continued to be in service and therefore, entitled to pay and allowances etc. as such. After such a decree is granted, it can be implemented by way of execution and in such proceedings, the executing Court can calculate the total amount to which the plaintiff decree-holder is entitled. The executing Court, while calculating this relief of payment of money, will have the same powers as the Court in a suit for payment of money. Section 34 of the Code of Civil Procedure, 1973, therefore, empowers the Court to award interest on the particular amount adjudged at such rate as the Court deems reasonable from the date of suit to the date of decree. Further interest at such rate not exceeding 6 per cent per annum, as the Court deems reasonable on such particular sum from the date of decree to the date of payment or such earlier date as the Court thinks fit. In view of the facts of the case, award of interest from the date of suit till 16th August, 1982 when this case was finally decided by this Court has been rightly made. *Qua* future interest from the date of decree till realisation of the decretal amount, the Court can award interest, but the rate will not exceed 6 per cent per annum. The date of final decree is 16th August, 1982 and it is not clear from the impugned order where from the date 20th December, 1982 has been taken into account.

(6) In this view of the matter, I accept both the revisions and modify the order of the executing Court only to the extent that interest at the rate of 12 per cent per annum has to be counted only till 16th August, 1982. Thereafter interest at the rate of 6 per cent per annum till realisation of the amount has to be counted. No order as to costs.

(7) The executing Court gave 2 months period from its orders to the revision petitioners for considering Radha Ram for promotion as inspector, but before expiry of that time, there was stay of operation of the impugned order. May be, the case for promotion of Radha Ram has not been considered till today. The same be done now within two months from today.

S.C.K.

FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJJ.

DALIP SINGH,—*Appellant.*

versus

BHARWAN BAI and others,—*Respondents.*

Regular Second Appeal No. 510 of 1982.

May 29, 1989.

East Punjab Urban Rent Restriction Act (*III* of 1949)—*Ss.* 2 (*d*) *and* 13—*Lease of running flour mill in an urban area—Charac*

of flour mill—Whether building or non-residential building—Purpose of leasing—Intention of parties—Cases of composite lease—Test of dominant purpose, laid down—Where dominant purpose of lease to let out business—Eviction of lessee—Jurisdiction of civil court—Whether barred by S. 13.

Held, that giving the word 'building' as defined in S. 2(a) of the East Punjab Urban Rent Restriction Act, 1949 and the word 'business' used in the definition of the expression 'non-residential building' in S. 2(d) of the Act, the widest possible meaning does not in our view cover a running flour mill, let out as such, within the scope of non-residential building, especially because the dominant intention of the parties was letting out of the flour mill and the letting out of the building in which the flour mill was installed was only incidental. The existence of complete flour mill with all machinery and accessories does not in our view fell within the definition of 'building' or 'non-residential building', as defined in the Act, under the implied larger scope of 'building' with fittings for more convenient use thereof. It is self-contained flour mill, it falls outside the definition of 'building', as well as 'non-residential building' as these definitions exist at present. (Para 15).

Held, that in letting out a running concern, the emphasis was not so much on the building as on the business. If a running business was the subject matter of the lease, the prominant things will not be what houses the business but the business itself. The 'building' becomes secondary since every business or industry has to be accommodated in some enclosure or building.

(Para 18).

Held, that the test to be applied for determining the true character of the lease in such a case is of dominant intention and applying the said test the lease under consideration was of the flour mill, the building being let out incidently. Hence it has to be held that such a lease is not covered under the provisions of the Act and the civil court had jurisdiction.

(Para 25).

Regular Second Appeal from the decree of the Court of the istrict Judge, Ludhiana, dated the 16th day of February, 1982 firming with costs that of the Sub-Judge Ist Class, Ludhiana, ted the 30th November, 1978, passing a decree with costs in our of the plaintiff and against the defendant for possession by tment of the defendant from the Flour Mill including one tric motor 20 H.P., starter, Shafts, etc. embodied in house B. I, 161, Civil Lines, Kailash Cinema Road, Ludhiana.

