

M/S. PRECISION STEEL AND ENGG. WORKS

v.

PREM DEVA NIRANJAN DEVA TAYAL

DECEMBER 9, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

*Rent Control and Eviction:*

*Delhi Rent Control Act, 1958; Section 14(1)(e):*

*Eviction Petition—On ground of bonafide requirements—Rejected by Rent Controller on the ground that premises let out was not for residential purpose—Reversed by High Court— On appeal, held: Where premises is let out for composite or mixed purposes, it is necessary to ascertain from the written agreement/deed the main and dominant purpose of letting if purpose of letting is residential, any incidental or unauthorised user would be of no effect—In the facts and circumstances of the case, provision of Section 14(1)(e) attracted—Delhi Development Authority Act; Sections 14 and 29—Delhi Municipal Corporation Act; Sections 347 and 430.*

*Words and Phrases:*

*'mixed user'—'abundant cautela'—Meaning of in the context of Section 14(1)(e) of the Delhi Rent Control Act.*

**Appellant-tenant was in occupation of tenancy premises as per terms of the Licence Deed. Respondent-Landlord filed eviction petition on ground of bonafide requirements under Section 14(1)(e) of the Delhi Rent Control Act. Rent Controller rejected it since purpose for which premises have been let out was not residential and Section 14(1)(e) not attracted. On appeal, High Court reversed the order of Rent Controller. Hence this appeal by the tenant.**

**It was contended for the appellant that premises was let out for residential as well as non-residential purpose as per agreement/Licence Deed; and that as per explanation appended to Section 14(1)(e) of the Act, Legislature intends that even incidental user of premises for non-residential purpose with the consent of Landlord would change the purpose**

**A** of letting from residential to non-residential, Section 14(1)(e) not attracted.

On behalf of Respondent-Landlord, it was submitted that predominant purpose of letting was residential only besides incidental user for purpose other than residential was not in conformity with local laws.

**B** Dismissing the appeal, the Court

**C** HELD: 1.1. Section 14 of the Delhi Rent Control Act protects tenants from eviction. An order for recovery of possession of the tenancy premises can be made by the Rent Controller on one or more of the specified grounds. It is not permissible under the Scheme of the Act to file an application seeking an order for recovery of the premises let for non-residential purposes on the ground of *bona fide* requirement. Letting out for composite or mixed purposes and whether the premises let for such composite or mixed purposes can be got vacated on the ground of *bona fide* requirement is not specifically provided by the Act. [634-B-E]

**D** 1.2. The expression 'the premises let for residential purposes' should be construed liberally and not technically or narrowly; meaning thereby, where the premises are solely let for residential purposes they are undoubtedly covered by Section 14(1)(e) but even when the premises are let out for composite or mixed purposes if the predominant or main purpose of letting is for residential purposes, the same would be included within the expression 'the premises let for residential purposes'. An incidental, secondary or unauthorized user of the premises for purposes other than residential would not take the premises out of the meaning of the expression 'the premises let for residential purposes'. In such cases, it would be necessary to find out what is the "main and dominant purpose" of letting as distinguished from "subsidiary, ancillary or incidental purpose". [643-F, G; 644-B]

*Allenbury Engineers Pvt. Ltd. v. Shri Ram Krishna Dalmia and Ors.*, [1973] 1 SCC 7, followed.

**G** *Dr. Sewa Singh v. Smt. Revinder Kaur and Anr.*, (1970) RCJ 615 SC; *Sant Ram v. Rajinder Lal and Ors.*, [1979] 2 SCC 274; *Smt. Nai Bahu v. Lal Ramnarayan and Ors.*, [1978] 1 SCC 58 and *Hiralal Kapur v. Prabha Choudhury*, [1988] 2 SCC 172, relied on.

