

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 636 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/CIVIL REVISION APPLICATION NO. 636 of 2025
With
CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2025
In R/CIVIL REVISION APPLICATION NO. 636 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI **Sd/-**

Approved for Reporting	Yes	No
	Yes	

SHANTABEN WD/O NATVERLAL SOMDAS PATEL
 Versus
 VINUBHAI GANDABHAI PATEL

Appearance:

DHRUVIK K PATEL(7769) for the Applicant(s) No. 1
 ANAND R PATEL(7352) for the Opponent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 09/12/2025

ORAL JUDGMENT

1. This revision under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Rent Act") is directed against the judgment and decree passed by the appellate Bench of the Small Cause Court, Ahmedabad in Regular Civil Appeal No.96 of 2013, whereby the appeal preferred by the revisionist – defendant has

been dismissed confirming the judgment and decree passed by the Small Cause Court, Ahmedabad in H.R.P.Suit No.774 of 2020 dated 22.07.2013 allowing the plaintiff's suit, directing the revisionist – defendant to handover the vacant and peaceful possession of the suit premises, and further directed to pay the arrears of rent for 3 years at the rate of Rs.225/- per month from the date of filing of the suit and also directed to pay the mesne-profit at the rate of Rs.225/- per month from the date of filing of the suit i.e. 07.05.2010, till the vacant and peaceful possession is handed over to the plaintiff. Permanent injunction was issued to restrain the revisionist – defendant from changing the hands of the suit premises.

2. For convenience and brevity, parties are referred to as per their original status before the learned trial Court.

3. Case backgrounds as under:-

3.1 A shop admeasuring 31 ft. x 12 ft. on Tenament No. 3601-0056-00-103-I on final plot No.204/P/7/2 having Survey No.65/1/1/3/2 on final plot No.204-A paiki sub-plot No.4-A bearing Survey No.65/1/1/2 at moje Asarwa (Suit Premises) was rented to Natvarlal Somdas Patel at monthly rent of Rs.225/-, excluding the municipal tax, education cess and other taxes as well as other Government taxes, which were to be borne by the tenant. The tenancy was monthly tenancy, starting from the first day of the english calendar month and ending on the last day of the english calendar.

3.2 The tenancy was started from date 01.07.1996. The tenant - Natvarlal Somdas Patel was doing the business of

selling Grocery in the name and style of 'Bhagwati Kirana Store'. The plaintiff purchased the entire property, including the suit premises from the erstwhile landlady – Smt. Ashaben Sanjaykumar Patel on 28.05.1999 by the registered sale deed with sitting tenant - Natvarlal Somdas Patel. The rent note was executed between the landlady and the tenant on 16.07.1996.

3.3 Tenant - Natvarlal Somdas Patel died on 13.05.2003. According to the plaintiff, at that time, he was doing the business in the name and style of 'Bhagwati Kirana Store' independently, without the help of any family members or other heirs. It is also the case of the landlord – plaintiff that, after passing of one year after the death of tenant - Natvarlal Somdas Patel, her widow, i.e. the appellant herein, started the business, which is discernible from the notice dated 04.05.2004 issued by her. At the end of the exchange of the notice between the parties, the plaintiff – landlord filed the suit against the revisionist – defendant seeking the peaceful and vacant possession of the suit premises on the ground of Section 5(11)(c) of the "Rent Act" claiming that the Widow of the deceased did not qualify as a tenant of the suit premises. Further alleging that the son of deceased tenant - Natvarlal Somdas Patel is a Chemical Engineer and other son is Doctor and among the daughters, one has married and two others were studying.

3.4 The summons of the H.R.P. Suit No.774 of 2020 filed by the plaintiff for the recovery of peaceful and vacant possession of the suit premises was served upon the defendant. Written submission was filed by the defendant that prior to the death of tenant – Natvarlal Somdas Patel, his Nephew – Anilbhai

Parshottmdas Patel was doing business along with him, he is necessary party in the suit as he qualifies to the term 'tenant' under Section 5(11)(c) of the "Rent Act".

3.5 It is further contended that after the death of Natvarlal Somdas Patel, revisionist – defendant being his Widow, joined the business of 'Bhagwati Kirana Store' along with Anilbhai Parshottmdas Patel. The defense of non-joinder of the necessary parties was, therefore, raised in this context and ultimately, it was claimed to dismiss the suit. The HRP Suit, after permitting both the parties to lead the evidence, was decreed by the learned Small Cause Court in favor of the landlord and passed the judgment stated *ibid*.