P. K. Palli, Sr. Advocate with A. V. Palli, Advocate, *for the llants.*

I. L. Sibal, Sr. Advocate with Gopi Chand, Advocate, *for the ndents.*

JUDGMENT

A. P. Chowdhri, J.

(1) These Regular Second Appeals (R. S. A. No. 510 of 1982 and R.S.A. No. 2298 of 1983) against concurrent findings of Courts below raise a substantial question of law of general importance, namely whether lease of *atta chakki* (flour mill) comprising a running flour mill, electric motor and other accessories installed in a part of building situate within an urban area used and intended to be used as a flour mill is governed by the provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act').

(2) The factual background leading to these appeals is simple, short and identical. The predecessor-in-interest of respondents in R.S.A. No. 510 of 1982, namely Chandi Ram was owner of a building No. B-I, 161, Civil Lines, Ludhiana. He installed a flour mill in a part of the building, besides the milling machine, the flour mill included one electric motor of 20 HP., starter, shafts *et cetera*. He leased out the flour mill as well as the building in which it was running to the appellant under an oral agreement regarding which the appellant executed a rent-note on 8th April, 1975. The monthly rent which was a consolidated amount on account of the machinery as well as building was Rs. 375. The period of lease was three months. On the expiry of the said period, the lease was not renewed. The tenancy thus came to an end by the efflux of time. Thereafter, Chandi Ram did not accept any rent from the appellant. Chandi Ram filed a regular suit for possession in the Civil Court at Ludhiana, alleging that dominent purpose of the lease was the flour mill and thus the tenancy was not covered under the provisions of the Act. Besides possession of the flour mill and the premises, Chandi Ram also claimed damages for use and occupation @ Rs. 375 per month, Chandi Ram having died during the pendency of these proceedings, the present respondents were brought on record as his legal representatives.

(3) The facts in R.S.A. No. 2298 of 1983 are that the respondents were owners of a flour mill consisting of the milling machine, shafts, pulleys, 10 H.P. electric motor and electric fittings, housed in a shop comprised in property No. 38 on Chandigarh-Road, Ludhiana. Initially, the respondent Mohinder Singh, the appellant Thaljit Singh and one Amrit Kaur wife of the other respondent

Narinder Singh became partners and the said partnership carried on the flour mill. The partnership was dissolved on 24th April, 1972 and at that time the flour mill along with the shop in which it was installed was leased out to the appellant @ Rs. 200 per month. The tenancy of the appellant was determined by serving a notice and the respondents instituted a suit for possession against the appellant. They also claimed damages for use and occupation @ Rs. 200 per month for a specified period. According to the respondents, the dominant purpose of the lease was the flour mill and hence the Civil Court had jurisdiction.

(4) It is not disputed that both the buildings were situated in 'urban area' declared under the Act. The above referred suits were contested by the appellants. In the written statements filed in the two suits, the facts were not disputed, but it was denied that dominant purpose of the lease was letting of the flour mill. It was pleaded that the lease was in respect of a building for business purposes. It was further pleaded that the lease, in question, was covered by the Act and jurisdiction of the Civil Court was barred.

(5) The trial Court framed necessary issues and on a consideration of the evidence and the law bearing on the subject held that the dominant purpose was the hiring of the flour mill and the lessee could not seek protection of the Act. Both the suits were thus decreed by the learned trial Court. The above findings were affirmed by the learned Additional District Judge, Ludhiana, in first appeal. The lessees have preferred these second appeals.

(6) These appeals first came up for hearing before S. S. Sodhi, J. The learned Judge was faced with the question as to the appropriate test to be applied to resolve the jurisdictional problem in the case of composite lease of a building and machinery. The learned Judge considered the question to be important having wide repercussions He, therefore, referred the appeals to a larger Bench.