**H** *Lakshman Santu Sintre v. Balkrishna Keshav Shetye*, AIR (1925)

Bombay 398; *Watter & Son Ltd. v. Thomas*, (1921) 1 KB 541; *T. Dakshinamoorthy v. Thulja Bai and Anr.* AIR (1952) Madras 413 and *Feyereisel v. Parry and Ors.*, (1952) 1 All E.R. 728, referred to. A

1.3. Once the terms of tenancy have been reduced into writing the purpose of tenancy has to be determined by reading the relevant clauses of the deed and extrinsic evidence making a departure from the terms of deed may not be admissible. In case of doubt or vagueness resort can be had to other factors such as constructional features of the premises, their location, the amenities available, the conveniences provided, the number of rooms and the actual user to which the premises have been subjected. The opening and governing part of Clause 6 of licence deed is couched in a mandatory form—"the licensee shall use the premises for the residence of the directors, partners and officers". In the succeeding sentence the use of word 'however' is suggestive of the fact that incidental user of the tenancy premises for the office purpose also was permitted by the landlord. Such incidental user is permissive and not purposive. And that too has been made dependent on the permissibility determinable by reference to the laws governing the local authority. [646-F-H; 647-A] B C D

1.4. In the instant case, the primary and dominant purpose of letting the suit premises is residential. Commercial activity therein is not permitted. Incidental user for office purpose is permitted subject to the condition of such user being permissible under the municipal laws which it is not. In any case such user being incidental or ancillary, the same would not detract from the primary or dominant purpose of letting. The suit premises have been rightly held by the High Court to be 'the premises let for residential purposes' within the meaning of Section 14(1)(e) of the Act. [648-A-B] E F

*Kamla Marwah v. M/s. Kapur Fabrics*, 48 (1992) DLT 636, distinguished.

2. The enactment of explanation appended to Section 14(1)(e) is *ex abundanti cautela*. All that the explanation say is that the tenant cannot by his unilateral act of impermissible user, alter the purpose of letting. This explanation has nothing to do with determining the main, principal or dominant purpose of letting—the theory applies to interpreting the expression "the premises let for residential purposes" in Section 14(1)(e) of the Act. [649-A-B] G

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**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2227 of 2000.

From the Judgment and Order dated 27.8.1999 of the Delhi High Court in C.R. No. 408 of 1994.

**B** B. Datta and S.K. Taneja, Ujjwal Banerjee, S.K. Puri, Ms Anindita Gupta and H.K. Puri, for the Appellants.

M.L. Verma, Prashant Pakkhide, Abhay Kumar and Subramonium Prasad, for the Respondent.

**C** The Judgment of the Court was delivered by

**R.C. LAHOTI, J.** Proceedings for eviction of the appellants-tenants, were initiated by the respondent landlord on the ground available under clause (e) of sub section (1) of Section 14 of the Delhi Rent Control Act, 1958 (hereinafter 'the Act,' for short). The High Court has, in exercise of its revisional jurisdiction, passed an order for recovery of possession of the tenancy premises: The tenants are in appeal by special leave.

**D** The tenancy premises are situated at B-44, Greater Kailash, Part I, New Delhi. Out of the building standing over 1000 sq. yards plot the appellants are in occupation of the front portion of the ground-floor since 1971. Premises comprise of four bed rooms, 3 barthrooms 1 barsati, I garage and the servant quarters along with one bathroom for servants. At this stage, it is no more in controversy that the respondent is owner-cum-landlord of the premises and the appellants are the tenants. The terms of tenancy are incorporated in a document dated 13th September, 1971 called Licence Deed. The Rent Controller and the High Court have both recorded findings of fact that the suit premises are required *bona fide* by the respondent-landlord for occupation as a residence for himself and the members of his family and for satisfying such requirements the respondent does not possess any other suitable accommodation. The controversy centres around determination of the purpose for which the premises have been let, and, depending on the answer, whether the applicability of Section 14(1)(e) of the Act is attracted. In the opinion of the Rent Controller—it is not; in the opinion of the High Court—it is.

**E** Clauses 6, 7, 12 and 16 of the Licer.ce Deed, which were referred to by the learned counsel for the parties during the course of hearing, are extracted and reproduced hereunder:—

