consent of the State Government or a person authorised in this behalf by the State Government. In fact, it adopted a novel course to by-pass the said provision by observing that section 420, Indian Penal Code, had also been added as one of the offence for which the accused had been charged. It was further observed that 'the dealers have cheated the innocent farmers by supplying substandard medicines and have thus caused loss to the poor farmers and have given undue profit to the manufactures, dealers and the suppliers'. Even the learned counsel for the State has not been able to point out any material whatsoever on the basis of which this observation was made by the trying Magistrate. It is obvious that the mere addition of section 420, Indian Penal Code, would not nullify the requirements of law for offences under the Insecticides Act.

(6) It is needless to go into another serious objection in regard to the summoning of the three petitioners who are not even *prima facie* shown to be Incharge of the manufacturing process of the item concerned. The trial Court could not just pick and choose a person connected with the Firms in question, to face a criminal charge.

(7) The result is that the order summoning the three petitioners as accused in the case is nothing but an abuse of the process of Court and the same is quashed. The present petition is accordingly allowed.

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*H.S.B.*

*Before: D. S. Tewatia and D. V. Sehgal, JJ.*

VED PARKASH,—*Petitioner.*

*versus*

DARSHAN LAL JAIN,—*Respondent*

Civil Revision No. 1734 of 1984

April 24, 1986.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) & (iii)—Tenant occupying two adjacent shops belonging to different persons—Wall intervening between the two shops demolished by the tenant—Value and utility of the demised shop thereby admittedly impaired—Demolition of the wall within the knowledge of the landlord but rent accepted thereafter for a long*

*period—Such action of the landlord—Whether amounts to acquiescence of the act done by the tenant—Tenant whether liable to be evicted under section* 13(2) (*iii*).

*Held,* that section 13(2) (iii) of the East Punjab Urban Rent Restriction Act, 1949, provides that where the tenant has after the commencement of the Act without the written consent of the landlord transferred his right under the lease or sublet the building or rented land or any portion thereof the landlord can seek the eviction of the tenant by applying to the Rent Controller. At the same time section 13(2) (iii) o tfhe Act lays down that where the tenant has committed or caused to be committed such acts as are likely to impair materially the value and utility of the building or the rented land the landlord can seek eviction of the tenant. There is thus a clear distinction between clause (ii) and clause (iii) of section 13(2) of the Act, in that while in the former the act complained of attracts eviction when it is committed without the written consent of the landlord, no such stipulation is contained in the latter. If the Landlord is aware of continuing breach and acquiesces for a long period where, for instance, with full knowledge, he receives rent it will be presumed that he has either released the covenant or grants a licence for the user. As such where it is found that the landlord having full knowledge of the fact that the wall in question had been removed by the tenant but had been receiving rent from the tenant for a number of years it would amount to acquiescence on the part of the landlord and as such the tenant would not be liable to be evicted under the provisions of section 13(2) (iii) of the Act.

(Paras 5 and 9)

*Case referred by Hon'ble Mr. Justice J. V. Gupta to Larger Bench for decision of an important question of law involved in this case on December* 10, 1984. *The Larger Bench consisting the Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice D. V. Sehgal, finally decided the case on April* 24, 1986.

*Petition under section* 15(5) *of Act III of* 1949 *for the revision of the order of the Court of Shri Hari Ram Appellate Authority, Ambala, dated 22nd May,* 1984 *affirming that of Shri K. C. Dang, Rent Controller, Ambala City, dated* 31*st March,* 1981, *passing an order of ejectment of the respondent from the demised premises. The appellant (Ved Parkash) granted* 2 *months time to vacate the premises in dispute.*