(7) The appeals then came up for hearing before a Division Bench consisting of S. P. Goyal and Pritpal Singh, JJ. Relying on two decisions of the Supreme Court in *Uttamchand* v. *S. M. Lalwani* (1) and *Dwarka Prasad* v. *Dwarka Dass Saraf* (2), it was

(1) A.I.R. 1965 S.C. 710.
(2) A.I.R. 1975 S.C. 1758.

contended on behalf of the lessors that the dominant purpose of the lease being letting of flour mill, the Civil Court had jurisdiction. According to the lessees, the lease was covered under the definition of 'non-residential building' as defined under section 2(d) of the Act and thus only Rent Controller had jurisdiction. The learned Judges observed :

> "Both these decisions proceed on the peculiar definition of 'accommodation' in the Rent Act under consideration. In none of those Acts non-residential building has been defined whereas in the Punjab Act, as stated above, non-residential building has been defined ....."

The learned Judges were of the view that the matter was not free from difficulty and kept arising frequently and, therefore, they referred the appeals to a Full Bench. This is how these appeals have been placed before us.

(8) It was contended by the learned counsel for the appellants that the lease in question was in respect of 'non-residential building' as defined in section 2(d) of the Act and jurisdiction of the Civil Court was barred under section 13 thereof. Elaborating his contention, learned counsel made the following points :—

(i) The word 'building' occurring in the above definitions is to be given the widest possible meaning to preserve and achieve the objects of the Act ;

(ii) Exclusion of 'a room in a hotel, hostel or boarding house' was a clear indication that all buildings situate in an urban area were intended to be covered by the Act except those exempted under section 3, in the context of landlord and tenant relationship ;

(iii) If the lease in question is covered under section 3(d) of the Act, the case will be governed by the Act and jurisdiction of the Civil Court will be barred ;

(iv) Even though the definition in our Act does not contai the words, "fittings affixed to such building or part c a building for the more beneficial enjoyment thereo like the definition in some other rent legislatior these words must be taken to be implied in our Act well ; and

to mean a building being used solely for the purpose of business or trade.

(9) The word 'building' is defined in section 2(a) of the Act to mean any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding house.

(10) The word 'premises' was defined in section 2(B) of the West Bengal Act, substantially in the same terms as the word 'building' in our Act, except that clause (b) of section 2(B) of the West Bengal Act further provided :

> (b) any furniture supplied or *any fittings affixed by the landlord for use of the tenant in such building* or part of a building or hut or part of a hut ....." (Emphasis added).

(11) The stand taken on behalf of the lessor was that the demised flat fell outside the definition of 'premises' because of the additional amenities referred to above. Rejecting the contention, it was observed :

> "..... The definition of "premises" set out above is in very wide terms and includes not only gardens, grounds and outhouses, if any, appertaining to a building or part of a building, but also furniture supplied by the landlord for the tenants' use and any *fittings affixed to the building,* thus indicating that the legislature was providing for all kinds of letting. The definition of "premises" and "hotel or lodging house" between them almost exhaust the whole field covered by the relationship of landlord and tenant, subject to the exceptions noted in the definition of "premises".

It was further observed at page 312 of the report :—

> "..... it is difficult, if not impossible, to accept the contention that the legislature intended the provisions of the Act to have a limited application depending upon the terms which an statute landlord may be able to impose upon his tenants. *In order fully to give effect to*

> *the provisions of the statute, the court has to give them the widest application possible within the terms of the statute....* Having those considerations in view, we do not think that the supply of the amenities aforesaid would make any difference to the application of the Act to the premises in question." (Emphasis supplied).

(12) In case before the Kerala Full Bench referred to earlier the question raised was whether lease in respect of two Cinema theatres was covered by the Kerala Buildings (Lease and Rent Control) Act (16 of 1959) (as amended by Act 29 of 1961). A similar question arose in the Full Bench before Andhra Pradesh Full Bench, mentioned above. The observations of their lordships of the Supreme Court in *Karnani Properties' case* (supra) were heavily relied upon and the conclusion reached was that the concerned Rent Control Act covered the case in respect of cinema theatres.