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- “6. The Licensees shall use the said premises for the residence of their Directors, partners and officers. The Licensees will, however, be free to use the said premises in part or in full also for office purpose provided the rules of the local authorities so permit and in such an event the Licensees shall pay to the owners any increase in local taxes, etc. occasioned by such change of use of the said premises from residential to office. A B
7. The Licensees shall not permit the said premises or any part thereof being used by any other person for any purpose whatsoever without the previous consent in writing of the owners and in default thereof the Licence shall be liable for cancellation. The Licensees shall not transfer possession of the premises or part thereof or otherwise carry on the business in the premises with any other person or assign, transfer, change or otherwise alienate their interest in the premises. C
12. The Licensees shall comply at all times with all the rules and regulations of the local authorities whatsoever in relation to the said premises. D
16. The Licensees agree and understand that the said premises shall not be used for any illegal or immoral purpose, for gambling or for sale of alcoholic beverages and the owners shall have full right to cancel the Licence by giving one month's notice in case the said premises are used for any of these purposes and to claim in full the balance of the Licence fees for the unexpired part of the Licence period and in addition to claim damages/for less of good reputation of the premises and the owners and also expenses sustained in the removal of the Licensees' establishment from the said premises.” E F

A few other relevant undisputed facts may also be noticed. The master plan and the zonal plan of the locality where the suit premises are situated have earmarked the area as residential. No activity other than residential is permissible threat. This is so by virtue of the provisions contained in Delhi Development Act, 1957 and Delhi Municipal Corporation Act, 1957, the relevant provisions whereof will be referred to where needed. It appears that on 18.3.1982, a junior engineer of Delhi Development Authority ('DDA', for short) inspected the premises occupied by the appellants and found that a front room on the ground floor was being used for running an office of the appellant-company. The company, which is the tenant, and its director and H

A constituted attorney, the appellant no.2 were prosecuted for having committed an offence punishable under Section 14 read with Section 29(2) of DDA Act for the residential building falling in development zone F-II which can be used only for residential purposes according to master plan, was being used for running an office therein. The Metropolitan Magistrate found such misuser having been proved. The defence taken by the appellants was that only one room of the tenancy premises was used for his office by appellant no.2 as he being a director of many companies the personnel thereof were coming to him for consultancy work which was transacted in the one room office. The appellants were convicted and directed to pay a fine of Rs. 3000 each.

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C On behalf of the appellants one Rajbir Pal, Lower Division Clerk of Municipal Corporation of Delhi was examined as RW2, who stated that Greater Kailash-I was a freehold area where it was permissible, so far as MCD is concerned, to use the property for residential as well as commercial purposes. He further deposed that so far as the premises in occupation of the appellants are concerned, misuser charges were levied and recovered from the appellants for the period 1.4.1989 to 31.3.1991. Such misuser charges are recovered when residential premises are subjected to commercial use. In the records relating to this property, made available by the witness in the court, there was no letter from the landlord allowing commercial user of the suit premises by the tenants though a letter dated 1.3.1990 from the appellants requesting for permitting commercial user of the suit premises was available in the records.

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F Mr. B. Dutta, the learned senior counsel for the appellants placed forceful reliance on clause 6 of the Licence Deed and submitted that the premises have been let out not only for the residence of directors, partners and officers of the tenant-company but the tenants have been permitted freely to use the tenancy premises in part or in full also for office purposes which shows that so far as the parties to the tenancy agreement are concerned the purpose of letting is mixed, i.e., residential and non-residential both. The submission of Mr. M.L. Verma, the learned senior counsel for the landlord-respondent, has been that the principal purpose of letting is residential only though incidentally user for office purposes has been allowed, eclipsed by the condition that such user does not invite the wrath of the rules of the local authorities. Inasmuch as the laws governing the local authorities and as applicable to the suit premises do not permit user of the premises for any purpose other than residential, the purpose of letting, on a fair construction of clause 6 of the Licence Deed would remain residential only and this inference stands reinforced by a reading of Clauses 7, 12 and 16 of the Licence Deed. Having

heard the learned counsel for the parties at length we are satisfied that the predominant and main purpose, for which the suit premises have been let is residential and therefore proceedings for eviction under Section 14(1)(e) of the Act have been rightly held by the High Court to be maintainable. A

Section 14 of the Act protects tenants from eviction. An order for the recovery of possession of the tenancy premises can be made by the Rent Controller on one or more of the specified grounds. One of the grounds provided by clause (e), relevant for our purpose, is under: B

“(e) that the premises let for residential purposes are required *bona fide* by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation; C

*Explanation.*—For the purpose of this clause, “premises let for residential purposes” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;” D