3.6 Being aggrieved and dissatisfied with the judgment and decree passed in H.R.P. Suit No.774 of 2020, Civil Appeal under the "Rent Act" is filed as Civil Appeal No.96 of 2013 by the revisionist – defendant. Judgment and decree passed by the Small Cause Court, Ahmedabad dated 30.03.2024 governs the final decision in the Civil Appeal. The appeal was dismissed along with another appeal being Civil Appeal No. 94 of 2014. The judgment and decree passed in H.R.P. Suit No.774 of 2020 was approved and confirmed.

3.7 Being aggrieved, this revision application under Section 29(2) of the "Rent Act" is preferred.

4. Heard learned advocate Mr. Dhruvik K. Patel for the revisionist – defendant and learned advocate Mr. Anand R. Patel for the landlord – plaintiff.

4.1 After narrating the various incident, learned advocate Mr. Dhruvik K. Patel for the revisionist – defendant submitted that the learned trial Court as well as the learned appellate Court has committed serious error in interpreting the Section 5(11)(c)(ii) of the “Rent Act”. He would further submit that the revisionist is the Widow of the deceased tenant falling in the definition and category of family member, and therefore, she inherently succeeds the tenancy rights.

4.2 He would further submit that the evidence on record establishes that she has carried on the business of ‘Bhagwati Kirana Store’ after the death of her husband, as such she inherited the tenancy created in favor of the deceased tenant - Natvarlal Somdas Patel. He would further submit that in view of carrying such business of ‘Bhagwati Kirana Store’ by the appellant – defendant, she qualifies as a tenant of the suit premises. Learned advocate Mr. Dhruvik K. Patel, therefore, submitted that the learned Courts below have committed serious error in appreciating of the evidence as well as the provision of law, the error goes to the root of the case and therefore, he submits that the revision be allowed.

4.3 Learned advocate Mr. Dhruvik K. Patel also submits that the learned trial Court has incorrectly appreciated the evidence of the appellant. She is a widow and illiterate lady. The learned trial Court has picked up few words from the deposition and treated them as an evidence, rather treated them as an admission to believe that the appellant was not doing business with the husband at the time of his death. He would submit that the tenant - Natvarlal Somdas Patel died in a short span due to a

sudden ailment. The wife and other family members were attending to the ailment of the tenant - Natvarlal Somdas Patel and during that time period, the business of the 'Bhagwati Kirana Store' was actually not going on, and therefore, there is no reason to carry the business preceding the death of tenant - Natvarlal Somdas Patel. In this submission, learned advocate Mr. Dhruvik K. Patel submitted that the erroneous order of the learned Court below be set aside.

4.4 He referred to and relied upon the the judgments in the case of **Vithalbhai Biharilal Patel v. Laxmanbhai Gordhandas**, reported in **2003 (4) GLR 3403** and **Karim Mohammed Fakir Mohammed v. Late Abdulmajid Fatehmohammed Thru Legal Heirs**, reported in **2013 (4) GLR 3099**.

5. As against the aforesaid argument, learned advocate Mr. Anand R. Patel appearing for the respondent – plaintiff, who is the landlord, argued that the case of the appellant even before the learned trial Court was that Mr. Anilbhai Parshottmdas Patel, son of the brother in law of the appellant, was doing business along with the tenant - Natvarlal Somdas Patel and continued the business after the death of the tenant.

5.1 He would further submit that Anilbhai Parshottmdas Patel, though had knowledge about the proceedings were going on, did not come forward during the suit proceedings to be joined as a necessary party. He even did not prefer any appeal against the judgment and decree passed by the learned Court below in the HRP Suit, but filed Civil Application for Leave to

Appeal No. 5042 of 2024 in F/CRA No. 21006 of 2024 and asked the leave of this Court to prefer the revision against the judgment and decree passed in H.R.P. Suit No.774 of 2020, which is confirmed by the learned appellate Court in Regular Civil Appeal No.96 of 2013.

5.2 He would further submit that the coordinate Bench of this Court, on 24.03.2025, passed the order in Civil Application and did not permit Anilbhai Parshottmdas Patel to file the revision application by rejecting the leave application. Learned advocate Mr. Patel submits that in view of above, the case becomes clear as crystal. It is not a case of appellant before the learned Court below that she was doing business along with her late husband. It was her case before the learned trial Court that Anilbhai Parshottmdas Patel was doing business with her late husband. This Court believed that Anilbhai Parshottmdas Patel was not doing business with her late husband. In view of that, it is established that at the time of the death of tenant - Natvarlal Somdas Patel, no one was doing any business along with the tenant. Thus, neither Anilbhai Parshottmdas Patel nor appellant qualifies as a 'tenant' under Section 5(11)(c)(ii) of the "Rent Act".