(13) For proposition No. (v) that the word "business" is to be given a very wide meaning, reliance was placed on *S. Mohan Lal* v. *R. Kondiah* (3) and *M. P. Bansal and another* v. *The District Employment Officer, Pathankot* (4). The question in *S. Mohan Lal's case* (supra) was whether an Advocate's profession was business within the meaning of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It was held that carrying on profession of Advocate was business within the meaning of the said Act. After pointing out that the expression 'business' had not been defined in the Andhara Act, their lordships proceeded to explain the meaning to be given to the word "business" thus :

> "..... It is a common expression which is sometimes used by itself and sometimes in a collocation of words as in "business, trade or profession". It is a word of large and wide impart, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various Dictionaries except to say that everyone of them noticed a large number of meanings of the word. In a broad sense it is taken to mean 'everything that occupies the time, attention and labour of men for the purpose of livelihood or profit'. In a narrow sense it is confined to commercial activity. It is obvious that *the meaning of the word must be gleaned from the context in which* it is used. ....."

(3) A.I.R. 1979 S.C. 1132.

(4) A.I.R. 1985 P. & H. 251 (D.B).

In *M. P. Bansal's case* (supra), it was held that office of District Employment Officer was 'business' as used in the definition of 'non-residential building' in section 2(d) of the Act. We have given our anxious consideration to the above submissions. We are unable to accept the contention that lease in respect of a running flour mill, in the facts and circumstances of the case, is covered by the definition of 'non-residential building' under the Act. We may point out at once that we are not dealing with case of lease of a building for whatever purpose let out. For instance, where a *building* is let out for carrying on any business, trade or industry such as *atta chakki*, saw-mill, cinema theatre or any purpose whatsoever, it would be lease of a 'building' within the meaning of the Act. The simple reason is that according to the definition of the word 'building' in section 2(a) of the Act, the *sine qua non* is letting of the building. The definition itself does not place any restriction on the purpose for which the building is let and the purpose for which it is actually used. On the other hand, we are dealing with a case in which what was let out was a running flour mill installed in a building. The question, therefore, which has to be inevitably answered is whether the dominant purpose of the lease was letting of the building or letting of a flour mill.

(14) We may point out that the word "building" used in the Act or analogous words such as 'accomodation,' 'premises' used in various Rent Control Legislations had been differently defined according to the legislative policy of each State and the distinction in the various definitions is vital. Even in the sister State of Haryana, which was governed by the East Punjab Urban Rent Restriction Act, 1949 prior to the enactment of the present Act, the definition of the word 'building' and 'non-residential building' was materially different. Section 2(a) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, defines a 'building' to mean any 'building' or a part of building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, gardens, lawns, wells or tanks appurtenant to such building or the furniture let therewith or *any fittings affixed to or machinery installed in such building*, but does not include a room in a hotel, hostel or boarding house.

(15) Regarding proposition (iv) above, it may be stated that when one talks of a building, it is necessarily implied that the

building will not cease to be so if it is partly or fully furnished. To borrow the words of Krishna Iyer, J. (as his lordship then was),—

> "..... a building which is ordinarily let, be it for residential or non-residential purposes, will not be the bare walls, flour and roof, but will have necessary amenities to make habitation happy. That is why the legislature has fairly included gardens, grounds and outhouses, if any, appurtenant to such building, likewise leases sometimes are of furnished buildings and that is why 'any furniture supplied by the landlord for use in such building, is treated as part of the building. In the same strain, we may notice, as a matter of common occurrence, many fittings such as electrical fittings, sanitary fittings, curtains and venetian blinds and air-conditioning equipment being fixed to the building by the landlord so that the tenant's enjoyment of the tenement may be more attractive. *The crucial point is that these additions are appurtenant, sub-servient and beneficial to the building itself.* They make occupation of the building more convenient and pleasant but the principal thing demised is the building and the additives are auxiliary ... . (*Emphasis supplied*). (*See Dwarka Prasad* v. *Dwarka Das Saraf*, A.I.R. 1975 S.C. 1758 at p. 1761).

