IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 248 of 2000

With
R/CIVIL REVISION APPLICATION NO. 904 of 2000

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER Sd/-

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Approved for Reporting	Yes	No
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SAURASHTRA RACHNATMAK SAMITI & ORS.
Versus
LEGAL HEIR OF DECD. FULCHAND DEVJI MEHTA & ORS.

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Appearance:
TANNA ASSOCIATES(1410) for the Applicant(s) No. 1,2,3
ADVOCATE NOTICE SERVED for the Opponent(s) No. 1.7.3
MR AS VAKIL(962) for the Opponent(s) No. 1.1,1.10,1.2,1.3,1.4,1.5,1.6,1.7.1,1.7.2,1.9
UNSERVED EXPIRED (N) for the Opponent(s) No. 1.7.4

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 14/10/2025

ORAL JUDGMENT

1. The present Civil Revision Applications are filed under Section 29 of the The Bombay Rents, Hotel and Lodging House Rates Act, 1947, challenging the judgment and decree passed in Regular Civil Appeal Nos.182 of 1981 and 199 of 1981, passed by Assistant Judge, Jamnagar dated 30.06.1999, which were filed pursuant to the judgment and decree passed in Regular Civil Suit No.634 of 1971 passed by Civil Judge, Senior Division, Jamnagar.

2. For the sake of brevity and convenience the parties are referred to as per their original status as that in the suit.

3. The brief facts arising in the present Revision Applications are that the plaintiff filed a suit for eviction of the defendants from the suit property, on the ground of bonafide and reasonable requirement for his own residence and business purposes. The suit premises consist of ground floor and the first floor and the entire suit property was given on rent to the defendants. The defendant appeared in the said suit and filed a written statement. The Trial Court framed issues vide Exhibit 10 as under:

> *"(1) Whether the plaintiff proves that he is required suit premises reasonably and bonafide for occupation by itself?*
> *(2) To whom greater hardship would be caused in case decree for eviction is granted or refused ?*
> *(3) What should be the standard rent ?*
> *(4) Whether the suit notice is legal and valid?*
> *(5) Whether the suit is barred by mis-joinder of parties ?*
> *(5-4) Whether the suit is maintainable in*

view of the contention raised in para 2 of the written statement at Exh.9?
(6) What is due? And
(7) What order and decree?"

4. The plaintiff examined himself vide Exhibit 122 amd at the Appellate Stage at Exhibit 44 the plsintiff's son was examined and the witnesses of the plaintiff were examined vide Exhibits 237, 239, 240, 242 and 245 and at teh Appellate Stage, the witnesses of the plaintiff was examined vide Exhibit 45. The defendant examined himself vide Exhibit 265 and was examined at Appellate Stage at Exhibit 33 and after considering the oral evidence and the documentary evidence and giving finding on all the issues, the Trial Court by a judgment and decree dated 02.11.1981, partly allowed the suit and passed a decree of eviction in favour of the plaintiff qua first floor of the suit premises and refused the decree for eviction of the ground floor portion.

5. Being aggrieved by the judgment and decree, the plaintiff filed Regular Civil Appeal No.182 of 1981, against refusal of part decree whereby eviction of the ground floor portion for business of the plaintiff was refused and the defendants filed appeal against partial decree, granted in favour of the plaintiff, being Regular Civil Appeal No.199 of 1981. After re-

appreciating the evidence, the Appellate Court allowed the Regular Civil Appeal No.182 of 1981 filed by the plaintiff and dismissed the Civil Appeal No.199 of 1981, filed by the defendants thereby the Appellate Court granted a decree of eviction even for the ground floor premises and confirmed the decree qua the first floor portion of the premises which was passed by the Trial Court in Civil Suit No.634 of 1971, hence the present Revision Applications.

