

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 245 OF 2011**

Smt. Deepa Anant Bandekar, r/o Usnori Building, Karewadda, Vasco-da-Gama, represented by her constituted Attorney, Shri R.K. Shenoy, r/o Margao, Goa. Petitioner

Versus

1. Shri Anwarali Ismail Virani, Shop No. 8, Laxminarayan Niwas, Vasco-da-Gama, through Attorney Shri Tajdin Noorani, residing at Malbath, Margao, Goa.
 2. Rent Controller & Dy. Collector, (District Level), Mormugao, Vasco-da-Gama, Goa.
 3. Administrative Tribunal of Goa, 3rd Floor Vaidya Bldg., Panaji, Goa.
- } Deleted as per order
dt. 05.05.2011
- Respondent

Shri J.E. Coelho Pereira, Senior Advocate with Ms. A. Sayed, Advocate for the Petitioner.

Shri S.M. Singbal, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

RESERVED ON: 12th SEPTEMBER, 2017

PRONOUNCED ON: 15th SEPTEMBER, 2017

JUDGMENT:

The challenge in this petition is to the judgment and order dated 26.11.2010, passed by the learned Administrative Tribunal in Eviction Appeal No. 49/2003. By the impugned judgment, the learned Administrative Tribunal has set aside the order of the learned Rent Controller, by which, the learned Rent Controller had directed eviction of the respondent.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the petitioner is the owner of a residential cum commercial building known as 'Laxminarayan Niwas', situated at Vasco-da-Gama. The respondent was inducted as a tenant in respect of Shop No. 8 in the said building (hereinafter referred to as suit premises), vide agreement dated 01.03.1983, on an agreed rent of Rs.450/- per month.

The respondent started running a retail business in the suit premises in crockery, plastic, electrical goods etc. According to the petitioner, after sometime, the respondent no.1 stopped using the suit premises for running the retail business and started illegally using it as a godown, without written permission of the petitioner. Thus, the respondent has used the premises for a purpose other than, for which it was let out.

The petitioner thus sought eviction of the respondent under Section 22(2)(b)(ii) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act, for short).

3. The respondent filed written statement and resisted the application. It was denied that the respondent has stopped the retail business. It was further denied that the suit premises are being used as a godown.

4. The parties led evidence before the learned Rent Controller. The petitioner examined her Power of Attorney, Shri Ramesh K. Shenoy and one more witness being Shri Keshav Pandurang Digde and produced on record the photographs of the suit premises. The respondent examined Shri Tajdin Noorani (RW-1), Shri Siraj Virani (RW-2) and Shri Francis Pereira (RW-3).

5. The learned Rent Controller found that the respondent had indeed effected the change of the user of the suit premises, by using it as a godown and proceeded to allow the application, directing eviction of the respondent. In appeal, the learned Administrative Tribunal has reversed the same. Hence, this petition.

6. I have heard Shri Pereira, the learned Senior Counsel for the petitioner and Shri Singbal, the learned Counsel appearing for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the evidence and the record and impugned judgment.

7. It is submitted by Shri Pereira, the learned Senior Counsel for the petitioner that the Administrative Tribunal was

in error in interfering with a well reasoned order of the Rent Controller. It is submitted that there is sufficient evidence on record to show that the respondent had stopped his retail business and the suit premises was being used as godown, which is actionable under Section 22(2)(b)(ii) of the Act. It is submitted that once the petitioner has shown that the respondent has stopped using the suit premises for retail business, the onus had shifted on the respondent to show that the suit premises were indeed used for the purpose of his retail business and not as a godown. It is submitted that respondent has failed to discharge the said onus, as a result of which, an adverse reference needs to be drawn. The learned Senior Counsel pointed out two letters dated 20.12.1991 and 23.07.1991, which were returned by the Postal Authority, for the reason that the suit premises were closed. It is submitted that the respondent has failed to produce any license from the local Authority, to show that the retail business was being carried out in the suit premises. It is submitted that the other evidence led by the respondent is not at all acceptable in the absence of any documentary evidence, as to the existence of license, invoice/bills and such other documents to show that the respondent was carrying on retail business in the suit premises.