5.3 Learned advocate Mr. Anand R. Patel submitted that the learned trial Court has thus, not committed any error to pass decree in favor of the landlord.

5.4 He would further submit that in a limited scope of revision, the appellant fails to bring any case within the purview to exercise the revisional jurisdiction. These arguments are canvassed to dismiss this revision.

6. I have heard learned advocates for both the sides. I have also paid the anxious consideration to rival submissions. In context to the concurrent findings arrived at by the learned Courts below and having also gone through the Record and Proceedings of the HRP Suit, at the outset, I may refer to the judgment in the case of **Patel Valmik Himatlal v. Patel Mohanlal Muljibhai (Dead) Through Lrs.**, reported in **1998 (7) SCC 383**, for the ambit and scope of the revision. The relevant paras of which reads as under:-

"5. The ambit and scope of the said section came up for consideration before this Court in Helper Girdharbhai V/ s. Saiyed Mohamad Mirasaheb Kadri and Ors. (JT 1987 (2) SC 599) and after referring to a catena of authorities, Sabyasachi Mukharji, J. drew a distinction between the appellate and the revisional jurisdictions of the courts and opined that the distinction was a real one. It was held that the right to appeal carries with it the right of rehearing both on questions of law and fact, unless the statute conferring the right to appeal itself limits the rehearing in some way, while the power to hear a revision is generally given to a particular case is decided according to law. The Bench opined that although the High Court had wider powers than that which could be exercised under Sec. 115 of the Code of Civil Procedure, yet its revisional jurisdiction could only be exercised for a limited purpose with a view to satisfying itself that the decision under challenge before it is according to law. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Did the High Court exceed its jurisdiction.

6. The powers under Sec. 29(2) are revisional powers with which the High Court is clothed. It empowers the- High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the

matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of evidence cannot be a ground for exercise of the revisional jurisdiction."

6.1 The revisional jurisdiction is limited to find out that any error has been committed by the learned trial Court, which goes to the root of the scope. Though the scope of Section 29(2) of the "Rent Act" is slightly wider than the scope of Section 115 of 'the Code', the scope of revision under the "Rent Act" is broad than the scope of revision under Section 115, but is not expensive as an appeal by the appellate Court.

6.2 This Court, under the revisional jurisdiction, is therefore, restrained from reappreciating the evidence and reappreciating the facts of the case, the Court has to find out that any error of law has been committed by the learned Court below, which goes to the root of the case.

6.3 The revisionist, who insists the Court to interfere with the concurrent finding arrived by the learned Courts below has to establish that the learned Courts below have committed manifest error of law on the face of record. The narrow scope of Revision under Section 29(2) of the "Rent Act" does not permit the High Court to reappreciate the evidence or substitute findings, essentially preventing it from becoming a Second Appeal and ensuring quick finality of rent dispute.

6.4 Mainly the High Court's power is supervisory, focused on the jurisdiction. Interference is totally limited to cases where there is a clear/obvious and error apparent on the face or legal

flaw on the lower Court's order or judgment. No reappraisal of evidence is permitted to the High Court in revision, and it generally won't interfere with the concurrent factual finding or substitute its own view of the evidence if the lower Court's finding are supported by the material evidence. So, Section 29(2) of the "Rent Act" is a specific, limited remedy and not a routine second appeal. In essence, the High Court under Section 29(2) of the "Rent Act" acts as a guardian against the fundamental, legal or jurisdictional error, and not as a fact finder.

6.5 The case of the party, in short, inter-se revolves around the operation of Section 5(11)(c)(ii) of the "Rent Act". Let me refer Section 5(11)(c) of the "Rent Act" as under:-

"5. In this Act unless there is anything repugnant to the subject or context—

(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes-

(c) (i) in relation to premises let for residence, any member of the tenants' family residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant as may be decided in default of agreement by the Court, and

(ii) in relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage as the case may be, in the said premises and as may be decided in default of agreement by the Court;"

6.6 To attract the provision, it is essential to establish that the premises was lent for business, trade or storage.

Members of the tenant's family were carrying on business, trade of storage with the tenant in the said premises at the time of death of the tenant and continued after his death.

6.7 The case of the landlord is simple and specific that tenant - late Natvarlal Somdas Patel was carrying on business in the name and style of 'Bhagwati Kirana Store' in the suit premises. At the time of his death, which took place on 13.05.2003, none of his family members were carrying any business. The wife of late tenant restarted the business of 'Bhagwati Kirana Store' after one year, as it came to be notice of the landlord from the communication in the form of notice made by the learned advocate for the appellant.

