In his petition for eviction, the landlord had only stated that the tenant had taken the building on lease for the purpose of running a

shoe-mart but the tenant had converted a portion of the shop for selling readymade dresses and this amounted to user of the shop by the tenant for

a purpose other than that for which it was leased. This was disputed by the tenant in his objection, who took the stand that it was generally for the

purpose of his trade that the building was let, though, at the relevant time, he was only conducting a trade in shoes. There was no violation by him

of any term of the letting and there was no user of the shop for a purpose other than the purpose for which it was let out to him. It is necessary to

notice here that there was no plea of the tenant having covenanted not to use the building for any other trade.

6. On the plain terms of the statute, uninfluenced by authorities, it appears to us that user of the building for a purpose other than that for which it

was leased, has to be considered in the context of Section 21 of the Act which prohibits conversion of a residential building into a non- residential

building except with the permission in writing of the controller, any covenant in that behalf entered into by the tenant and the nature of the tenancy.

In other words, when the lease is granted for the purpose of a trade, in the absence of any covenant in the contract between the parties prohibiting

a user different from the particular one mentioned in the lease deed, the tenant would be entitled to carry on any trade in the premises, consistent

with the location and the nature of the premises. In a case where the premises let out for a commercial purpose, is used by the tenant for a

residential purpose, it would be a user for a purpose other than that for which it was leased attracting Section 10(2)(ii) (b) of the Act. Similarly, if a

building had been let out for the purpose of a trade, but a tenant uses the premises for the purpose of manufacture or production of materials after

installing machinery, that would be a user other than the one for which the building was let. User of a building let out for a trade as a godown may

attract the provision. Ultimately, the question would depend upon the facts of a particular case, in the context of the terms of the letting and the

covenants governing the transaction and the general spirit of Section 108(o) of the Transfer of Property Act. Merely because a shop let out for

trade in shoes and other leather goods, is used by the tenant also for the purpose of trading in readymade garments, it could not be held to be a

user by the tenant of the premises for a purpose other than that for which it was leased. It has to be noted that even now, the tenant is carrying on

the business of trading in shoes, which according to the landlord was the purpose for which the building was let. The trade in shoes has not been

stopped by the tenant. All that has happened is, that he has also diversified into selling some readymade garments or T-shirts, the manufacture of

which even some of the manufacturers of shoes have taken up.

7. Learned counsel for the landlord placed considerable reliance on the decision in *M. Arul Jothi and Another Vs. Lajja Bal (Deceased)* and

Another, . That case also arose u/s 10 (2) (ii) (b) of the Act. The transaction between the parties was governed by a lease deed. The tenant

covenanted that the premises, ""shall be used by the tenant for carrying on his own business and the tenant shall not carry on any other business than

the above said business."" The business intended was dealing in radios, cycles, fans, clocks and steel furniture. Subsequently, the tenant also started

a trade in provisions (spices and dals etc.). The landlord sought eviction and the courts below ordered eviction u/s 10(2)(ii)(b) of the Act. The

tenant had appealed to this Court. This Court referred to the earlier decisions of this Court including the one in M.K. Palaniappa Chettiar and

Another Vs. A. Pennuswami Pillai, . It also referred to Section 108 (o) of the Transfer of Property Act. This Court distinguished the various

decisions brought to its notice under other sister enactments and took the view that the covenant in the rent deed not to use the premises for any

purpose, other than the one referred to in the rent deed, brought the user by the tenant within the mischief of Section 10(2)(ii)(b) of the Act and,

therefore, the order for eviction was justified. With respect, as we see it, their Lordships rested their decision on the existence of the negative

covenant in the lease deed and on the view that a breach of that covenant, would attract Section 10(2)(ii)(b) of the Act, and make the user, one

coming within the mischief of that provision. In this case, as observed, there is no covenant as the one involved in Arul Jothi's case. In M.K.