8. On behalf of the petitioner, strong reliance is placed on the decision of the Supreme Court in the case of **Goa Urban Co-operative Bank Ltd. Vs. Noor Mohd. Sheikh Mussa & Another, AIR 2004 SC 3886** and the decision of the Punjab and Haryana High Court in the case of **Augur Nath Vs. Kishan Chand (now dead) through his LRs, (2003) 133 PLR 741**. It is submitted that although, the fact that office premises were converted as a godown, were admitted in the case of **Goa Urban Co-operative Bank Ltd.** (supra), the principles laid down therein, would still apply and the learned Administrative Tribunal was not right in refusing to place reliance on the decision in the case of **Goa Urban Co-operative Bank Ltd.** (supra), on the ground that the facts are distinguishable.

9. On the contrary, it is submitted by Shri Singbal, the learned Counsel for the respondent that there is no evidence led on behalf of the petitioner, as to which goods were stored in the suit premises, to show that it was used as a godown. It is submitted that none of the witnesses examined by the petitioner state about the goods allegedly stored in the suit premises. It is submitted that the burden to establish the change of user, exclusively lay on the petitioner, which has not been discharged. It is submitted that there is absolutely no evidence either oral or

documentary to show that the suit premises were used as a godown. The witnesses examined on behalf of the petitioner are the employees of the petitioner and not independent witnesses. It is also contended that Ramesh Shenoy (AW-1), who is the Power of Attorney holder of the petitioner does not have authority to depose on behalf of the petitioner, in as much as the Power of Attorney does not contain power to give evidence on behalf of the petitioner. It is submitted that the suit premises have been leased out to the respondent to conduct "Business Activities", which is wider than "Commercial Activities". It is thus submitted that even assuming that the suit premises were used for storage of goods, it would come within the ambit of "business activities", which is permissible in terms of the recitals in the lease deed. It is submitted that there are only three broad categories of use to which any building/premises can be put, namely, (i) residential, (ii) commercial and (iii) industrial. It is submitted that any business activity, which would fall within the ambit of commercial activity, would cover use of the premises as a godown also. The learned Counsel was at pains to point out that there is no injury or there is no act of waste caused by the respondent, assuming that the suit premises are used as a godown. It is submitted that the injury to the suit premises is a necessary concomitant for the change of user to be actionable.

It is submitted that the clause, as to the permissible user of the premises, as contained in the lease deed has to be strictly interpreted. Reliance in this regard is placed on the decision of Supreme Court in the case of **M. Arul Jothi & Another Vs. Lajja Bal (deceased) & Another, (2000) 3 SCC 723**. It is submitted that there is no restrictive clause. It is submitted that the business activities as used in the lease deed, in the given case, would even cover use of the suit premises as a godown. It is submitted that the dominant intention of the parties has to be gathered from the recitals of the lease deed. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Spun Casting & Engg. Co. (P) Ltd. Vs. Dwijendra Lal Sinha (Dead) through LRs. & Others, (2005) 6 SCC 265**. Reliance is also placed on the decision of the Supreme Court in the case of **Atul Castings Ltd. Vs. Bawa Gurvachan Singh, (2001) 5 SCC 133** and in the case of **Mohan Amba Prasad Agnihotri & Others Vs. Bhaskar Balwant Aher (Dead) through LRs., (2000) 3 SCC 190**. He submits that the learned Administrative Tribunal has rightly appreciated the oral as well as the documentary evidence on record and has rightly found that the ground for change of user is not made out.

10. I have carefully considered the rival circumstances and the submissions made.

11. Section 22(1)(2)(b)(ii) and (c) of the Act which are relevant for the purpose read as under:

“22. Grounds of eviction.— (1) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.

(2) If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied —

(a)

(b) that the tenant has without the written consent of the landlord—

(i)

(ii) used the building for a purpose other than that for which it was leased; or

(c) that the tenant has committed such acts of damage as are likely to impair materially the value or utility of the building;

(d)

(e)

(f)

(g)

the Controller shall make an order directing the tenant to put the landlord in possession of the building; and if the Controller is not so satisfied he shall make an order rejecting the application.”

