

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO.610 of 2018****With****CIVIL APPLICATION (FOR STAY) NO.1 of 2019****In R/CIVIL REVISION APPLICATION NO.610 of 2018****With****CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO.2 of 2019****In R/CIVIL REVISION APPLICATION NO.610 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****Sd/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | NO |
| 2 | To be referred to the Reporter or not ? | YES |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

AZIZ FAZLEHUSEIN KARAKA
Versus
BATUL ABBASBHAI RANGWALA

Appearance:

MR VISHAL C MEHTA(6152) for the Applicant(s) No. 1,2

PRERAK P OZA(8279) for the Opponent(s) No. 1,2

RULE SERVED BY DS for the Opponent(s) No. 4,5

UNSERVED REFUSED (R) for the Opponent(s) No. 3

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**Date : 05/09/2022****CAV JUDGMENT**

(1) The present revision application is filed under section 29(2) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ("the Rent Act") by the defendant Nos.2 and 4 of the original proceedings.

- (2) Parties in this judgment are referred to as per their original status in the Suit.
- (3) Plaintiffs - Batul Abbasbhai Rangwala and Jamuna Abbasbhai Rangwala (i.e. the present opponent Nos.1 and 2) instituted suit H.R.P. No.1471 2008 seeking possession of the suit premises and *mense profits* along with the costs of the suit. It is the case of the plaintiffs that they are the owners of the properties situated in Kalupur Ward No.1, Near Khadia New Gate, bearing Survey No.2724, admeasuring about 37 sq.mtrs., having floor and Survey No.2725, admeasuring about 90 sq.mtrs., and they are in possession and occupation of the ground floor and the premises of the first floor and second floor bearing M.C. No.589/A and Tenement No.0114-1100-0002-V has been given to defendant No.1 as a tenant of the said premises with monthly rent of Rs.60/- since 1970. It is further their case that the suit was instituted by asserting that the family members of defendant No.1 and his uncle Fazlehusein are the joint tenants, as they were residing in the suit premises and they have not jointly paid rent of the suit premises since October, 2000 and thereafter, the rent is due for the

period from 01.11.2000 to 31.05.2008 to the tune of Rs.5,460/- and they are entitled to get the possession of the suit premises from the defendants on the ground of arrears of rent. Additionally, it was also contended that the defendants and their family members have acquired their own property and, therefore, they are not in need of the suit premises. In the suit, it was also asserted that the defendants have become the tenants of the suit premises by virtue of joint family members of the tenant and all the defendants are not using the suit premises. It is also the case of the plaintiffs that the defendants have sub-let or transferred the possession of the suit premises to a stranger and third party is using the suit premises. With these assertion of facts, the plaintiffs had instituted the suit to recover vacant and peaceful possession of the suit premises from the defendants and also to recover *means profits*.

- (4) The trial court framed the issues vide Exh.40. There are 10 issues framed by the trial court and after recording the evidence - both documentary as well as oral adduced by the parties, it answered the issues Nos.1 to

4, and 6 and 7 in the negative and issue No.5 in the affirmative. Issue No.8 is connected to issue No.5, whereas while answering issue Nos.9 and 10 the trial court decreed the suit in favour of the plaintiffs-landlord and directed the defendants to handover the physical possession of the suit premises to the plaintiffs. Aggrieved by the judgement and decree passed by the trial court, the defendants filed Civil Appeal No.38 of 2012 before the Appellate Bench of Small Causes Court at Ahmedabad. By the judgement and order dated 12.05.2018, the Appellate Court dismissed the appeal and confirmed the judgement and decree passed by the trial court, which has given rise to the present civil revision application.