Palaniappa Chettiar and Another Vs. A. Pennuswami Pillai, , the tenant, while continuing the business for which the building was taken on rent, was

using a negligible portion of the building for the purpose of cooking. This Court held that the High Court was in error in reversing the decision of the

Rent Controller and the Appellate Authority to the effect that no ground for eviction u/s 10 (2) (ii) (b) of the Act was made out. This Court

dismissed the petition for eviction. In Mohan Lal Vs. Jai Bhagwan, , this Court, interpreting the corresponding provision in Haryana Urban

(Control of Rent & Eviction) Act, 1973, held that when a tenant who had taken a building on lease for the purpose of running a business in liquor,

converted the business into that of general merchandise, in the absence of a negative covenant, the user did not amount to user for a purpose other

than that for which the building was leased. The same position was adopted in Gurdial Batra Vs. Raj Kumar Jain, , where the premises was let out

for repairing business and the tenant along with the repairing business, also carried on sale of television sets for a while. This Court held that there

was no change of user which would attract the liability for eviction under the corresponding provision of the East Punjab Urban Rent Restriction

Act, 1949. It was clearly stated that the concept of injury to the premises which forms the foundation of Section 108 (o) of the Transfer of

Property Act is the main basis for a provision similar to the one in Section 10 (2) (ii) (b) of the Act. We think that the case on hand is governed by

the principles recognized in the latter decisions and the ratio of the decision in Arul Jothi has no application in the absence of a negative covenant as

the one obtaining in that case. Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data, was a case where the premises was taken on

rent for ""sugarcane crushing with the help of an ox and for the shop thereof"" and the tenant was to get constructed a temporary shed of tin-sheet

for that purpose. The tenant started a cloth business in the premises. The courts below found that this was a user for a purpose other than that for

which the premises was leased and this Court found no ground to interfere. This decision only re-affirms the position that everything would depend

on the terms of the letting and the facts of the case. Obviously, the cloth business started, had no connection with crushing of sugarcane. The

decision in Ram Gopal v. Jai Narain and Ors. 1 , shows that the user by the tenant of a building taken on rent for the purpose of running a shop

(commercial), for a manufacturing purpose, would entail his eviction on the ground of change of user. The tenant, in that case, installed an Atta

Chakki and an Oil Kolhu, in the shop. The case on hand is not one of that nature. In other words, in the present case, there was no change of user,

from non-residential to residential or from business to manufacturing or industrial. As emphasized already, there was also no negative covenant as

was available in Arul Jothi's case. In such a situation, we are satisfied that the High Court was clearly in error in interfering with the decision of the

Appellate Authority that there was no change of user in the case on hand attracting Section 10(2)(ii)(b) of the Act. Merely because a tenant, who

has taken a building for the purpose of running a trade, alters the commodity in which he was trading when he took the building on lease or trades

in other commodities also, he could not be held to be using the premises for a purpose other than the purpose for which it was let. The purpose has

to be understood, as the purpose of trade and in the absence of a covenant barring the using of it for any other trade, it will be open to the tenant

to use the premises for expanding his trade or even for taking up other lines of trade as befits a prudent trader.

8. It is true that this Court has held in Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, , that the Rent Control

Legislation is enacted in the larger interest of the society as a whole and it is not intended to confer any disproportionately larger benefit on the

tenant to the disadvantage of the landlord. But that does not mean that the Rent Control Legislation should not be approached as a beneficial piece

of legislation and with the recognition that reasonable protection to the tenant is one of the objects of that legislation. While construing a provision

of law imposing a liability, for eviction, like Section 10 (2) (ii) (b) of the Act, one must see whether there has been such a change of user of the

premises as to make it alien to the purpose for which the building was let and deny eviction when the basic activity remains the same and there is

only a variation in the manner or mode of carrying on of that activity. Therefore, the interpretation placed on Section 10 (2) (ii) (b) of the Act by

the High Court in the decision under appeal and in some other decisions of that Court referred to in the orders of the Rent Controller and the High

Court, has to be held to be not warranted or justified. The order of eviction passed by the High Court u/s 10 (2) (ii) (b) of the Act has, therefore,

to be reversed.

33. However, in that case the Honourable Supreme Court then considered as to whether the act of the tenant in putting up a new sign board, fixing

two additional racks by drilling holes in the wall and in the beam, taking independent electric connection for which holes have been drilled in the

floor and the wall, amounted to commission of the acts of waste as are likely to impair materially the value and utility of the building. Now that was

because the Honourable Supreme Court observed that the argument was that the tenant had made himself liable for eviction u/s 10(2)(iii) of the

Act and which was pleaded as a distinct ground of eviction, namely, making permanent additions and alterations. In such circumstances the

tenant's petition/ appeal challenging the order of his eviction by the High Court was allowed.