12. The petitioner in the present case has sought eviction under Section 22(2)(b)(ii) of the Act i.e. on the ground of the suit premises being used for the purpose other than that for which it was leased. It would therefore be necessary to first ascertain as to the purpose for which the suit premises were leased to the respondent. There is a written agreement of lease in this case. The relevant portion of the lease agreement reads as under:

"Whereas the Lessor is the owner and Lawful possessor of the urban property named Lakshimi Narayan Nivas, situated at Vasco-da-Gama, District of Goa and Sub-District Mormugao, registered in the Land Revenue Office Matriz No.2715, and in the Land Registration Office of Salcete (Conservatoria de Registo Predial) under No.17467 new series, and whereas the Lessee has agreed to take on lease one shop No.8 consisting of two rooms on the ground floor of the said property. The parties have agreed to enter into this agreement on the following terms and conditions:-

1. That the Lessor to give on lease to the Lessee the above mentioned premises for a period of eleven months commencing from 1st March, 1983 strictly for the purpose of running his business activities. The Lessee is strictly forbidden to convert these premises into a Bar-Restaurant, Hotel, Taverna, Boarding and Lodging House or Cold Drink House on permanent or temporary basis."

(Emphasis supplied)

13. While construing the purpose for which the suit premises have been leased, the Court has to discern the dominant purpose for the lease by reading the recitals in the lease deed as a whole. A perusal of clause 1 of the lease deed would make it clear that the suit premises were leased out “strictly for the purpose of running the business activities of the respondent”. The activities which were forbidden or impermissible are also stipulated in clause 1, which says that the respondent cannot use the suit premises as a bar and restaurant, hotel, taverna, boarding and lodging house or cold drink house, on permanent or temporary basis. Undisputedly, the respondent was running a business of selling crockery, electrical goods, plastic goods etc. in the suit premises. The eviction of the respondent is sought on the ground that the suit premises are now being used as godown, which is actionable under Section 22(2)(b)(ii) of the Act.

14. Mr. Ramesh Shenoy (AW-1) is the Power of Attorney of the petitioner, who states that the suit premises which forms a part of a building known as “Laxmi Narayan Niwas” are let out to the respondent on an agreed monthly rent of Rs.450/- per month for commercial purpose i.e. for running a shop. The respondent

was carrying on the business of sale of cutlery, electrical goods, plastic goods etc. till about the year 1986 and thereafter, kept the premises closed and used them as godown for the purpose of storing goods. He states that the premises were not leased to be used as a godown, which use is contrary to the agreement. He states that somewhere in the year 1991, the petitioner personally came to know about the illegal use. Ramesh Shenoy, the Power of Attorney, states that he has personally noticed that the suit premises were being used as a godown. He states that there were some hawkers who were permanently using the space outside the shutter by displaying some clothes hung on the shutter. He states that the petitioner addressed letter dated 28.03.1991 to the respondent, terminating the lease and to hand over the vacant possession, which letter was returned with the remark "shop remained closed, returned to sender". That letter is produced at Exhibit-PW-1/D. Yet another letter dated 23.07.1991 was sent to the respondent, which was again returned with similar remarks, which is produced at Exhibit-PW-1/E. The photographs of the suit premises are produced at Exhibit-PW-1/F collectively.

In the cross examination, it was suggested to this witness that the suit premises were never closed and the business was always conducted in the same, during the business

hours, which suggestion is refuted. AW-1 also denied that the petitioner was aware that the suit premises are being regularly used by the respondent for business purpose.

15. Keshav Digde (AW-2) states that the respondent is using the suit premises as a godown for last about 15 years (since prior to the date on which he gave evidence). He further states that the shop was closed since 1986 and that, he and Ramesh Shenoy (AW-1) had informed the petitioner that the suit premises are being used as a godown. He states that the photographs (Exhibit-PW-1/F) were taken in October, 1991. He however denied that they were taken on a Sunday. There are suggestions given to this witness, from which it is apparent that the respondent has not disputed that the photographs are that of the suit premises. It was tried to be suggested that as the photographs were taken on a Sunday and therefore, the shop is seen closed.