Submissions of the learned senior advocate for the defendant:

6. Learned senior advocate Mr.Bhaskar Tanna for the defendant, has mainly argued that, the Appellate Court has failed to appreciate the evidence on record and thereby committed an error in coming to the conclusion that the plaintiff has proved bonafide and reasonable requirement of the suit premises. It has been argued by the learned senior advocate that the Appellate Court has without any basis come to the conclusion that the plaintiff required the suit premises for reasonable and bonafide requirement. It has also been argued by the learned Senior Advocate that, the Appellate Court has wrongly come to the conclusion that the plaintiff would be put to greater hardship than the defendants, even when there was ample evidence on record that greater hardship would be caused to

the defendants if the decree of eviction is passed. It has also been argued by the learned senior advocate for the defendant that the Appellate Court has wrongly appreciated the evidence and wrongly interpreted the provisions of the Rent Act, and has wrongly come to the conclusion that the defendants should shift to another premises and therefore, it has been argued that the judgment and decree passed in Regular Civil Appeal Nos.182 of 1981 and 199 of 1981 are required to be quashed and set aside.

7. Learned senior advocate Mr.Tanna has for the defendants has argued that in the present case, it is not in dispute that the suit property was given on rent by Fulchand Devji Mehta, and that he was residing at Aden and the said suit was filed in the year 1971 and the said suit was filed against (1) Saurashtra Rachnatmak Samiti (2) Khadi Gramodhyog Bhandar, Jamnagar(3) the Manager of Khadi Gramodhyog, and while filing the suit, the plaintiff has not stated whether defendant no.1 was a society or a trust registered under the Bombay Public Trust Act. It has been argued by the learned senior advocate that the said fact had been brought to the notice of the plaintiff in the year 1975, when the defendant filed an application for amendment of his written statement and it was brought to notice that the trustees of Saurashtra Rachnatmak Samiti, have not been joined as parties and therefore as the

tenant of the suit properties were a public trust registered under the Bombay Public Trust Act, unless the trust and the trustees were joined in the suit, the Court could not have granted a decree of eviction against the defendants.

8. It has been argued by the learned senior advocate that the Trial Court, as well as the Appellate Court, have come to the conclusion that the said amendment whereby the fact of defendant no.1 being a trust registered under the Bombay Public Trust Act, was done at the last minute in the suit, which is factually not correct, in view of the fact that the judgment was delivered in the year 1981 and therefore, it cannot be said that at the last minute, the said amendment was sought by the defendants**.**

9. The learned senior advocate has also argued that, the suit filed by the plaintiff for eviction could not have been decreed by the Court, in view of the fact that the suit fails because of non-joinder of trustees and as the said fact goes to the root of the matter and that, there is no finding despite the clear amendment made in the written statement, the Appellate Court could not have granted a decree of eviction. Moreover, if the entire pleading and oral evidence of the plaintiff are taken into consideration, the fact remains that it was stated that the plaintiff requires the ground floor portion of the suit premises

for commercial purposes, for his own reasonable and bonafide requirements, and the upper portion of the suit premises is required by the plaintiff for his own reasonable and bonafide requirements for residential purposes. The Trial Court, while rejecting the claim for the ground floor portion, has taken into consideration the comparative hardship of the parties, and came to a finding that there were adequate arrangements of the plaintiff's for their business. Therefore, the First Appellate Court could not have reversed the findings of the Trial Court with respect to the ground floor portion of the suit premises.

10. The learned senior advocate also argued that the concept of there being large number of family members cannot be a ground for eviction of a tenant from the suit premises, in view of the fact that the original plaintiff landlord had given the suit property on rent, and therefore the change of circumstances could not be a ground to evict the tenant from the premises and therefore, comparative hardship was also in favor of the defendants and the Appellate Court could not have reversed the said findings of the Trial Court for the ground floor portion of the suit property.

11. The learned senior advocate for the defendants has argued that the plaintiffs have been possessing suitable, rented premises for their residence and business purposes and

therefore also, the plaintiff cannot claim possession of the suit premises on the ground that his son requires the suit premises and therefore, the requirement of the plaintiff's son cannot be a bonafide and reasonable requirement of the plaintiff-landlord.

12. Moreover, it has been argued that the fact that the plaintiff has provided and suggested alternative accommodation, cannot be a ground to evict the defendants from the suit property.

