REVISIONAL CIVIL.

Before Muni Lal Verma, J.

CHATAR SAIN,—*Petitioner.*

versus

BISHAN LAL,—*Respondents.*

Civil Revision No. 796 of 1974.

July 17, 1975.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(iii)—*Landlord mentioning in the ejectment application details of material alterations made by the tenant—Omission to state that such alterations were likely to impair the value or utility of the premises—Whether would defeat the right of the landlord to seek ejectment.*

Held, that where a landlord in his eviction application mentions the details of the material alterations made by the tenant in the property in dispute and omission on his part to allege that such alterations are likely to impair materially the value or utility of the building cannot have the effect of defeating his right to seek ejectment of the tenant. The expression "are likely to impair materially the value or utility of the building" denotes that it would be a matter of opinion or deduction to be drawn from the nature of the alteration or construction that the same would or would not impair the value or utility of the premises. It would be the court who would ultimately come to that finding on consideration of the material and evidence brought on record. Thus mere non-mentioning in the eviction application that the material alterations made by the tenant were likely to impair the value or utility of the premises would not be a ground to dismiss the case of the landlord.

(Para 4).

Petition under section 15 *of the Haryana Urban (Control of Rent and Eviction) Act,* 1973, *for revision of the order of Shri B. S. Yadav, Appellate Authority, Rohtak camp at Sonepat, dated* 14*th December,* 1973, *affirming that of Shri V. K. Kaushal, Rent Controller, Sonepat, dated* 4*th May,* 1973, *passing an order of ejectment in favour of the applicants and against the respondent and ordering the respondent to vacate the premises in dispute within a period of two months from today and to hand over its vacant possession to the applicants. Under the peculiar circumstances of the case, the parties are left to bear their own costs.*

S. P. Jain, Advocate, *for the petitioner.*

R. S. Mittal, Advocate, *for the respondents.*

JUDGEMENT.

VERMA, J.—(1) This revision petition is by the tenant and arose out of eviction proceedings under the circumstances, stated as under:—

Originally Om Parkash was owner of the property including the demised premises, hereinafter called the premises, described in para 1 of the eviction application, situate within the limits of Sonepat. He had let the premises to the petitioner at monthly rental of Rs. 8.33 paise. He sold the aforesaid property including the premises to the respondents on August 28, 1968. So, the respondents became landlords of the petitioner respecting the premises by operation of law. They (the respondents) claimed, by making eviction application under section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) in the Court of Rent Controller, Sonepat, eviction of the petitioner from the premises on four grounds; firstly, that he had fallen in arrears of rent with effect from August 28, 1968 and had not paid the same; secondly, that the premises had been let out for residence and the petitioner had converted it into shop-cum-residence; thirdly, that they (the respondents) required the premises *bona fide* for their residence; and fourthly, that the petitioner had made material alterations by removing the frame of the door of the shop and fixed the same just on the roadside and thereby included the verandah into the shop. The petitioner contested the application. He controverted the material allegations of the respondents. He, however, paid the arrears of rent and costs therein assessed by the Rent Controller on the first date of hearing. Hence, the eviction application was tried on the following issues;

(1) Whether the respondent is liable to be evicted from the tenanted premises on the grounds alleged in the petition ? Opp.
(2) Whether the tenancy of the respondent has been validly terminated ? If not, its effect. Opp.
(3) Whether the petitioners are the owners of the suit premises ? Opp.
(4) Relief.

The ground of non-payment of rent was not pressed by the respondents because the petitioner had paid the arrears of rent etc., on the

first date of hearing. The Rent Controller found issues No. 2 and 3 in the affirmative. He held under issue No. 1 that the respondents failed to prove by cogent evidence that the petitioner had been guilty of change of user or effecting material alterations by including verandah into the shop. He, however, found under issue No. 1, that the respondents required *bona fide* the premises for their occupation and as a result of that finding he allowed the application and directed eviction of the petitioner. Aggrieved by the said order, the petitioner carried appeal. In the appeal the ground of change of user was not pressed by the respondents. The Appellate Authority doubted that the requirement of the premises by the respondents for their occupation was *bona fide* and, therefore, vacated the finding which had been recorded by the Rent Controller on that matter in their favour. But the Appellate Authority disagreed with the Rent Controller that the petitioner had not effected material alterations and found under issue No. 1 that the petitioner had made such material alterations in the premises which had impaired its utility and maintained eviction order, though on a different ground. Dissatisfied with the said result, the petitioner came to this Court in revision.