16. The respondent has examined his Power of Attorney Tajdin Noorani (RW-1). He has denied that the suit premises are being used as a godown or that the respondent is not carrying on any business therein. He states that the business was being carried out in the suit premises in the name and style as

“National Traders”, in which the respondent is dealing with crockery, glass ware, hawai chappals, electronic items etc. and that the said business was a partnership business. He admitted that there was no name board outside the suit premises. He claimed that there is municipal license for the shop run by the respondent in Damodar Chambers (which is a different shop), but there is no license for the business transacted in the suit premises. Although, he claims that a single license is enough for both the shops, not even the said license for the shop in Damodar Chambers is produced on record. In any event, there is no license produced on record to show that the respondent is carrying on business in the suit premises. He further claims that separate receipt books were being maintained in respect of the suit premises. However, the sales tax is not being separately paid in respect of the business transacted in the suit premises. He states that the electricity bills were being paid. However, he admits that none of the electricity bills are produced, pertaining to the suit premises, insofar as four to five years prior to the filing of the application is concerned. Income Tax Returns are claimed to have been filed in respect of the business in the suit premises. However, no such Income Tax Returns are produced nor the receipt book of sales in the shop are produced. He admits in categorical terms that he has not produced any

documents to establish that the business was conducted in the suit premises, during the period of four to five years, prior to the filing of the application and even thereafter.

17. Siraj Virani (RW-2), who according to the respondent is an independent witness (he is conducting business in a building called "Apna Bazaar" in Vasco city). He states that the suit premises are in possession of the respondent, wherein he is conducting the business of sale of crockery, buckets, payal chappals and other items. He claims that he has been purchasing the said items for more than ten to twelve years. In cross examination, he has stated that he is dealing in the items like crockery, buckets or payal chappals, however, he does not have any receipt to show whether the crockery or payal chappals purchased by him were from the suit premises or the shop in Damodar Chambers.

18. On a careful consideration of the evidence, I do not find that any reliance can be placed on the evidence of Siraj Virani (RW-2). The evidence of Tajdin Noorani (RW-1) taken together with the pleadings and the two letters, which were returned with the remark that the "shop premises are closed", would be sufficient to establish that the respondent is not

conducting his business in the suit premises. The question is whether, the suit premises are being used as a godown.

19. The learned Counsel for the respondent broadly raised three contentions. Firstly, it is contended that the factum of the change of user has not been established. In other words, it is contended that the petitioner has not established that the respondent has changed the user of the premises from a shop to a godown. Secondly, it is contended that even assuming that there is such a change of user, it would be covered within the ambit of “business activities”, as envisaged in the lease agreement, in as much as a “business activities”, would essentially require a godown and clause 1 of the lease deed clearly shows that the premises have been leased out for the purpose of the “business activities” of the respondent. Thirdly, it is contended that mere change of user from a shop to a godown, would not be actionable, in the absence of any acts of waste or damage to the premises and the consequent prejudice to the petitioner/landlord.

20. It is true that the preliminary burden to establish the ground of change of user would be on the landlord. However, once the landlord has established that the business (as was being

conducted in the suit premises), is not being conducted, the onus would shift on the respondent-tenant, particularly, when the respondent claims that the business, is being still conducted in the suit premises. That in my considered view has not been discharged and therefore, adverse inference needs to be drawn (see the judgment in the case of **Augur Nath Vs. Kishan Chand**, (2003) 133 PLR 741). On the contrary there is clear evidence that the respondent is not conducting the business of sale of crockery, plastic items, electrical goods etc. in the suit premises and in such circumstances, having regard to the evidence of AW-1 and AW-2, it has to be held that the respondent has changed the user of the suit premises from a shop to a godown.

21. This takes me to the second contention. It is well settled that in order to discern the dominant purpose and the intention of the parties, the lease deed has to be read as a whole. A careful perusal of the lease deed would show that the lease was in respect of a “shop” for “running the business activities”. It can thus be seen that the “business activities” although, may be a term of a wider connotation, in the present case, it is qualified with the suit premises being let out as a “shop”.