H. L. Sarin, Senior Advocate with R. L. Sarin, and Sukhdev Singh, Advocates, *for the Petitioner.*

S. P. Jain, Advocate with B. K. Gupta, Advocate, *for the Respondent.*

JUDGMENT

*D. V. Sehgal, J.*—

(1) Darshan Lal Jain landlord-respondent filed an application under section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act') for ejectment of Ved Parkash tenant-petitioner on the allegation that shop bearing House-tax No. 6313, Ward No. 3 situated in Jain Bazar, Ambala City, is owned by him and was let out to the petitioner on a monthly rent of Rs. 22/-,—*vide* rent note dated 26th September, 1960, and sought his ejectment, *inter alia*, on the ground that he had made structural alterations in the shop, in dispute, by removing the wall adjacent to shop No. 6312 and thereby committed an act by which the value and utility of the shop in dispute had been impaired. The learned Rent Controller, Ambala City,—*vide* his order dated 31st March, 1981 held the ground of eviction to have been established and directed ejectment of the petitioner from the demised premises. On appeal, the learned Appellate Authority,—*vide* order dated 16th April, 1982 having concluded that no definite finding had been returned by the Rent Controller whether the tenant had impaired the value and utility of the shop, remitted the matter to the Rent Controller for recording finding on issue No. 1 which was recast as follows:—

> "Whether Ved Parkash, the tenant, has impaired the value and utility of the shop in question?"

The Rent Controller decided issue No. 1 and gave finding to the effect that the tenant-petitioner had not impaired the value and utility of the shop in question and submitted his report dated 18th February, 1983 to the learned Appeal Authority. The learned Appellate Authority, however, did not agree with the report of the Rent Controller and,—*vide* his judgment dated 22nd May, 1984, dismissed the appeal by affirming the finding of the Rent Controller as recorded in the earlier order dated 31st March, 1981. Being thus dissatisfied, the tenant-petitioner filed the present revision petition under section 15(5) of the Act in this Court.

(2) When this revision petition came up for final hearing before J. V. Gupta, J., on 10th December, 1984, he was of the opinion that the case ought to be heard by a larger Bench as it involved a question—whether the landlord had waived off the alleged act committed by the tenant in impairing materially the value and utility of the shop by removing the wall and has thus acquiesced in it—which is of importance and likely to arise in other cases. It was further found that there is a conflict in the judgments rendered by this Court. The view taken in *Sat Paul* v. *Faqir Chand* (1), goes contrary to the view taken earlier in *Messrs New Garage Limited* v. *Sardar Khushwant Singh and another* (2). This is how the matter has been placed before us.

(3) We have heard the learned counsel for the parties. So far as the concurrent finding of the authorities below that it is the tenant-petitioner who removed the intervening wall between shop No. 6313 and 6312 and thus has impaired materially the value and utility of the demised shop, is concerned, we are of the view that it is based on due and proper appreciation of the evidence and there is no valid ground to interfere with this finding, which is accordingly affirmed.

(4) The learned counsel for the petitioner then invited our attention to the statements of AW-1 Budh Ram and AW-2 Ram Kishan, wherein they stated that the wall in question had been removed 8 to 10 years ago. AW-3 Shambhu Nath stated that the wall was removed 9 to 10 years ago. AW 4 Tek Chand deposed that it was removed 18 to 19 years ago. When Darshan Lal Jain, landlord-respondent himself appeared in the witness-box, he stated that the wall had been removed 10 years ago. During the course of his cross-examination, he deposed that it was about 10 years ago during the summer season that he had seen for the first time that the intervening wall had been

(1) 1973 P.L.R. (Short Note) 3.
(2) 1951 P.L.R. 136 (D.B.).

removed by the petitioner. He admitted that he did not give any notice to the tenant, nor did he make any report to the police. He further admitted that he had been paying visits to the tenant off and on. In his examination-in-chief he no doubt stated that he had asked the tenant to rebuild the wall, but he did not do so. It is worth noting that besides the aforesaid ground for eviction, the landlord-respondent in his ejectment application had put forward another ground to the effect that the tenant had failed to make the payment of rent in respect of the show in dispute since 1st September, 1973 till the date of the application, i.e., 22nd January, 1976. Thus, he contended that since the tenant had not paid the rent since 1st September, 1973 in spite of repeated requests and demands, the tenant was liable to ejectment. The rent so claimed was tendered by the tenant by taking resort to the proviso to section 13(2)(i) of the Act and thus this ground was given up. It is, however, evident that the landlord had been receiving rent from the tenant all along till 1st September, 1973. According to his statement, he had seen the wall in question having been removed 10 years earlier to his statement in court on 3rd March, 1979. Being fully alive to this fact, he continued receiving the rent from the tenant for a period of more than four years, according to his own admission, instead of seeking his eviction by taking resort to the provisions of section 13(2)(iii) of the Act. The question, therefore, which inevitably, arises is whether the respondent acquiesced in the aforesaid act of the tenant and is, therefore, estopped from taking up this ground for his ejectment at a later stage.