Applying the test whether the fittings are appurtenant, subservient and meant for more beneficial enjoyment of the building, it cannot be said that a running flour mill with all its machinery and accessories etc. can be covered under the implied provision of fittings for the more beneficial enjoyment of the building. The question was dealt with in the same manner by their lordships of the Supreme Court in *Uttamchand's case* (supra). That was a case of a 'Dal mill building' and it was observed :—

> "..... There can be no doubt that the fittings of the machinery in the present case cannot be said to be fittings which had been fixed for the more beneficial enjoyment of the building. The fittings to which S. 3(a)(y)(3) refers are obviously fittings made in the building to afford incidental amenities for the person occupying the building. That being so, it is clear that the fittings in question do not fall under S. 3(a)(y) (3)....."

With regard to the two Full Bench decisions referred to above in *Mohd. Jaffer Ali's case* and *K. Kungu Govindan's case* in which cinema theatres had been held to fall within the definition of a building under the relevant Rent Control Law of those States, we may notice that certain significant amendments had been made to the parent statutes whereby the definition of building was expanded and its wide range was made to include all tenancies relating to all structures even though accessories, furniture and fittings used in the house were also made over. Thus giving the word 'building' as defined in section 2(a) and the word 'business' used in the definition of the expression 'non-residential buliding' in section 2(d) of the Act, the widest possible meaning does not in our view cover a running flour mill, let out as such, within the scope of non-residential building, especially because the dominant intention of the parties was letting out of the flour mill and the letting out of the building in which the flour mill was installed was only incidental. It may further be added that existence of a complete flour mill with all machinery and accessories does not in our view fall within the definition of 'building' or 'non-residential building', as defined in the Act, under the implied larger scope of 'building' with fittings for the more convenient use thereof. As pointed out above, a whole running flour mill cannot be considered to be fitting for the more convenient use of the building'. In order to be covered in the concept of a furnished building, the fittings have to satisfy the test of being appurtenant, subservient and affording incidental amenities for the more beneficial enjoyment of the building. Where, as in the cases in hand, it is a self-contained flour mill, it falls outside the definition of 'building', as well as 'non-residential building', as these definitions exist at present.

(16) As to *Karnani Properties' case* (supra), it may further be mentioned that *admittedly* the case related to *lease of building* and effort of the landlord was to show that the building fell outside the definition of the word 'premises' because of the additional amenities provided by the landlord. The amenities provided included electrical and sanitary fittings which were held to be covered under the expanded definition of the expression 'premises' given in the relevant Act as including fittings affixed by the landlord for use of the tenant in such building. In the cases under consideration, on the other hand, the dominant part of the lease was the flour mill and the principal question for decision is whether in such a case the lease can nevertheless be construed as a lease of a building.

(17) In order to be covered under the definition of 'non-residential' building in section 2(d) of the Act, the lease has to satisfy two conditions, namely (i) the lease has to be in respect of a 'building'. In case of composite lease the dominant purpose has to be letting the building; (ii) the subject-matter of lease must be covered under the definition of 'building' as defined. In the present case, both these conditions are not fulfilled.

(18) As pointed out earlier, the facts are not in dispute. Both the Courts below came to the conclusion that the dominant purpose of the lease was a flour mill. No meaningful argument could be put-forward on behalf of the appellants to assail this finding. The facts un-erringly show that the building in each case was adapted for use as *atta chakki*. The admitted case was that *atta chakki*, electric motor and other accessories belonging to the respondents (lessors) were let out along with the building to be used as *atta chakki* during subsistence of the lease. In letting out a running concern, the emphasis was not so much on the building as on the business. If a running business was the subject-matter of the lease, the prominant thing will not be what houses the business but the business itself. The building becomes secondary since every business or industry has to be accommodated in some enclosure or building. We, therefore, affirm the finding that the dominant intention was letting of the flour mill.