22. The Supreme Court in the case of **Goa Urban Co-operative Bank Ltd.** (supra) had an occasion to consider the decision of the Full Bench of the Punjab & Haryana High Court in the case of **Des Raj Vs. Sham Lal, AIR 1980 P & H 229**. The Supreme Court has quoted with approval the observations of the Full Bench of the Punjab & Haryana High Court Court in para 21 of the judgment, which reads as under:-

"In Des Raj Vs. Sham Lal, AIR 1980 P & H 229, the Full Bench of the Punjab and Haryana High Court held that where a premises is let out to the tenant as a shop and it is silent as regards the purpose for which it is let and it is used by the tenant exclusively as a godown then the tenant can be said to have changed the use of the premises and liable to be evicted in terms of the provisions of East Punjab Urban Rent Restriction Act, 1949. It was observed :

"This hypothetical discussion is meant to emphasise that where a demised 'building' is identified merely as 'shop', then the same can be used only as a 'shop' although various kinds of trade could be carried on therein, but if the said demised 'building' came to be used later on exclusively as 'residential building', then that would tantamount to the change of user. Similarly, if such a demised 'building' was put to use exclusively as a 'godown' (for the moment assuming that the expression 'godown' connotes a 'building' that is used for the purposes of only stocking provisions therein) then that would tantamount to the change of user. The reason being that when the demised

*'building' is used as a 'shop', it is being put to constant use by the lessee which, by implication, ensures its proper upkeep like timely repair, timely white washing etc., but when a building is used as a 'godown', which is merely used for dumping goods therein, such an upkeep may neither be possible nor, by implication, envisaged as such. A 'godown' remains mostly closed, while a 'shop' remains mostly open. The premises used as a 'godown' are bound to deteriorate and a landlord, if had been informed at the time of entering into the lease transaction that the lessee intended to use the demised premises described as 'shop', he might not have agreed to enter into the said lease transaction. Hence, when the demised premises are used for a purpose to which having regard to its description as 'shop', 'house' etc. the landlord may not have intended, had the said different purpose, which the lessee had in mind, been made known by the lessee to him, then the landlord may not have agreed to lease the said building for that purpose (see in this connection **Telu Ram Vs. Om Parkash Garg, 1971 (73) Pun LR 1**). Hence putting to use the demised premises to a purpose, which the given description or identification of the demised building in the rent note did not warrant, would tantamount to the change of user.”*

(Emphasis supplied)

It can thus be seen that there is clear distinction drawn between the premises which are identified as a “shop” and a “godown”. The Full Bench of the Punjab & Haryana High Court in the case of **Des Raj** (supra) has held that if, the demised building identified as a shop, is used as a godown, that would

tantamount to change of user. The reason being that when the demised building is used as a shop, it is used by the lessee, which by implication ensures its proper upkeep like timely repair, timely white washing etc., but, when a building is used as a godown, which is merely used for dumping goods therein, such an upkeep may neither be possible nor by implication, envisaged as such. The Court further observed that a godown mostly remains closed, while a shop mostly remains open and the premises used as a godown are bound to deteriorate and the landlord, if had been informed at the time of entering into the lease transaction that the lessee intended to use the premises as godown, he might not have agreed to enter into the said lease transaction.

23. It may be mentioned that in para 22 of the judgment in the case of **Goa Urban Co-operative Bank Ltd.** (supra), the Supreme Court has quoted with approval the findings and the observations of the Full Bench in the case of **Des Raj** (supra).

24. In the case of **Goa Urban Co-operative Bank Ltd.** (supra), the premises which were let out as an office were admittedly converted into a godown, which was held to be a valid ground for eviction. The learned Administrative Tribunal has

tried to distinguish the case of **Goa Urban Co-operative Bank Ltd.** (supra) on the ground that the factum of conversion from office to godown was admitted therein. However, that cannot have any bearing on the principles laid down therein and particularly the one, while affirming the decision of the Full Bench of the Punjab & Haryana High Court in the case of **Des Raj** (supra) that the user of a shop when changed to a godown, would not only tantamount to change of user, but, would also have the effect of deteriorating the condition of the premises. This takes me to the third contention raised on behalf of the respondent. In fact, the decision in the case of **Des Raj** (supra) takes care of this contention when it says that the user of the premises let out as a shop, if used as a godown, is bound to result into deterioration of the building. However, that apart the ground as envisaged in Section 22(2)(b)(ii) of the Act does not contemplate that such change of user is detrimental or injuries to the demised premises. In fact, the Act provides a separate ground as contemplated under Section 22(2)(b)(ii)(c), namely, where the tenant has committed such acts of damage as are likely to impair materially the value or utility of the building. For this reason, in my considered view, the third contention cannot be accepted.