(5) It is to be noted that section 13(2)(ii) provides that where the tenant has after the commencement of the 1949 Act (the East Punjab Urban Rent Restriction Act, 1949) without the written consent of the landlord transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or used the building or rented land for a purpose other than that for which it was leased, the landlord can seek eviction of the tenant by

applying to the Rent Controller. At the same time, section 13(2)(iii) of the Act lays down that where the tenant has committed or caused to be committed such acts as are likely to impair materially the value and utility of the building or rented land, the landlord can seek his eviction. There is, thus, a clear distinction between clause (ii) and clause (iii) of section 13(2) of the Act, in that while in the former the act complained of attracts eviction when it is committed without the written consent of the landlord, no such stipulation is contained in the latter. This aspect places clause (iii) of section 13(2) almost at the same footing as section 9(1)(b)(i) of the Delhi and Ajmer-Merwara Rent Control Act, 1947, which came up for consideration before a Division Bench in *Messrs New Garage Limited's* case (supra). Placing reliance on the position of law explained in Hill and Redman's Law of Landlord and Tenant, (1946 Edition) 122, it was observed that if the lessor is aware of a continuing breach and acquiesces in it for a long period where, for instance, with full knowledge, he receives rent it will be presumed that he has either released the covenant or granted a licence for the user. The Division Bench also relied on the following observations of Cockburn, C.J., in *Griffins* v. *Tomkins* (3):—

> "I think would be monstrous if it were otherwise; it would amount to this: that the lessor with a full knowledge that the thing had been done which was prohibited by the lease, and upon which a forfeiture was to accrue if it was done, might continue as long as it suited his purpose to receive his rent, and so waive the forfeiture up to the time that rent was received, and then, when it suited his purpose upon a change of circumstances, turn round on the tenant and say, "Although I have allowed you thus by implication to suppose that I was licensing what you were doing. I now take advantage of it and turn you out of what is to you a beneficial lease."

(3) 1880) 42 L.T. 459.

In *M/s New Garage Limited's* case (supra), the Division Bench found that the landlords were aware of the alleged breach that had taken place (namely, use of the premises as a workshop instead of its use as a show-room, for which according to the landlords premises were let out) and had continued to receive rent without any kind of objection having been raised for a period of at least 6 years, which could lead only to one conclusion and that is that even if there was a breach of the covenant it was waived and the landlords had released the covenant and granted a licence to the user. Reproducing the provisions of section 9(1)(b)(i) *ibid*, it was held that the effect of this was that if it was proved that by consent of the landlord any premises had been used for purposes other than for which they were let, a landlord would not have the right of ejectment and the consent may either be express or implied and, therefore, section 9(1)(b) would be defeated by waiver on the part of the landlord if it was proved that by his previous conduct he had consented to a particular breach of the covenant with regard to user of the premises. It was found that the landlords knew of the breach of the covenant and user and with that knowledge had been receiving rent. It was thus held that the case would not be any different from that what it was in *Griffin's* case (supra) and section 9(1)(b) would not be applicable to the facts of the case. This position of law was again reiterated in *Dayala alias Dayal Singh and another* v. *Gian Singh* (4) and *Mukesh Chand and others* v. *Jamboo Pershad and another* (5).