(19) This brings us to the main question of composite lease and the test to be applied to determine its true character. As the words in the expression denote 'composite lease' implies lease of disparte or separate parts. A composite lease can assume several forms. For instance, there can be a lease of residential portion and a non-residential portion. There can also be lease of immoveable property as well as the business being carried on therein. Sometimes as in the present case, the purposes of the lease are thoroughly and inextricably fused, as to leave no scope for division. Any attempted division of the lease and separation of rights in regard to two classes of property would in the highest degree be artificial never contemplated by the parties. To sprit up such a lease as the one just mentioned into two separate contracts of lease and hire is to destroy it altogether. (*See* A.I.R. 1975 S.C. 1758). It is in such cases that the Supreme Court has applied the test of dominant intention to determine the true character of the lease. In *K. Venkayya*

and another v. *Thammana Peda Venkata Subbarao and another,* (5), the learned Judges of the Division Bench were dealing with the question as to the nature of the lease with which the Court was concerned in that case. Viswanatha Sastri, J. observed that there is an immense variety of structures which could be styled buildings and added : "we are unable to accede to the proposition that every enclosure of brick, stone work or mud walls covered in by a roof irrespective of the purpose for which it is used and let, is a building within the meaning of the Act". The learned Judge also remarked that so to construe the Act would bring within its operation all factories and mills which are invariably located in buildings. The question in each case would be what is the dominant purpose of the demise and what is the purpose for which the building was constructed and let out. The Supreme Court in *Uttamchand's case* (supra) approved the aforesaid test of dominant intention for construing a composite lease of a building and machinery.

(20) In *Uttamchand's case* (supra), which is a locus classious on the subject, a Dal mill building with fixed machinery in running condition together with accessories was leased out on an annual rent. The intention of the parties was to use the building as a Dal mill. The question was whether the Dall mill was an 'accommodation' within the meaning of section 3(a) of M. P. Accommodation Control Act, 1955, and whether the Rent Control Authority had jurisdiction to determine the standard rent. On a consideration of the terms of the lease, it was held that the Court must apply the test of dominant intention of the parties. The Court must determine the character of the lease by asking itself as to what was the dominant intention of the parties. The ratio of *Uttamchand's case* (supra) was stated by the Supreme Court in a letter decision in *Dwarka Prasad's case* (supra) in these words :—

> "The ratio of that case is that the Court must apply the test of dominant intention of the parties to determine the character of the lease i.e., what was the primary purpose of the parties in executing the document. The mere fact that the demise deals with a building does not bring it within the ambit of accommodation. ....".

(21) In *Dwarka Prasad's case* (supra), the same question again came up before the Supreme Court. A cinema theatre building

(5) A.I.R. 1957 A.P. 619.

with all the equipment, fittings and furniture necessary for operating the cinema was leased out at a monthly rent. The question was whether the lease was in respect of 'accommodation' within the meaning of section 2(a) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, as amended by Amending Act 17 of 1954. It was held :

> "Where the lease is composite and has a plurality of purposes, the decisive that is the dominant purpose of the demise."

The above test was applied in the following cases :

1. *R. Kapanipathi Rao and another* v. *M. S. Meyyappan and another,* (6),

2. *J. J. Pancholi* v. *Sridharjee and others,* (7) ;

3. *Kharaiti Lal, Banarsi Lal, Panna Lal* v. *Smt. Kamla Vati,* (8); and

4. *Ashok Timber Industries* v. *Mysore Arts and Woodworks Co. P. Ltd.,* (9).

(22) A perusal of the decisions in *Uttamchand's case* and *Dwarka Prasad's case* (supra) show that it was not on any peculiar definition in the relevant Rent Control Act, but it was on general principles that rule regarding construction of composite leases was laid down.