SUBMISSIONS:

- (5) Learned advocate Mr.Vishal C. Mehta appearing for the original defendants Nos.2 and 4 submitted that the Trial Court has decreed the suit in favour of the plaintiffs mainly by answering issue No.5 in the affirmative, which pertains to acquiring possession of a suitable residence by three defendants. It is submitted by him that both the courts below have failed in appreciating the vital aspect that there is no evidence to establish that

defendants No.2 (Aziz Fazlehusein Karaka) and No.4 (Mufddal Fazlehusein Karaka) have acquired a suitable alternative accommodation other than the demised premises and the suit is only decreed by resorting to the provisions of section 13(1)(1) of the Rent Act by holding that other defendants, who are the co-tenants have acquired suitable accommodation. It is submitted that a decree of eviction can only be passed when the plaintiffs are able to prove and establish that all the tenants have an alternative suitable accommodation. It is submitted by him that even the Court Commissioner's Report produced at Exh.11 clearly mentions presence of defendant No.4 in the demised premises at the time of carrying out the panchnama of the demised premises.

- (6) In support of his submissions, learned advocate Mr.Mehta has placed reliance on the judgement of this court in case of Soni Jagjivan Narsi vs. Manchhaben Odhavji, 1975 G.L.R. 991, judgement of Full Bench in case of Heirs of Jayantilal Kanjibhai vs. Rameshchandra Uttamram, 2000(3) G.L.H. 76 and judgement of the Apex Court in case of Anandi D. Jadhav vs. Nirmala Ramchandra Kore.

- (7) Finally, it is submitted that the Trial Court has not framed the issue whether the defendants are the joint tenants and without framing the issue the Trial Court could not have decreed the suit in favour of the plaintiffs. Thus, it is submitted that the application may be allowed by setting aside the judgement and decree passed in favour of the plaintiffs. No further submission is made.
- (8) *A fortiori*, learned advocate Mr.Mitul Shelat appearing for the plaintiffs-respondent Nos.1 and 2 has submitted that this Court, while exercising its revisional power conferred under the provisions of section 29(2) of the Rent Act, may not exercise its discretion by setting aside the concurrent findings of both the courts below. In this regard, learned advocate Mr.Shelat has placed reliance on the judgement of the Apex Court in the case of Helper Girdharbhai vs. Syed Mohammed Mirasaheb Kadri, 1987(3) S.C.C. 538.
- (9) Learned advocate Mr.Shelat, while placing reliance on the judgement of this Court in the case of Pranjivan Khushaldas vs Dhanuben wd/o Devchand & Ors., 2001 (2) G.L.H. 223 has

contended that if one of the tenants resides in an alternate accommodation, that is sufficient for getting a decree of eviction against rest of the tenants. It is submitted that the defendant no.2 has admitted that all the defendants are the joint tenants, and when it is proved that out of five defendants, three defendants have their alternate accommodation, the decree of eviction against defendant nos.2 and 4 is appropriately passed. It is submitted that in view of admission of the fact that all the defendants were living jointly and are the joint tenants, there was no need to frame the issue of joint tenancy. Reliance is also placed on the judgment of Suresh Kumar Kohli vs. Rakesh Jain & Anr., 2018 (6) SCC 708. Thus, it is submitted that the present revision application may not be entertained.

CONCLUSION:

- (10) The instant revision application has been filed by defendant no.2 and 4 only. Defendant no.1 has chosen not to appear before this Court. Defendant no.4 has chosen not to enter into the witness box. There are five defendants in the suit. Defendant no.1 is the

cousin of the defendant no.2, defendant nos.3, 4 and 5 are the brothers of defendant no.1. The documents on record reveal that more particularly, the facts recorded in the order dated 11.10.1999 in H.R.P Suit No.1991 of 1993 and order dated 24.02.1999 passed below Exh.1 in H.R.P. Suit No.1105 of 1993 reveal that the demise property was given on rent by one Rukiyabai 60 years back to the father of Fazleabbas Hassanali, father of defendant nos.2, 3, 4 and 5. After death of Rukiyabai, one Hussenaben Abbasbhai Rangwala became the landlord. Faslehussein Karaka and Safakathussein Karaka were the real brothers. The plaintiffs are the heirs of Hussenaben. All were residing as a joint family. After demise of their fathers, defendant no.1, Zulfikar Saftakhusein Karaka and father of defendant nos.2, 3, 4 and 5, i.e Fazleabbas Hassanali Karaka was declared as legal tenant under section 5(11)(c) of the Rent Act vide order passed in 24.02.1999 below Exh.1 passed in H.R.P. Suit No.1105 of 1993.