6.8 Landlord, therefore, asked for the peaceful and vacant possession of the suit premises on the ground that, wife of the late tenant does not qualify as a 'tenant' in view of Section 5(11)(c)(ii) of the "Rent Act".

6.9 In regards to the plaintiff's claim made through pleading, the reply was filed by the appellant at Exhibit-21 in HRP Suit. In para 9, 11, 13 and 14 of the written statement, it is contended by the appellant that Anilbhai Parshottmdas Patel, who is the son of the brother of late tenant - Natvarlal Somdas Patel, was doing business along with the tenant prior to his death, and has continued the business in the name and style of 'Bhagwati Kirana Store' after the demise of the tenant on 13.05.2003, and after the death of tenant, the appellant has continued the business along with Anilbhai Parshottmdas Patel in the name and style of 'Bhagwati Kirana Store'. Thus, the

defendant or Anilbhai qualified as a tenant in operation of Section 5(11)(c)(ii) of the “Rent Act”. The learned trial Court fixed the issue in HRP Suit as under:-

“1 Whether the plaintiff proves that defendant has no tenancy rights in suit premises?”

2 Whether rent is due as alleged by plaintiff?

3 Whether the plaintiff proves that the defendant is about to unlawfully transfer, sublet or otherwise assign the suit premises as alleged?

4 Whether the plaintiff proves that defendant and third person namely Anilbhai & Manibhai has committed the contempt of court's order alleged in application below exhibit – 38?

5 Whether the defendant proves that he is legal tenant of suit premises as per Section 5(11) (c) of Rent Act?

5/1 Whether suit is bad for non-joinder of necessary parties?

6 What relief is the plaintiff entitled to get?

7 What order and decree?”

6.10 And given the following findings as under:-

“1 In the affirmative.

2 In the affirmative.

3 In the affirmative.

4 In the negative.

5 In the negative.

5/1 In the negative.

6 In the affirmative.

7 As per final order.”

6.11 Learned appellate Court has also framed the issues from the point of determination, as it could be envisioned from para 9.2 of the appellate Court's judgment. Though it is claimed that Mr. Anilbhai Parshottmdas Patel was doing any business with the tenant – late Natvarlal Somdas Patel, no documentary evidence is produced on record to support such claim.

6.12 The tenancy was person-centric. It is an undisputed aspect. The tenant - Natvarlal Somdas Patel started the business in the name and style of 'Bhagwati Kirana Store'. He died on 13.05.2003. Defendant claims that Anilbhai Parshottmdas Patel was doing business along with the deceased tenant and continued the business along with the appellant after the death of the deceased tenant, but except bare words, nothing has been produced on record to prove the contention.

6.13 It is interesting that, Anilbhai Parshottmdas Patel, who claims that he was doing business along with the late tenant - Natvarlal Somdas Patel, did not join the suit proceedings and even appeal proceedings, but filed the Civil Application No. 5042 of 2024 and asked leave to appeal against the judgment and decree in HRP suit. The coordinate Bench of this Court rejected the said application.

6.14 The coordinate Bench in oral order of Civil Application for Leave to Appeal No. 5042 of 2024 in para 3, 5.1, 5.2, 5.3, 5.8 and 6 observed as under:-

“3. An admitted fact in the present case is that the tenant of the suit premises was Natvarlal Somdas Patel, who died on 13.05.2003. The applicant herein is not a family member as envisaged under section 5(11)(c) of the Rent Act.

xxx xxx xxx

5.1 *Having heard learned advocate for the applicant and having perused the judgment and decree passed by the trial Court and the appellate Court, it appears that there is clear findings by the trial Court and the appellate Court that while issuing a notice Exh.80, the wife of the tenant has stated that Govindbhai Somdas Patel was doing business. In the cross-examination wife of the deceased Natvarlal Somdas Patel has also stated that she had never gone to shop during life-time of her husband and that the applicant is son of elder brother of the deceased Natvarlal Somdas Patel. It has also come on record that none of the children of the deceased Natvarlal Somdas Patel were doing business in the tenanted premises and that the present applicant is not a family member of the deceased tenant.*