13. The learned senior advocate for the defendants has also argued that the plaintiff has not produced any satisfactory evidence to prove that the plaintiff requires the suit premises reasonably and bonafide for his personal use and occupation. It has been argued by the learned senior advocate for the defendants that, if the oral evidence of the plaintiff and his son, Rameshchandra, are taken into consideration, the same does not prove the fact that the plaintiff requires the suit property reasonably and bonafide for his personal use and occupation.

14. The learned advocate for the defendants has also argued that the Appellate Court has also not decided the issue of greater hardship, in view of the fact that greater hardship will be caused to the defendants, if the decree of eviction is passed.

15. It has been argued by the learned advocate for the defendants that the plaintiff has stated that there are 25 members in his family and that he is residing in rented premises situated at Sheri No.2, Nagarpara at Jamnagar and that the said premises, are not sufficient to accommodate all members of his family and that he is paying the rent of Rs.200/- and that rent note was produced, vide Exhibit 71 and the rent receipts were produced, vide Exhibits 72 and 73 and therefore, the defendants tenant had proved that the landlord is possessing residence accommodation and there was no hardship that would be caused to the plaintiff and therefore, the Appellate Court could not have granted a decree of eviction of the defendant, considering the fact that greater hardship would be caused to the defendant, if the defendant is evicted from the suit property.

16. The learned senior advocate for the defendants has also argued that, it has come on record that plaintiff has various buildings in his occupation for residence and business purpose and that rented premise is in possession of the plaintiff, for residence comprised with 6 rooms, 1 storeroom, kitchen and 2 osaries. While according to the plaintiff, the said rented premises are comprising only of 3 rooms, kitchen and 2 osari. The learned advocate for the defendants has also argued that, it

has come on record that there were two rented premises and a godown in possession of the plaintiff for business purpose and that his son Vimesh is doing business of provision store and the rent receipts of the same are also produced vide Exhibits 91 and 92. It has also come on record that there was another shop which was situated at locality known as Hawai Chowk, Jamnagar and the rent receipts for the same were produced, vide Exhibits 89 and 90 and the said shop, the plaintiff was using for the business, known as Cycle Auto Agency and running provision store by the name and style International Agency, and the rent note to that effect was produced, vide Exhibit 75.

17. The learned senior advocate for the defendants has also argued that the plaintiff also was in possession of one godown situated at the place and locality known as Ananda Bawa Chakla, and the rent receipt of the said godown was produced vide Exhibits 78 to 82. The learned senior advocate for the defendants has argued that the plaintiff in his evidence has stated that the two shops and godown are not sufficient for him to do business and therefore, he required the suit premises to start a business of provision store, therefore, it has been admitted that the plaintiff had other alternative premises and therefore, the plaintiff does not require the suit premises for his reasonable and bonafide requirement to do business, the

plaintiff has stated that the Cycle Business, known as Cycle Auto Agency, was done by his son and his son obtained registration of the said business and that his four sons had executed partnership deed, for the said Cycle Business and that none of his business was running in the name and style of Fulchand Devaji Joint Hindu Family Firm, therefore the plaintiff has other premises for residence and business therefore the Appellate Court could not have passed a decree of eviction.

18. Moreover, it has been argued by the learned senior advocate for the defendants that it has also come on record that, two sons of the plaintiff namely Gunavantrai and Mahendra are at present at Dubai, therefore also the bonafide requirement of the sons could not be a ground for eviction of the defendants from the suit property.

19. The learned senior advocate for the defendants has relied on the following judgments:

1. 2003 (2) GLH 148 Dwarkaprasad V/s. Niranjan:
Which discusses about the legal position for granting a decree under Section 13(1)(g).

2. (2003) 2 SCC 320 Badrinaryan Chunilal Bhutada V/s.

Govindram Ramgopal Mundada, wherein it has been held that concept of comparative hardship lies in domain of equitable or social justice.

3. (2001) 8 SCC 561 Siddalingamma & Anr. V/s. Mamtha Shenoy, while deciding bonafide requirement of landlord, the test will on the proven facts on record, the need to occupy the premises should be natural, real, sincere, honest.