- (11) The suit is decreed in favour of the plaintiffs under section 13(1)(1) of the Rent Act by answering the issue no.5 as affirmative by the Trial Court. The same is as under:

"5. Whether plaintiffs prove that the defendants have built or acquired possession of a suitable residence."

(12) After examining the documentary as well as oral evidence adduced by the respective parties, it is established that out of five tenants three tenants are residing elsewhere and since all the defendants are residing jointly and are the joint tenants, the defendant nos.2 and 4 are ordered to handover the possession of the demise property to the plaintiffs. For answering the issue no.5 in affirmative, the Trial Court has placed reliance primarily on the evidence at, oral evidence of defendant no.2 recorded below Exh.67, Exh.52 - oral evidence of one Shri Arjanbhai Sukhavat Bodat, an Officer of Tax Department of Municipal Corporation, documentary evidence at Exh.53 produced by him showing that defendant no.1 is separately residing at Baddi Manzil, Kalupur, Ahmedabad owned by his wife, Exh.55 documentary evidence showing defendant no.3 is residing separately at Jalali Park, Kalupur, Ahmedabad, Sale deed (Exh.56) defendant no.3 has purchased a property at Kalupur ward. In the cross-examination of defendant no.2, (Exh.67), it is elicited that the family of

his father and his uncle used to reside in the demise property as a joint family and were paying the rent jointly. It is admitted by him that all are staying as a joint family. Further, it is admitted by him that he has been residing with defendant no.4 on the second floor. Defendant no.4 has not entered into the witness box. Thus, the oral as well as documentary evidence reveals that three defendants are residing in alternative accommodations.

- (13) The fact which is established on record is that out of five tenants, three are found to have been residing in alternative accommodation. The defendant nos.1 and 3 are residing in the premises, which are purchased by them. Since there is an admission on the part of the defendant no.2, that all of them are residing jointly in the demise property, the Trial Court was not required to frame any issue in this regard. The defendants have also not asserted before the Trial Court that they are not the joint tenants, and the rent was not paid jointly. Both the Courts below have rendered concurrent findings in this regard, hence this Court, while exercising its power under section 29(2) of the Rent

Act, cannot upset the concurrent findings on the fact.

- (14) Thus, the core issue, which requires deliberation in the present revision application is whether the defendant nos.2 and 4, i.e. the applicants can be ordered to be evicted by resorting to the provision of section 13(1)(1) of the Rent Act on the ground that other three joint tenants have acquired alternative accommodation. Section 13(1)(1) of the Act reads as under:

"SECTION 13 : When landlord may recover possession

(1) Notwithstanding anything contained in this Act [but subject to the provisions of section 15], a landlord shall be entitled to recover possession of any premises if the Court is satisfied.-

(1) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence."

- (15) This Court in the case of ***Pranjivandas Khushaldas (supra)*** in an analogous issue has held thus:

"8. The requirement of Section 13 (i)(1) is that, the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant, after coming into operation of this Act, has built or acquired vacant possession of or has been allotted a suitable residence. It is under this ground that