(2) Mr. S. P. Jain, learned counsel for the petitioner, assailed the finding recorded by the Appellate Authority that he (the petitioner) had made material alterations in the premises which had the effect of impairing its utility and contended (a) that it could not be held on the evidence present on record that the petitioner had removed the frame of the door from its original position and had then fixed the same in the wall erected just on the side of the road and had thereby included the verandah into the shop; (b) that the respondents did not state in the eviction application that the construction raised by the petitioner had impaired the utility of the premises; and (c) that the said construction including the verandah into the shop could not be considered to be material alteration and the same might be taken as improvement of the premises, but could not be said to impair the utility of the premises. I have not been able to agree with him.

(3) The statements of Bishan Lal, P.W. 1, Om Parkash, P.W. 2, Ram Niwas, P.W. 3 and Hari Singh, P.W. 4, when read together, point out unmistakably that there were two shops adjoining each other and there was a common verandah in front of the said two shops when the same were sold by Om Parkash in favour of the respondents, and it was after the said sale that the portion of the verandah

lying in front of one shop which was a part of the premises was included into that shop by the petitioner. Their statements receive ample confirmation from the documentary evidence. In the sale deed Exhibit P. 1, by means of which the property including the premises had been sold by Om Parkash to the respondents on August 28, 1968, the shop of the premises was described to have three spans (*khans*) of the roof. Plan Exhibit R.W. 9/1 filed by the petitioner indicates that the shop of the premises had four spans. No explanation as to how the said shop, when it had three spans at the time of sale had subsequently acquired the fourth span, could be furnished. So, the circumstances that there were three spans of the shop of the premises at the time of purchase of the property including the premises by the respondents from Om Parkash, and thereafter its spans had increased to four, undoubtedly read consistent with the conclusion that the fourth span is of the portion of the verandah which was lying in front of the shop of the premises and had been included by the petitioner into it (the shop). Therefore, I unhesitatingly find that the Appellate Authority was right in concluding on the evidence and material present on record that the petitioner had divided the verandah which was existing in front of the two shops by raising a wall in its middle, and then included half of the said verandah into the premises by removing the frame of the door which existed in the wall of the shop and then fixing the same in the wall which was erected by him on the outer side of the verandah adjoining the road.

(4) The relevant provision which allows eviction of the tenant from the premises for impairing the utility of the same is contained in clause (iii) of sub-section (2) of section 13 of the Act, and reads thus,

> "........... If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied, that the tenant has committed such acts as are likely to impair materially the value or utility of the building may direct his eviction."

In sub-para (b) of paragraph 2 of the eviction application the respondents stated that the petitioner had made material alterations in the property in dispute and converted the verandah and turned into a shop. He removed the door of the previous existing shop and fixed the same just on the road side after converting the verandah into the shop. The petitioner further bifurcated the common

verandah thus separating the shop of the respondents from the shop under his tenancy. That means that the respondents did allege in the application that the petitioner had made material alterations in the premises. They, however, did not state specifically therein that the said alerations made by him in the premises were likely to impair its utility materially. But that, by itself, cannot, in my opinion for reasons to be presently recorded, have the effect of dislodging the respondents in their claim. The expression "are likely to impair materially the value or utility of the building" denotes that it would be a matter of opinion or deduction to be drawn from the nature of the alteration or construction that the same would or would not impair the value or utility of the premises. That means that it would be the Court who would ultimately come to that finding on consideration of the material and evidence brought on record. As such, mere non-mention in the eviction application that the material alterations made by the petitioner were likely to impair the value oı utility of the premises would not be a ground, much less valid, to dismiss the case of the respondents. Then, it is common knowledge that pleadings in mufassil are not in experienced hands and, therefore, the same are to be liberally construed. The averments made in paragraph 2 of the application do give an impression that the respondents claimed eviction of the petitioner also on the ground of making material alterations in the premises which were likely to impair materially its utility. The record shows, and it is clear from paragraphs 4 and 6 of the judgment of the Rent Controller, and sub-para (b) of paragraph 2 of the judgment of the Appellate Authority that the parties were fully alive of the matter that the eviction of the petitioner had been claimed on the ground of material alterations, that is, inclusion of the verandah into the shop, which impaired materially the utility of the premises. They had led evidence in proof and disproof of the said ground for eviction and also advanced serious arguments in support of their respective stand in the Courts below. It is incontrovertible proposition that rules of procedure are meant for advancing justice and not to defeat it and technicalities would not be allowed to overcome the ends of justice or to operate as means of circuity of litigation. A decision, if it is correct on merits and is within the jurisdiction of the Court passing it, would not be upset merely for technical or immaterial defects. Therefore, in the circumstances of the case, I am of the opinion that the omission on the part of the respondents to state specifically in the eviction application that the alterations made by the petitioner by including the verandha into the shop had materially impaired its utility is of no

consequence, for the reason that the said omission did not cause any prejudice to the petitioner and had not affected merits of the case, especially when it is clear that the petitioner had fought the case with a clear understanding that his eviction had been sought from the premises also on the ground of committing the act of including the verandah into the shop which had impaired materially the utility of the premises.