4. (2001) 2 SCC 604 Gaya Prasad V/s. Pradeep Srivastava, wherein it has been held that the landlord should not be penalized for the slowness of the legal system and the crutial date to decide the bonafide requirement of the landlord is the date of his application for eviction.

5. 2001 (2) GCD 1716 Amubai Ibrahimbhai V/s. Fakruddin Abbulhusain, on the issue as the Appellate Court has powers to reappreciate and reassess the evidence and if the landlord fails to establish any ground evicting the tenant, the said findings of the Appellate Court can not be interfered.

6. (1999) 1 SCC 439 M.S. Zahed V/s. K. Raghavan, wherein the Court held that the reasonable and bonafide requirement must not only be bonafide but also be

reasonable.

7. 1999 (1) GLR 15 Patel Valmik Himatlal V/s. Patel Mohanlal Muljibhai, wherein it has been held that the High Court cannot rehear the matter and reappreciate the evidence but can correct mistakes of law which goes to the root of the decision.

8. 1993 (1) GLR Mukundlal Nanalal Chanawala V/s. Bhagvatsingh Dhansingh Gadaria, wherein it has been held that it is the duty of the Court to consider the question of relative hardship of respective parties first to find out as to whom the greater hardship would be caused in case of partial decree.

9. 1968 GLR 729 Kasturbhai Ramchand Panchal & Bros. V/s. Firm of M/s. Mohanlal Nathubhai, Wherein it has been held that if the requirement of the landlord is not reasonable for the whole of the premises and partial decree could be passed without causing any hardship to the either side, the question would be resolved on the second ground contemplated under Section 13(2) of the Act.

The judgments that have been relied upon by the learned senior advocate for the defendants are on general principles

of rent act and therefore, they have not been dealt with separately, in view of the fact that the said are the basic principles under, which the Court will have to take into consideration a suit for eviction under Section 13(1)(g) of the Rent Act and while deciding the present Revisions, this Court has taken into consideration the same and even while dealing with the judgments relied upon by the learned advocate for the plaintiff the judgments relied on by the defendants are dealt with.

20. Therefore, it has been argued by the learned senior advocate for hte defendants that the present Revision Applications are required to be allowed and the judgment and decree passed in Civil Appeal Nos.182 and 199 of 1981, are required to be quashed and set aside and the judgment and decree, whereby partial eviction of the 1st floor portion of the suit property is granted in favour of the plaintiff, in Civil Suit is also required to be quashed and set aside.

Submissions of the learned advocate for the plaintiff:

21. Learned advocate for the plaintiff has argued that, the defendant no.1 tenant came to be inducted in the suit property as tenant at the monthly rent of Rs.200/- in the year 1956. It has been argued by the learned advocate for the plaintiff that

the original plaintiff along with his family members were residing at Aden, since he was fourteen years old. The defendant no.1 is a society registered under the Society's Registration Act, on 28.01.1953 and the registration certificate is produced vide Exhibit 271.

22. It has been argued by the learned advocate for the plaintiff that, the suit property comprises of shop on the front on the ground floor, store room in the rear, two rooms, bathrooms, stair case on the eastern side and first floor and the suit property is capable of being used for residence and commercial purpose and in the year 1962-63 the rent of the suit property was increased to Rs.500/-.

23. It has been argued by the learned advocate for the plaintiff that, as there was political unrest at Aden, the plaintiff started correspondence with defendant no.1-tenant from Aden and documentary evidence to support the same were produced vide Exhibits 49, 136 to 139, 188 to 189 and therefore the plaintiff's sons and daughter came to Jamnagar and were residing in rented premises.

24. Thereafter, in the year 1971, the plaintiff also left Aden and came to Jamnagar. Learned advocate for the plaintiff has also argued that the original plaintiff and his son showed and

suggested various alternative accommodation to the defendants and as the defendants did not vacate the suit premises, the plaintiff filed suit seeking eviction of the defendants from the suit property on the ground of personal requirement i.e. Section 13(1)(g) of the Rent Act.