(23) The following decisions were relied on or referred to by learned counsel for the appellants :—

1. *K. Kungu Govindanand and others* v. *Parakkat Kunhilekahmi Amma and others,* (10),

2. *Mohd. Jaffer Ali* v. *S. Rajeswara Rao and others,* (11) ;

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6. A.I.R. 1974 Madras 57 (DB);
7. A.I.R. 1984 Allahabad 130 (DB);
8. 1985(1) R.L.R 630 (P. & H.) (SB);
9. 1978 (2) Rent Law Reporter 140 (Karnataka);
10. A.I.R. 1966 Kerala 244 (FB) ;
11. A.I.R. 1971 A.P. 156 (FB) ;

3. *M/s. Standard Cashew Industries and another* v. *M. Krishnan,* (12) ;

4. *Chelladural alias* v. *N. Veeman Pillai and another* v. *Parmanand Jindal,* (13); and

5. *M/s. Nirmal Dal Mills and anr.* v. *Smt. Krishna Devi and ors.* (14) ;

The decisions at serial No. 1 and 2 have been referred to and discussed in the earlier part of this judgment to the extent considered necessary.

(24) The decisions at Sr. Nos. 4 and 5, above, have no relevancy. In the former, the question before the learned Single Bench of Madras High Court was whether a cement drying yard was a building within the meaning of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (as amended by Act 23 of 1973). In the latter case, a learned Single Judge of the Allahabad High Court considered the provisions of the U. P. Civil Laws Amendment Act, 1972 and held that a 'Dal mill' was covered under the definition of the word "building" under the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 It is a short judgment. There is no reference to either *Uttamchand's case* (supra), or *Dwarka Prasad's case* (supra) or the test of dominant intention. The authority is of no assistance to the appellants. The remaining three authorities noted at Nos. 1 to 3 deal with cases under the paculiar definition in the Rent Control Legislation in force in those States. As the lease in dispute in those cases was held to be covered under the provisions of the Rent Control Acts, it was held that the test of dominant intention was not attracted. They are thus of no help to the appellants.

(25) "We are, therefore, of the considered view that the lease in question is not covered under the definition of non-residential building as defined in the Act. We are further of the view that the test to be applied for determining the true character of the lease in such a case is of dominant intention and applying the said that the lease under consideration was of the flour mill, the building

12. 1981(1) R.C.J. 33 ;
13. 1981(1) R.C.J. 119 (SB) ;
14. 1978(1) R.C.R. 547 (SB).

being let out incidently. We, therefore, hold that such a lease is not covered under the provisions of the Act and the Civil Court had jurisdiction". Thus, we affirm the findings of the two Courts below and dismiss these appeals (R.S.A. No. 510 of 1982 and R. S. A. No. 2298 of 1983) with costs.

Sd/-

May 29, 1989. (A. P. Chowdhri),
Judge.

(26) The Bench referring this matter to us noticed difficulty in settling the frequently arising question that even when the dominant purpose of the lease was a letting out the business, would it still be a lease of non-residential building as defined in section 2(d) of the East Punjab Urban Rent Restriction Act, 1949. Even learned counsel for the tenant-appellants, in the instant cases, had built an argument on the assumption that the dominant purpose of the leases was to let out the respective business. Such even is the finding of fact recorded by the Courts below in both these cases. It is significant to observe here that it would be the intention of the parties which would be the governing factor, as to what was let out. If it was to let out a business, the mere fact that it was housed in a building by itself would not clothe the letting to be that of a building or rather of a non-residential building. If it was to let out a building, the mere fact that a business being run there was also let out by itself would not clothe the letting to be that of a business. The determining factor in such cases of composite leases is neither the building in which the business or trade is carried out not the specific business or trade housed in a building. The determining factor rather is the dominant intention of the parties, without discovering which the dominant purpose cannot be disconcerned. It needs to be emphasized here that laws are meant for people; nor people for laws. The dry and abstract definition of the expression "non-residential building" is not meant to be of such wide amplitude so as to kill the live intention of the parties discernible from the terms of their lease and conduct. Adding these few words, I respectfully concur with my learned brother A. P. Chowdhri, J.

Sd/-
M. M. Punchhi,
Judge.

I agree.

Sd/-
Ujagar Singh,
Judge.

R. N. R.