It is not permissible under the scheme of the Act to file an application seeking an order for the recovery of the premises let for non-residential purposes on the ground of *bona fide* requirement. Letting out for composite or mixed purposes and whether the premises let for such composite or mixed purposes can be got vacated on the ground of *bona fide* requirement is not specifically provided by the Act. E

In our opinion the expression ‘the premises let for residential purposes’ should be construed liberally and not technically or narrowly; meaning thereby, where the premises are solely let for residential purpose they are undoubtedly covered by Section 14(1)(e) but even when the premises are let out for composite or mixed purpose if the predominant or main purpose of letting is for residential purpose, the same would be included within the expression ‘the premises let for residential purposes’. An incidental, a secondary or unauthorized user of the premises for purposes other than residence would not take the premises out of the meaning of the expression ‘the premises let for residential purposes.’ F G

Premises are capable of being classified into residential and non-residential depending on the purpose of letting. This is broad classification. H

- A Question of construction and determining the purpose of letting may pose difficulty when the premises are let for mixed, composite or dual purpose, i.e., where the entire premises are allowed to be used for an overlapping purpose or the premises forming subject matter of one tenancy are allowed to be used for purposes more than one. In such a case it cannot be said that the premises would cease to be of either category, i.e., they would be neither residential nor non residential. Rather it would be necessary to find out what is the “main and dominant purpose” of letting as distinguished from “subsidiary, ancillary or incidental purpose”. The theory of determining the purpose of letting by reference to finding out the main and dominant purpose of letting has ample judicial authority to derive support from. In *Dr. Sewa Singh v. Smt. Revinder Kaur and Anr.*, (1970) RCJ 615 SC it was held that residential building will remain so even if it is used by a person engaged in one or more of the professions partly for his business or partly for his residence. The building in the occupation of the tenant was undoubtedly residential and on the evidence it was found that part of it was being used by the tenant, a medical practitioner for examining patients and prescribing medicines.
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- D *Allenbury Engineers Pvt. Ltd. v. Shri Ram Krishna Dalmia and Ors.*, [1973] 1 SCC 7, to determine whether the tenancy was for manufacturing purpose within the meaning of Section 106 of the Transfer of Property Act, 1882 the Constitution Bench applied the test of ‘main and dominant purpose’ as distinguished from ‘incidental purpose’. The dominant purpose of lease was for storage and resale of the vehicles. Some spare parts were manufactured and used in the vehicles as incidental to the main purpose of disposal of the vehicles as without repairing or reconditioning the vehicles the disposal could hardly have been possible. It was held that the dominant purpose of the lease as manufacturing purpose was not established. In *Sant Ram v. Rajinder Lal and Ors.*, [1979] 2 SCC 274, a cobbler carried on cobbler’s business in the shop. Incidentally he slept in the back portion of the shop at night while he worked during the days. On the off days he would go home at night. It was held that the purpose of letting remained exclusively commercial as the user of back portion for sleeping in the night was not incompatible with day’s user.
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- G In *Smt. Nai Bahu v. Lala Ramnarayan and Ors.*, [1978] 1 SCC 58, this Court has held that a non-residential accommodation can be allowed to be vacated by an order for eviction if the same was genuinely required not only for non-residential use but also a portion of it *bona fide* for personal residence. It clearly follows that user of a portion for personal residence would not alter
- H the essential and basic or dominant user for non residential purpose: *Hiralal*

*Kapur v. Prabha Choudhury*, [1988] 2 SCC 172, is a reverse case on facts but deals with Section 14(1)(e) of Delhi Rent Control Act, 1958. The premises were residential in nature and let out for residential purposes. The landlord, a lawyer, applied for recovery of possession of his residential premises pleading *bona fide* requirement for his residential purposes. It was held that merely because the lawyer landlord intended to use a portion of the premises for purposes of his office, library or study, the same would not detract from his requirement being for residential purposes. It would be different when the entire premises sought to be got vacated are needed solely for use as office and library in which case the requirement would cease to be residential merely. This decision clearly spells out that incidental, secondary or partial user of the premises for office purpose along with use as residence of the premises does not alter the main or predominant purpose of user of the premises and the same continues to be residential.