34. All this would indicate that it is really not necessary for me to enter into the controversy as to whether the view taken by Hon^{ble} Mr. Justice

Daga is correct or requires reconsideration. In that context, a decision of the Honourable Supreme Court which was also not cited by the parties

before the learned Judge, in the case of Jagdish Lal Vs. Parma Nand, , makes the position further clear. The Honourable Mr. Justice S. Saghir

Ahmad (as His Lordship then was) speaking for the Bench referred to the earlier decisions till then, and then held thus:-

18. On a consideration of these decisions, it comes out that where the new business started by the tenant in the premises let out to him was an

allied business or a business which was ancillary to the main business, it would not amount to change of user. It is true that where a premises is let

out for commercial purposes, carrying on of a new business activity therein would not change the nature of the building and it would still remain a

commercial building. But that is not enough. Having regard to the provisions of the Act and the intendment of the Legislature in providing that the

tenant would not use the premises for a purpose other than that for which it was let out, the new business should either have some linkage with the

original business, which under the agreement of lease the tenant was permitted to carry on, or it should be an allied business or ancillary to that

business. Where local laws provide a specific prohibition in respect of the use of the premises under the Rent Legislation and that provision has

been interpreted in a particular manner by the High Court consistently, it would not be proper to disturb the course of decisions by interpreting that

provision differently.

35. Thus, what one finds is that there is always a distinction made by the Honourable Supreme Court in the sense that the use of the building for the

purpose other than for which it was let out, is a ground of eviction. The object is that the parties are bound by the agreement between them

including the condition of user of the leased premises. The breach of covenant regarding kind of user of the building is a ground of eviction and

therefore, the Honourable Supreme Court relied upon a three Judge Decision in the case of Bishamber Dass Kohli (Dead) by Lrs. Vs. Satya

Bhalla (Smt), . If change in the user of the building is alone significant for constituting a ground of eviction, then, the matter has been approached

differently. In the present case, both counsel do not dispute that in our Rent Control Law there is prohibition for using the premises let out for

residence as commercial. In the sense change of user is prohibited. (See Section 30).

36. In these circumstances Mr. Dani does not gain much from certain observations in the judgment of the Honourable Mr. Justice V.C. Daga.

Once the position has been clarified by the Honourable Supreme Court and as noted by me above, then, there is no conflict or diversion of views

or different opinions. There is no question in the case before me of dominant user theory being applied as suggested by Mr. Dani. Once the user

throughout was undisputedly for residence and it was changed to commercial as is evident by the concurrent findings of fact which I do not find to

be perverse in any manner, then, there is no substance in this Civil Revision Application. There is no error of jurisdiction and even if the eviction is

on the sole ground as held by the lower Appellate Court, namely, on the ground of change of user. In the backdrop of the facts and circumstances

and equally the position in law, I do not find that the jurisdiction has been exercised illegally or with material irregularity, warranting interference in

revisional jurisdiction.

37. The Revision Application is, therefore, devoid of any merit and is dismissed. Rule is discharged. No costs.

38. At this stage, Mr. Kahaladkar, learned Advocate holding for Mr. Dani, prays that the execution and enforcement of the decree passed by the

Trial Court and confirmed by the lower Appellate Court be stayed for a period of twelve weeks to enable the Applicants to approach a higher

court.

39. This request is opposed by Mr. P.J. Thorat, learned counsel appearing for the Respondent. In the light of the fact that there has been no ad-

interim stay granted, but the parties proceeded on the footing that the decree will not be executed and enforced, interest of justice would be served

if the enforcement and execution, so also, implementation of the Decree is postponed by eight weeks but on the condition that the Applicants file

an undertaking in this Court within Ten Days from today in usual terms including that they will not part with possession or make any alteration and

additions to the suit premises. Needless to clarify that if the Applicants fail to file an undertaking within the above stipulated period or on filing the

undertaking if they fail to comply with its terms, then, the Decree will become enforceable and executable and thereupon the Applicants can be

dispossessed in accordance with law and if necessary, with Police assistance.