25. It is the case of the plaintiff that the plaintiff and his family members are occupying rented premises for residence and for commercial purposes and that, defendant no.1-tenant has, been shown various alternative accommodations, but the defendants did not give any response and the plaintiff and his family members were required to obtain residential and commercial premises on rent, as defendant no.1 refused to vacate the suit property and that the commercial premises occupied by the plaintiff at the time of filing the suit were inadequate for development of the business and therefore, the plaintiff desired to commence a provision store on the ground floor portion and utilize the first floor portion for residence purpose.

26. The learned advocate for the plaintiff has also argued that on the aspect of comparative hardship with regard to the first floor for residence, the Appellate Court has discussed the same and has concluded that the Trial Court has considered all the relevant facts and the findings recorded by the Trial Court

are based on proper appreciation of evidence on record and therefore, cannot be interfered with.

27. It has been argued by the learned advocate for the plaintiff that the Trial Court has observed that the plaintiff has sufficiently adduced the evidence and satisfied the Court that, there is not a mere desire, but there was a need of the suit premises for personal use and occupation and that the defendants have not pointed out any ground or circumstances to show that the plaintiff's requirement was not bonafide.

28. Moreover, it has been argued by the learned advocate for the plaintiff that, considering section 13(2) of the Rent Act, the Trial Court and the Appellate Court have taken into consideration that the plaintiff's occupation in a rented premises is of a temporary accommodation and when the plaintiff is asking for a decree of possession of the suit premises, the same does not bar him, if the plaintiff is occupying a rented premises. It has been argued by the learned advocate for the plaintiff that the Trial Court and the Appellate Court have taken into consideration the size of the family of the plaintiff and have come to the conclusion that, the evidence in respect of the size of the family of the plaintiff and the size, area and accommodation of the rented premises, was in no way impeached and it has been argued that the plaintiff

has shown by reasons of his stature, number of members in his family, size and accommodation of the rented premises for residence and nature of his business, that he requires suitable and sufficient residential accommodation and that the demand of the plaintiff is infact genuine for residence purpose of the first floor portion.

29. The learned advocate for the plaintiff has also argued that, it would be unfair to ask the plaintiff to occupy rented premises, when a premises is owned by the plaintiff and that the plaintiff cannot be forced to search a rented house for himself, especially when the plaintiff himself owns his own house.

30. It has been argued by the learned advocate for the plaintiff that the Appellate Court has also considered different rented premises which were occupied by the sons of the plaintiff, to do business and it has been argued by the learned advocate for the plaintiff that the want of the plaintiff to shift business in the suit premises is not a matter to be decided by the Court and the want of the plaintiff, that will have to be taken into consideration and the alternative rental accommodation cannot wipe out the need of the plaintiff and therefore, it has been argued that both the Civil Revision Applications are required to be quashed and set aside, in view

of the fact that the scope of interference of the Revision Court under Section 29(2) of the Rent Act is only, if there is miscarriage of justice, due to mistake of law and this Court cannot reassess the value of evidence and interfere with the finding of fact merely because it thinks that the appreciation of evidence by the Appellate Court is wrong and that the Appellate Court should have reached a different conclusion of fact from what it did and therefore.

31. The learned advocate for the plaintiff has relied on the following judgments :

-For the point of interference of this Hon'ble Court under Section 29 (2) of Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947, the following judgments have been relied on.

1. (1947) 1 SCC 661 – Phiroze Bamanji Desai v. Chandrakant N. Patel and others.

2. (1981) 3 SCC 502 – Bhaichand Ratanshi v. Laxmishankar Tribhovan.

3 (1987) 3 SCC 538 – Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri and others.

4.(1996) 5 SCC 353 – Prativa Devi v. TV Krishnan: paras 1, 2, 4.

5. (2000) 1 SCC 679 – Raghavendra Kumar v. Firm Prem Machinery & Co.

6. (2000) 5 SCC 1 – Vaneet Jain v. Jagjit Singh.

7. (2008) 9 SCC 1 – Shamshad Ahmad and others v. Tilak Raj Bajaj and others.