In *Lakshman Santu Sintre v. Balkrishna Keshav Shetye*, AIR (1925) Bombay 398, Chief Justice Macleod, speaking for the Division Bench opined that the fact that a man carries on business or works in the same premises, which he uses for dwelling in, cannot thereby prevent those premises coming within the category of premises used as a dwelling house.

In *Walter and Son. Ltd v. Thomas*, (1921) 1 KB 541, the question arose—what is a dwelling house? The Bench applied the test—What is the dominant purpose and principal user of the premises? The Bench opined that answer would determine the purpose of tenancy and user of premises. The dominant purpose and object may be to carry the business of a licensee and the provision of accommodation for the occupants may be a mere adjunct of the business. Then the premises do not cease to be ‘business premises’ because dwelling accommodation necessary for the purpose of the business is attached. On the other hand a dwelling house would not cease to be so by reason only that part of the premises is used as a shop or office or for business, trade or professional purposes.

In *Feyereisel v. Parry and Ors.*, (1952) 1 All E.R. 728, the premises let by a landlord to a tenant were a camping site and a bungalow thereon. The tenant occupied the bungalow and carried on the business of a camping site proprietor. It was held that the camping site was the main object of the letting and the bungalow was a mere adjunct to the business carried on by the tenant and therefore it was held that the dwelling house went along with the camping site. The test of principal and dominant object of letting and user of the

A premises was reiterated. The question formulated was—“Is one thing the adjunct of the other, or the other of the one?”

B Incidentally, we may refer to a Full Bench decision of Madras High Court in *T. Dakshinamoorthy v. Thulja Bai and Anr.*, AIR (1952) Madras 413. The Full Bench held the English test being applicable in India too, as sound and reasonable, and approved the test of dominant purpose and principal user being applied for determining the purpose of letting though the Bench observed that such test was not always of easy application and the difficulty in the actual application of the test was capable of being taken care of by a margin of judicial discretion in the matter of the determination of the question of the character of the building as a question of fact has necessarily to be allowed for. To quote, the Full Bench held, “Instances of transactions inspired by mixed motives and intents in which the question of the main, real and dominant motive and intent has to be canvassed for validating or invalidating them are not uncommon in other branches of law. There can in our judgment be no reason or principle why a canvass of the main, real and dominant purpose should be regarded as not legitimate in this branch of law in cases where the letting is actuated by mixed purposes.”

E In our opinion, for the purpose of Section 14(1)(e) of the Act, so long as the principle and dominant purpose of letting is residential merely because a mixed user of the premises or user of a part or incidental or ancillary user of the premises is permitted for activities other than residential, the purpose of letting the premises would not cease to be residential and the premises would continue to be governed by Section 14(1)(e) of the Act.

F It is not the case of the appellants that any business activity is being carried out in the suit premises or was permitted to be carried on or was included within the purposes of letting. Once the terms tenancy have been reduced into writing the purpose of tenancy has to be determined by reading the relevant clauses of the deed and extrinsic evidence making a departure from the terms of deed may not be admissible. In case of doubt or vagueness resort can be had to other factors such as constructional features of the premises, their location, the amenities available, the conveniences provided, the number of rooms and the actual user to which the premises have been subjected. The opening and governing part of Clause 6 is couched in a mandatory form—‘the licensee shall use the premises for the residence of the directors, partners and officers. In the succeeding sentence the use of word

G ‘however,’ is suggestive of the fact that incidental user of the tenancy premises

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for the office purpose also was permitted by the landlord. Such incidental user is permissive and not purposive. And that too has been made dependent on the permissibility determinable by reference to the laws governing the local authority. It is not disputed that the provisions of Delhi Development Act, 1957 and the Delhi Municipal Corporation Act, 1957 do apply to the locality where the tenancy premises are situated.