5.2 *In the oral evidence of the original defendant i.e. the wife of the late Natvarlal Somdas Patel it has been admitted by her that present applicant is having own shop in the name and style of "Jay Ambe Kirana Store" near the tenanted premises and had also admitted in her cross-examination that the applicant is residing separately at Shahibaug and that the original tenant i.e. deceased Natvarlal Somdas Patel and his brother Govindbhai Somdas Patel were leaving separately for more than 25 years. It has also been admitted that the wife of the tenant and the present applicants are not doing joint business. Therefore, the appellate Court held that tenant has failed to prove that applicant is family member of the deceased tenant and doing business with the original defendant or with his widow. The learned appellate Court after re-appreciating the evidence and after going through the documents held that the amount which is alleged to have been paid to the applicant cannot be accepted to be remuneration but it was loan that was taken by deceased tenant and, therefore, the applicant failed to establish that applicant herein was doing business with the deceased tenant or with his widow. Even the registration certificate of provisional document which is in the name of Bhagvati Kirana Store is also not in the name of the applicant.*

5.3 *In the present proceedings when the trial Court has come to conclusion that the widow of the deceased tenant*

would not fall within the purview of Section 5(11)(c) of the Rent Act and was not occupying the premises at the time when the deceased tenant expired, the question of granting leave to the applicant to file application/appeal does not arise as he was not doing business with the deceased tenant at the time of his death and also that he is not a family member as defined in Section 5(11)(c) of the Rent Act.

xxx xxx xxx

5.8 From the records and proceedings, it can be clearly established that the applicant was very much aware about the entire proceedings and he has just kept watch of the entire proceedings and it is only after judgment and decree that has been passed and the judgment and order passed by the appellate Court confirming the said judgment and decree passed in HRP Suit No.774 of 2020, the present proceedings are filed. If the grounds seeking leave to appeal are considered then also the fact remains that present applicant has not established the fact that he is tenant as provided under section 5(11)(c) of the Rent Act. It has also not been established that wife of the deceased was occupying premises and had become tenant and, therefore, in view of the same present application is dismissed.

6. Therefore, on the basis of overall analysis of the material on record, on the basis of conclusion that has been referred to by the Court below, the Court is of the opinion that there is no material irregularity nor any perversity reflecting which would permit this Court to exercise revisional jurisdiction. The entire reasoning of the Court below are based upon clear analysis of the testimony of the witnesses for either side and also in consonance with documentary material and according to this Court it cannot be said that there is any perversity in the said order. Moreover, while deciding the Revision Application by the High Court in revisional jurisdiction under this Act is confined to find out that findings of fact recorded by the courts below is according to law and does not suffer from any abuse of law. The findings recorded by the Court below if perverse or has been arrived at without consideration of material evidence or such finding is based on no evidence or misreading of evidence or grossly erroneous that, if allowed to stand, would result in gross miscarriage of justice. The

same is open for correction because it is not treated as finding according to Law and in that event the High Court, in exercise of its revisional jurisdiction under the Bombay Rent Act, is entitled to set aside the impugned order as being not legal or proper.”

7. The case of Mr. Anilbhai Parshottmdas Patel is thoroughly negated by the coordinate Bench. The coordinate Bench did not believe that Mr. Anilbhai Parshottmdas Patel, since was doing business along with late Natvarlal Somdas Patel, he qualifies as tenant within purview of Section 5(11)(c)(ii) of the “Rent Act”. Thus, it closes the case of the appellant. Appellant did not claim that she was doing business along with her husband prior to his death, but she came out with the contention that Anilbhai Parshottmdas Patel was doing business with the husband and continued the business after the death of her husband and she joined the business along with Anilbhai Parshottmdas Patel after the death of her husband. She has also admitted the said aspects in a cross-examination (See Exhibit-74).

7.1 She has also admitted that her sons are doing another business, one is a Chemical Engineer and another is practicing Doctor and amongst the daughters, one is married and two are studying.

8. In the aforesaid circumstances, according to this Court, the learned Courts below have not committed any error, which permits this Court to interfere with the concurrent finding. Anilbhai Parshottmdas Patel has his own shop in the name and style of ‘Jay Ambe Kirana Store’ near to the ‘Bhagwati

Kirana Store'. This is a clear and specific finding of the learned Court below and it got confirmed by the order passed by the coordinate Bench in Civil Application No. 5042 of 2024.

9. In the premises of the aforesaid reasons, this Court finds that the revision fails. In so far as two judgments upon which learned advocate Mr. Dhruvik K. Patel relied upon are in regards to the interpretation of Section 5(11)(c)(i) of the "Rent Act", the provision of the "Rent Act" essentially deciding are made of submission in residential tenancy, and thus, they fail to assist the case of the revisionist.

10. For the reasons stated hereinabove, this revision stands dismissed.

- i) Interim-relief, if any granted earlier, is discontinued.
- ii) Connected Civil Applications do not survive.
- iii) Record and Proceedings be sent back to the concerned Court forthwith.

Raj

Sd/-
(J.C. DOSHI, J.)