8. (2009) 9 SCC 678 – N. Eswari v. K Swarajya Lakshmi.

9. (2010) 11 SCC 777- Sameer Kumar Pal and another v. Sheikh Akbar and others.

10. 2010 SCCOnline Guj 12293- Patel Kanjibhai v. Modi Manjulaben Babulal.

11. (2017) 14 SCC 132 – Ambadas Khanduji Shinde and others v. Ashok Sadashiv Mamurkar and others.

12. (2018) 12 SCC 576 – Gandhe Vijay Kumar v. Mulji alias Mulchand.

13. (2019) 9 SCC 282 – D. Sasi Kumar v. Soundararanjan.

14. (2020) 19 SCC 254 – Thankamony Amma and others v. Omana Amma N. and others.

-For the Question of landlord's reasonable and bona fide requirement of premises for his own use and occupation is one of fact following judgments have been relied upon:

1. (2008) 1 SCC 173 – Julieta Antonieta Tarcato v. Suleiman Ismail

2. (2008) 7 SCC 770 – Ganga Devi v. District Judge, Nainital and others

- For the point that Landlord is the best judge of his requirement / Court cannot direct/require landlord to do buiness in a particular area the following judgments are relied upon:

1. (2010) 12 SCC 740 – Dinesh Kumar v. Yusuf Ali
2. (2012) 2 SCC 155 – Mohd. Ayub and another v. Mukesh Chand
3. (2017) 5 SCC 640- Nidhi v. Ram Kripal Sharma

-For the point of delay in adjudication/ subsequent events/ crucial date for deciding the following judgments are relied upon:

1. (1997) 4 SCC 413 – Kamleshwar Prasad v. Pradumanju Agarwal
2. (2001) 2 SCC 604 – Gaya Prasad v. Pradeep Srivastava
3. (2004) 5 SCC 772 – Shakuntala Bai and others v. Narayan Das and others
4. (2010) 2 SCC 264 – Ashok Kumar v. Ved Prakash and others

32. In view of the same, it has been argued that the Civil Revision Applications are required to be quashed and set aside and judgment and decree passed in Regular Civil Appeal nos.182 of 1981 and 199 of 1981 are required to be confirmed.

Analysis

33. Having heard learned advocates appearing for the respective parties, and having considered the oral evidence, documentary evidence, and the judgment passed by the Trial

Court and the First Appellate Court, if the judgment of the Trial Court is taken into consideration, the Trial Court has held that the claim of the plaintiff for eviction for the purpose of doing his own business and residing in the suit premises is bonafide. If paragraph no.13 of the judgment passed by the Trial Court is taken into consideration, the Trial Court has held that the landlord is not bound to continue in the other rented premises which is occupied by the plaintiff, wherein there are all uncertainties of their tenure and it has been held that the plaintiff cannot be said to be unreasonable, if he wishes to occupy the suit remises for his personal use and occupation.

34. Moreover.,the Trial Court has also held that there is nothing strange, if the plaintiff, who is the owner of the premises, is thinking of doing business and residing in his own premises, and ultimately, the Trial Court had held that the claim of the plaintiff for eviction for the purpose of doing his own business and residing in the suit premises is a bonafide requirement. It has also come on record that the plaintiff only has the suit premises and has no other property that belong to the plaintiff, and it was not a mere desire of the plaintiff, but the need and necessity of the plaintiff to occupy the premises for residence and business, and the same is already held by the

Trial Court, and therefore, the Trial Court has held that the plaintiff was in need of the suit premises for residence and for his occupation. The Trial Court has also taken into consideration the factor of comparative hardship, and while taking into consideration the said factor, the plaintiff had examined himself vide Exhibit 122, and in the said examination-in-chief, the plaintiff had categorically given details of his family members and the business that his son and family is doing.