Section 14 of DDA Act provides that after the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity of such plan. The inhibition contained in Section 14 applies in full force inasmuch as the master plan and the zonal plan provide for Greater Kailash Part I being residential locality only. That is why the user of one room as an office was held liable to be penalized under Section 29 of the Act. Section 347 of the DMC Act imposes restrictions on uses of buildings with in Delhi Municipal Corporation area. No person shall, without the written permission of the Commissioner or otherwise than in conformity with the conditions, if any, of such permission, change or allow the change of use of any land or building. Section 430 provides for the manner in which a written permission may be granted. It has to be in writing and signed by the Commissioner or by the officer empowered in this behalf. It should satisfy other requirements of Section 430. A perusal of the statement of Rajbir Pal RW2 does not spell out any written permission by the Commissioner or an empowered officer having been allowed in accordance with Section 347 read with Section 430 of the DMC Act so far as the suit premises are concerned. Construing the statement of Rajbir Pal as much in favour of the appellants as possible, all that can be said is that the premises were found to have been misused and the misuser was condoned for the period 1.4.1989 to 1.3.1991 by levying misuse charges. The appellants did send a letter dated 1.3.1990 to the Corporation authorities requesting for permitting commercial user of the suit premises. However the exact nature of prayer is not known as the contents of the letter were not brought on record. Certainly, Rajbir Pal does not depose to any such permission having been granted by the Commissioner to the appellants.

Clause 7 of the Deed prohibits user of the premises for business purposes. Clause 12 obliges the occupants to comply with the laws governing the locality and as applicable to the local authorities. Clause 16 restrains use for any illegal purpose, i.e. a purpose not permitted by law. These clauses obviously attract applicability of Sections 14 and 29 of the DDA Act as also Section 347 of the DMC Act.

A The upshot of the above discussion is that the primary and dominant purpose of letting the suit premises is residential. Commercial activity therein is not permitted. Incidental user for office purpose is permitted subject to the condition of such user being permissible under the municipal laws which it is not. In any case such user being incidental or ancillary, the same would not detract from the primary or dominant purpose of letting. The suit premises have been rightly held by the High Court to be 'the premises let for residential purposes' within the meaning of Section 14(1)(e) of the Act.

C The decision in *Kamla Marwah v. M/s. Kapur Fabrics*, 48 (1992) DLT 636, was forcefully relied on by learned senior counsel for the appellants. It is a single Bench decision of the High Court of Delhi. Having gone through the decision, we find it a case of a peculiar nature proceeding on its own facts and clearly distinguishable so far as the present case is concerned. Section 14(1)(e) of the Act did not come up for the consideration of the Court. The eviction was sought for under Section 14(1)(k) of the Act. The lessee was obliged by clause (9) of the lease deed to use the premises for his residence only. However, it was found that in brazen disregard of the relevant clause of the lease deed the tenant indulged into misuser of the premises deviating from the permitted user of the residence only and in spite of the protest by the landlord. As the lease deed by clause (18) incorporated permission from the landlord to the tenant to utilize the premises, in case he so wanted, wholly or partially, for office purposes but subject to getting permission from the Government, it was held that so long as the tenant secured condonation of misuser from the Land and Development Office on payment of charges or penalty, the eviction order could be held in abeyance. However, still if the misuser was not condoned by the L and DO office the tenant must stop the misuser finally and suffer an eviction order in the event of defiance. Clearly, the High Court was not determining whether the purpose of letting was residential within the meaning of Section 14(1)(e) of the Act; all that the High Court considered was whether the user or dealing with the premises by the tenant was contrary to any condition imposed on the landlord by the Government or local authority within the meaning of Section 14(1)(k) of the Act.

H The learned senior counsel for the appellants referred to the explanation appended to Section 14(1)(e) and submitted that the Legislature in its wisdom thought fit to enact that premises let for residential purpose if used incidentally for commercial or other purposes by the tenant but *without the consent of the landlord* would not alter the purpose and the enactment of the explanation is

suggestive of legislative intent that even incidental user for commercial or other purposes if *accompanied by the consent of the landlord* would take the premises out of the expression 'premises let for residential purpose'. We cannot agree. The enactment of explanation is *ex abundanti cautela*. All that the explanation say is that the tenant cannot by his unilateral act of impermissible user, alter the purpose of letting. This explanation has nothing to do with determining the main, principal or dominant purpose of letting - the theory which in our opinion applies to interpreting the expression "the premises let for residential purposes" in Section 14(1)(e) of the Act. A B

The appeal is dismissed with costs. The appellants are allowed four months' time from today for vacating the suit premises subject to filing the usual undertaking within a period of three weeks from today. C

S.K.S.

Appeal dismissed.