eviction of the tenants was sought by seeking amendment in the plaint. It may be mentioned that this ground was not there in the plaint initially. It is only when the landlord came to know that the tenant has constructed alternative accommodation that this plea was raised in the plaint. Shri M. B. Parikh for the revisionist has, however, contended that the tenants have not only built alternative accommodation suitable for their residence but have also shifted in that accommodation. However, there was no evidence that the tenants have shifted in that accommodation and that finding was recorded by the Trial Court, which was confirmed by the Appellate Court. Shifting to the alternative accommodation is not the requirement of Section 13(i)(1) of the Act. There are three situations contemplated under this Section. One is that the tenant is rendered liable for eviction if he has built a suitable accommodation. The second is that the tenant acquires vacant possession of a suitable residence. The third is that he has been allotted a suitable residence. The requirement of possession is only in the second category when the tenant actually acquires vacant possession of a suitable residence. Acquisition of possession is not necessary when the tenant has built an accommodation for himself or for herself. Likewise, if an alternative accommodation has been allotted for the residence of the tenant then also, it is not the requirement of the law that the tenant must have shifted to the alternative accommodation, so allotted to him or to her. In this case, the Trial Court has recorded categorical finding that it is an admitted fact that the defendant No. 1(a) Dhanuben purchased land in Wadi of Ichchha Doshi and had built a building, consisting of three floors, namely ground floor, first floor and second floor. The plan of the building was also filed vide Ex. 81. If a three storeyed building was constructed and nowhere it was alleged by the tenants that the accommodation in this three storeyed building was not sufficient for accommodating the tenants after demise of the tenant-in-chief, it cannot be said that the claim of the landlord was liable to be rejected. The Trial Court, as well as, the Appellate Court have rejected the claim of the landlord mainly on two grounds. The first is that all the tenants have not built suitable accommodation for their residence. It may be mentioned that the tenant-in-chief was Devchandbhai and, Dhanuben is his widow. After the death of Devchandbhai, during the pendency of the suit, eight legal representatives inherited tenancy rights as has been found by the two courts below. On the other hand, if any one of the tenants builds a suitable accommodation to accommodate all the tenants, that is

sufficient for the landlord for getting a decree for eviction. Unnecessary time and energy has been wasted by the Appellate Court in examining as to who has constructed the house and what was the fund raised for the purpose and who contributed to the fund for completion of the house. Consequently, this ground is not sustainable that all the tenants in common or joint tenants should have built their own houses separately. There is no whisper from the tenants that the accommodation in three storeyed building is insufficient to accommodate the eight legal representatives of the deceased tenant. If that is so then, it can be said that that accommodation constructed by Dhanuben is sufficient for the residence of all the tenants in common or joint tenants."

- (16) In the case of *Suresh Kumar Kohli (supra)*, the Supreme Court has explicated the concept of joint tenancy and tenancy in common and has held thus:

"Conclusion:-

" 20. We are of the view that in the light of H.C. Pandey (supra), the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail."

(17) The conspectus of the aforementioned observations of this Court and the Apex Court will propose that the requirement of Section 13 (1)(1) of the Rent Act is that, the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant, after coming into operation of this Act, has built or acquired vacant possession of or been allotted a suitable residence and an eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. If these persons become tenants in common or joint tenants, it is not the requirement of the law that all the tenants should have built accommodation for their residence. In the present case, the joint tenancy has been inherited by the defendants from their fathers who were living jointly and upon their demise, the defendants have continued to occupy the demise property jointly. Defendant no.1 is residing in the property purchased in his wife's name and

defendant no.3 has purchased the property in his own name. Defendant no.5 is residing with his wife at Astodia in a flat. Neither the defendants no.2 and 4 nor the other defendants have adduced any evidence that they could not have been accommodated in the alternative accommodations. The report of the Court Commissioner, Exh.11 indicates that except defendant no.4, no one was found present in the demise property. Hence, when three defendants have been found to have been residing separately and defendant nos.1 and 3 are residing in the property owned by them, the defendant nos.2 and 4 cannot insist upon occupying the demise property. Thus, even if no evidence has emerged that the defendant nos.2 and 4 have not acquired any property, their eviction from the demise property can be ordered in wake of the established evidence that other joint tenants have acquired their property and are living residing separately.