(5) *Narayana Naik and others* v. *Maturi Satyanarayan and others* (1) relied on by Mr. S. P. Jain can be of no help to the petitioner. That was a case under the provisions of Orissa House Rent Control Act. One of the grounds for claiming eviction of the tenants in that case was that the lease-hold had been materially altered by them without the landlord's consent. The Controller and the Appellate Authority held that the said ground had been established. It was found in that case that a part of the demised premises had been gutted by fire and the tenants had replaced the burnt portion by pucca walls and had put corrugated sheets in place of thatch. The Appellate Authority did not record a categorical finding that the tenants had by replacing the burnt portion by pucca walls and by putting corrugated sheets in place of thatch, had committed an act which was likely to impair materially the value or utility of the house. It was on account of omission of such a finding by the Appellate Authority that its order of eviction was quashed and the case was remitted to it for reconsideration. It is worthy of note that it is not because of any defect in the pleadings that the aforesaid order of the Appellate Authority had been quashed. "To impair" would mean to reduce or diminish the quantity or quality. Mr. S. P. Jain, relying on *Sukhlal* v. *Bhopal Singh* (2) and *Shri Ved Parkash and another* v. *Shri Khushi Ram and another* (3), maintained that the alterations complained of, could not be said to impair the utility of the premises. *Sukhlal's case* (supra) was a case under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950. According to section 13(1)(c) of that Act, a tenant can be evicted if

(1) 1973 Rent Control Reporter 618.

(2) 1973 Rent Control Reporter 19.

(3) 1973 Rent Control Reporter 252.

he had without the permission of the landlord made such construction, as in the opinion of the Court, has materially altered the premises or is likely to diminish the value thereof. The word "utility" does not find mention therein. It was held there that putting up only the wooden frame with shutters in the opening or entrance, by itself, did not amount to an act of construction, and making of a pucca floor in place of kacha one, or having a kacha wall plastered, would not be a construction as would be likely to diminish the value thereof. In that case, no wall had been erected so as to bifurcate the verandah into two portions and no wall adjoining the road had been raised so as to include half of the verandah into the shop. Again, in that case, there was no removal of the door of the shop from its previous position. Further, it was observed in *Khinvaram* v. *Lakhi Prasad* (4), referred to in paragraph 9 of the said case, that:

> "The question whether any material alteration has been made in the premises is a question of fact in each case depending upon the nature of the premises and nature, extent and effect of the constructions made therein. The alteration should be of structural nature and not merely of decorative nature. Fixing a door to a room or to a garage by a tenant may not amount to material alteration within the meaning of section 13(1)(c) of the Act, but same will not be the case when an open verandah is covered into a closed room by fixing doors on the open portion. The character and shape of the premises in the former case remain unchanged while in the latter case the form and structure of the premises is changed."

The said observations rather go a long way to support the contention of the respondents that the petitioner had changed the structure of the premises by bifurcating the verandah and including half of it which lies in front of his shop into that shop and, as such, the same amounts to construction which could impair materially the utility of the premises. The facts of *Ved Parkash's case* (supra) were different. That was a case under section 12 of the Act. In that case, the tenant had gone to the Court for permission to replace

(4) 1964 R. L. W. 213.

a kacha roof which was in bad condition by a *kacha* roof and also to replace tin sheets in place of the old ones which had many holes. The decision of the Appellate Authority was that the replacement of the kacha roof, in the circumstances stated above, was not structural alteration, and the said decision was upheld by this Court. *Banarsi Dass* v. *Sunder Dass and another* (5) and *Nirmala Devi Kapoor* v. *Kartar Singh and others* (6) are the authorities to the effect that when there is structural alteration, it would not be repairs but would be counted as an act which is likely to impair the value or utility of the building. A verandah has its own utility. It provides light and air to the rooms adjoining it. A building with a verandah is admittedly more useful than the one without a verandah. Therefore, there can hardly be any doubt that the inclusion of verandah into the shop constitutes structural alteration and had impaired materially the utility of the premises. So, the aforesaid act of the petitioner undoubtedly fell within the ambit of section 13(2) (iii).

(6) It, thus, follows from the discussion above, that the contentions advanced by the learned counsel for the petitioner are not well-founded and the finding of the Appellate Court that the petitioner had made material alterations in the premises which had impaired its utility is correct and the same is affirmed. In that view of the matter, the impugned order is unassailable and there is no merit in this petition.

(7) Consequently, I, maintaining the order of eviction recorded by the Appellate Authority, dismiss this revision petition with costs.

(8) The petitioner is given two months' time from today to vacate the premises and to surrender its possession to the respondents.

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(5) 1969 P.L.R. 59.

(6) 1972 P.L.R. Short Notes No. 2.