25. The Administrative Tribunal has basically gone on the fact that the premises were let out to the respondent for running his “business activities”, without considering the fact that the premises were described as “shop premises” and the lease deed has to be read as a whole. The Tribunal also found that the Rent Controller has wrongly shifted the burden on the respondent (before the Rent Controller) that he is conducting the business activities. In my considered view, the said reasoning cannot be accepted. The petitioner came with a case that the respondent has stopped using the premises as a shop and has started its use as a godown. The petitioner has examined her Power of Attorney, Mr. Ramesh Shenoy and one Keshav Digde. The evidence on record in the form of two letters, the photographs and the evidence of RW-1, Tajdin Noorani clearly show that the activities which are expected to be conducted in a shop, are not being conducted therein and once this was shown, it was for the respondent to show to the contrary. The Tribunal has also observed that the non obtaining of the license for any business activity is a matter between the concerned person and the licensing Authority. The Tribunal may be right that primarily, the question of absence or otherwise of the license, would be between the concerned person and the licensing Authority.

However, the absence of license can always be taken into consideration where there is a claim that the business was being conducted in the suit premises.

26. A brief reference to the cases cited on behalf of the respondent may be made at this stage.

In the case of **Atul Castings Ltd.** (supra), it was *inter alia* held that the interpretation of the provisions must be purposive and not unduly restrictive or narrow and if, Section 13(2)(ii)(b) is interpreted in strict and narrow manner, it would be difficult for any tenant to protect himself from arbitrary eviction and to have freedom to use the building for residential purpose as he wanted. In that case, the suit premises were let out to the appellant-Company for residential use of the Managing Director and his family. During the currency of the lease, the landlord learnt that one room out of the six spacious rooms was used by the Managing Director as his office. This on fact was not found to be sufficient to be actionable under Section 13(2)(ii)(b) of the E.P. Urban Rent Restriction Act, 1949.

27. In the case of **M. Arul Jothi** (supra), the suit premises were let out only for carrying on the tenant's own business, dealing in radios, cycles, fans, clocks and steel furniture with a

stipulation that the tenant shall not carry on any other business than the aforesaid business. The question was whether, there was change of user in terms of Section 10(2)(ii)(b) of the T.N. Buildings (Lease and Rent Control) Act, 1960. The Supreme Court found in para 11 that the use of the words in the rent deed “not to use it for any other purpose”, have to be given effect to and hence, Section 10(2)(ii)(b) has to be interpreted to mean that the use of the building shall not be for a purpose other than that for which the shop was given as there was a specific clause restricting its user and the premises cannot be used for a purpose other than the same. In such circumstances, the order of eviction was confirmed. It is difficult to understand as to how the decision can come to the aid of the petitioner. Only because in the present case there are some activities which are prohibited, namely, conducting the business of bar and restaurant, hotel, taverna, boarding and lodging house or cold drink house, it cannot be said that the lease permits the use of premises as a godown. As noticed earlier, the decision of the Full Bench of the Punjab & Haryana High Court in the case of **Des Raj** (supra), would clearly show that there is a difference between the premises let out as a shop and the one which may be let out as a godown.

28. In the case of **Mohan Amba Prasad Agnihotri** (supra), the premises let out for business purpose were being used for residential purpose and the rear room at the back of the building was partly used for storing of spare parts of motorcycles. The Supreme Court found that the High Court in its supervisory jurisdiction under Article 227 of the Constitution of India ought not to have interfered with the finding of the Court below, unless there is no evidence to support it. Here is a case where the Tribunal has reversed the finding of the learned Rent Control on the grounds, which in my considered view are not germane and acceptable. The learned Rent Controller on appreciation of evidence on record had come to the conclusion that there is a change of user. The reasoning of the learned Administrative Tribunal while dealing with absence of license, in my considered view is perverse and not acceptable, requiring interference under Article 227 of the Constitution of India.

29. In the result, the following order is passed:

ORDER

- (a) The petition is allowed.
- (b) The impugned order is set aside.
- (c) The application filed by the petitioner is allowed.

(d) The respondent no.1, shall deliver the vacant and peaceful possession of the suit premises to the petitioner, within 60 days.

(e) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

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