(6) *Sat Paul's* case (supra), is clearly distinguishable. In that case, the question of acquiescence as a result of acts on the part of the landlord in accepting the position of the tenant as such in spite of breach of the terms of tenancy coming to his notice, had not come up for consideration. All that was held was that there is no period of limitation prescribed for the landlord to take advantage of a ground of forfeiture of tenancy in terms of section 13(2)(ii)(v) of the East Punjab Urban Rent Restriction Act and he could maintain an application for ejectment. The learned counsel for the respondent, however, relied on *Harbans Sharma* v. *Smt. Pritam Kaur* (6), wherein the ground involved was almost identical i.e., that the tenant had removed the wall intervening the two rooms under his tenancy.

(4) 1958 P.L.R. 354.
(5) 1963 P.L.R. 285.
(6) 1982 (Vol. 1) R.L.R. 247.

No doubt a contention was raised that the landlord had waived her right and was also estopped by her own act and conduct from raising the plea of impairment of the value and utility of the building. The contention was, however, repelled by holding that on the basis of the facts found, it could not be inferred that the respondent had condoned the default of the tenant and had agreed not to seek ejectment on its basis. Instead what was shown by the facts was that when the husband of the landlady objected to the removal of the wall, the tenant tried to justify his action through a writing and assured that no such default would be committed in future. *Harbans Sharma's* case (supra), is, therefore, again distinguishable.

(7) In a recent judgment by S. S. Kang, J., in *Smt. Narinder Kaur and others* v. *Arjan Dass* (7), the matter again came up for consideration whether the additions and alterations in the demised premises made by the tenant many years before the application for his ejectment on this ground was filed, was an act of the tenant which had been acquiesced in by the landlord, and it was observed that not only a fresh agreement of tenancy had been entered into between the parties but the landlord continued receiving rent from the tenant for another six years subsequent to the alleged act of additions and alterations in the demised premises. It was therefore, held that this act of the landlord would clearly bar him from raising the plea that the tenant had been guilty of acts of omission and commission which had taken place much earlier.

(8) We thus find that so far as this Court is concerned the law laid down by the Division Bench in *M/s New Garage Limited's case* (supra), holds good and no view contrary to it can be taken.

(9) The learned counsel for the respondent vainly argued before us that the tenant had not taken a specific plea of waiver or acquiescence as regards the alleged act of impairing the value and utility of the shop by removal of the wall in question by him. Therefore, this plea could not be entertained. We are unable to agree with this contention. The categoric admission of the landlord in the witness box makes out a clear case of acquiescence on his part. He having full knowledge of the fact that the wall in question had been removed by the tenant had been receiving rent from him for more than four years and in fact filed the instant ejectment application

(7) (1981) R.L.R. 194.

nearly eight years from the time he gained knowledge of the alleged act. The case is, therefore, squarely covered by the ratio of *M/s. New Garage Limited's* case (supra).

(10) Consequently, we allow this revision petition, set aside the orders dated 31st March, 1981 and 22nd May, 1984 passed by the Rent Controller and the Appellate Authority respectively and dismiss the ejectment application filed by the respondent-landlord. However, there shall be no order as to costs.

D. S. Tewatia, J.—I agree.

*H.S.B.*

*Before : D. S. Tewatia and J. V. Gupta, JJ.*

MUKHTIAR SINGH RATHI,—*Petitioner.*

*versus*

SATWANT KAUR,—*Respondent.*

Civil Revision No. 2465 of 1984

April 24. 1986.

*Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—Sections 2(d) & (g) and 13(2) (ii)(a) and (b)—Premises taken on rent by a lawyer for residential purposes—Small part of the aforesaid premises being used as an office by the tenant without the consent of the landlord—Demised building—Whether could be converted into a non-residential one in terms of section 2(d)—Act of tenant in using part of the building as an office—Whether amounts to change of user—Said tenant—Whether liable to be evicted under the provisions of Section 13(2) (ii) (b) of the Act.*

*Held*, that a reading of Section 13(3) (a) (ii) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, would show that the landlord is entitled to seek ejectment of the tenant if he requires it for use as office or consulting room by his son who intend to start practice as a lawyer or as a registered practitioner. In other words the building continues to be a residential building even if it is got vacated for the said purpose to start practice as a lawyer, and is being used as such. This by itself is indicative of the fact that the