- (18) Reliance placed by learned Advocate Mr.Mehta on the judgement of this Court in the case of ***Soni Jagjivan Narsi (supra)*** cannot come to the rescue to the applicants, since in the

case before the Coordinate Bench, the matter was remanded to the Trial Court since there was no finding with regard to the suitable premises/ residence within the meaning of section 13(1)(1) of the Rent Act. The Coordinate Bench has held that the real test, which is to be applied is that the new premises which a tenant has taken on "rent" is sufficient to accommodate himself and all his "dependents" or not and if it is found that they can be accommodated then certainly, he can be evicted under section 13(1)(1) of the Rent Act. In the present case, two of the defendants, who have actually purchased separate properties and the defendant nos.2 and 4 are not their "dependents". All were living jointly and paying rent jointly. Hence, the aforementioned judgments will not encompass the facts and issue raised in the present case. Similarly, in the case of **Anandi D. Jadhav (supra)**, the facts suggest that the heirs or sons of the tenant were not the tenant of the demise property, though they were living with their mother, and mother was the only tenant. The case of **Anandi D. Jadhav (supra)** has been relied upon by the Full Bench of this Court in case of **Heirs of Jayantilal Kanjibhai (supra)**. The

Full Bench was dealing with the case of husband and wife, who acquire the subsequent property and their statutory and legal right with regard to the acquired property. The issue of the joint tenancy was not under scrutiny before the Full Bench.

- (19) Finally, I may take notice of the judgement of the Apex Court in the case of **Helper Girdharbhai (supra)** in context of exercise of powers by the High Court under the provisions of Section 29(2) of the Rent Act has held thus:

"16. We must, however, guard ourselves against permitting in the guise of revision substitution of one view where two views are possible and the Court of Small Causes has taken a particular view. If a possible view has been taken, the High Court would be exceeding its jurisdiction to substitute its own view with that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant. Judged by that standard, we are of the opinion that the High Court in this case had exceeded its jurisdiction.

17. In the case of Punamchandra Revashankar Joshi v. Ramjibhai Maganlal (1966) 7 Guj. LR 807, the Gujarat High Court after dealing with the Gujarat Amendment Act (XVIII) of 1966 observed that the Legislature had not intended to equate the ambit of the power with the one exercised in an appeal. The authority vested in the High Court under the Amendment still remained only in the domain of the jurisdiction and power of revision and no further. The Amending provision, therefore, only related to procedure and not to any rights of the parties.

18. This Court in the case of Bhai Chand Ratanshi v. Laxmishanker Tribhovan, (1982) 1 Ren. C.J. 242; (AIR 1981 SC 1690) observed that where lower courts applied their minds properly in deciding a matter under Section 13(2) of the Bombay Rent Act, the High Court could not substitute its own finding for the one reached by the courts below, on a reappraisal of evidence under Section 29(2) of the Act as substituted by the Gujarat Act 18 of 1965. This Court reiterated that although the High Court had wider power than that which could be exercised under Section 115 of C.P.C., yet its revisional power could only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law. The High Court could not substitute its own finding for the one reached by the courts below on a reappraisal of evidence."

(20) Thus, as enunciated by the Supreme Court, this Court can exercise its revisional power under section 29(2) of the Rent Act for a limited purpose with a view to satisfy itself that the decision of the Courts below was according to law and the High Court cannot substitute its own finding for the one reached by the Courts below on reappraisal of evidence.

(21) The revision application fails legal scrutiny, hence is dismissed. RULE is discharged.

(22) Record and proceedings be sent back to the concerned Court forthwith.

Sd/- .
(A.S.SUPEHIA, J)

FURTHER ORDER

After the pronouncement of the above judgment, learned advocate Mr.Mehta for the applicants requests for stay of the judgment.

For the reasons recorded hereinabove, the request for extending the interim relief is rejected.

Sd/- .
(A.S.SUPEHIA, J)

*Bhavesh-[PPS]**