35. The factor which will also have to be taken into consideration is that the plaintiff was residing at Aden, and because of the Political Development that took place at Aden, he had to leave and come to India, and the plaintiff is trying to seek possession of the suit property from the defendants from the year 1956 and therefore, the need of the suit premises has been established by the plaintiff, while filing examination-in-chief, vide Exhibit 122. The son of the plaintiff, is examined vide Exhibit 237, and the son of the plaintiff has, in support of the case, given details of the size of his family and that the son of the plaintiff Rameshchandra Fulchand, was managing the affairs at Jamnagar and that he had met one of the member of the executive body of defendant no.1.

36. Moreover, the plaintiff had also examined vide Exhibit

239, one Dhirajlal Sundarji Varia, who was the owner of a property and was willing to give the said premises on rent to the defendants, and therefore, the plaintiff has tried to establish the fact that no hardship will be caused to the defendants, in view of the fact that the defendants have been suggested alternative premises to do business. The plaintiff had also examined vide Exhibit 240 a witness Mr.Maheshwar Sakarchand Mankad, who was managing the property of the plaintiff, and the said witness has given details about the size/measurement of the property. Moreover, the plaintiff has also examined vide Exhibit 242 and 245, who had suggested alternative premises to the defendants, where the defendants can occupy the premises for their business.

37. At the appellate stage, when the subsequent events that took place after the appeal was filed, the plaintiff examined son of the original plaintiff, to prove that the plaintiff has not acquired any other alternative accommodation and therefore, the question of bonafide requirement still continued. The plaintiff had also examined witness vide Exhibit **44 and 45, a**t the appellate stage in support of the plaintiff to the claim of the defendant, wherein the defendants had stated that the daughter-in-law of the original plaintiff has acquired a plot in Jamnagar is not proved.

38. The defendants examined himself, vide Exhibit 265, and from the oral evidence also, it can be gathered that the first floor portion of the suit premises is not used by the defendant, and with respect to the subsequent event, the defendants have examined, witness at Exhibit 33 to prove the fact that, daughter-in-law of the plaintiff Premilaben, has alternative premises at Jamnagar.

39. The learned senior advocate, Mr. Bhaskar Tanna's main arguments were that the plaintiff has not joined the trust and the trustees of the said trust, in view of the fact that the said trust is occupying the premises and the said trust is registered under the Bombay Public Trusts Act, 1950, bearing Registration No.F1998, and the copy of the said registration of the trust is produced vide Exhibit 267, and therefore, the learned senior advocate has argued that the Trial Court and the Appellate Court, could not have granted a decree of eviction, against the defendants in view of the fact that, the trust registered under the Bombay Public Trusts Act, 1950, was not joined as party defendant and the trustees of the said trust are also not joined in the said suit.

40. If the said arguments are taken into consideration, the fact remains that, admittedly, the suit property was given on rent, somewhere in the year 1956, and the said fact has not

been denied by the defendants that at the time when the suit property was given on rent to defendant no.1, defendant no.1, was not registered under the Bombay Public Trusts Act, 1950, in view of the fact that the said trust has been registered on 10.01.1967, and at the time when the suit property was taken on rent, defendant no.1, was a society registered under the Society's Registration Act, which has been proved by document produced vide Exhibit 271, which clearly shows that the defendant no.1, was registered under the Society Registratuion Act on 28.01.1953. Therefore, on the date when the suit property was taken on rent, defendant no.1 was registered as society under the Society Registration Act and therefore, the question of joining the trust registered under the Bombay Public Trusts Act, 1950, and joining the trustees of the said trust does not arise in view of the fact that the tenant of the suit premises was not the trust but society which has been registered under the Society Registration Act, and therefore the said argument of learned senior advocate, Mr.Tanna, that the trust had to be joined as defendant will not be applicable.

41. Moreover, though a defense by way of amendment in the written statement has been taken by the defendants, but even otherwise, at the time when the suit property was given on rent, the defendant no.1 was not registered under the Bombay

Public Trusts Act, 1950. Moreover, it has also not come on record that as on date, the said registration under the Society Registration Act of the defendant No.1, has been cancelled and/or that defendant No.1, is no more a society registered under the Society Registration Act and that, it is only registered under the Bombay Public Trusts Act, 1950. Therefore, also the said factor of not joining the trust and the trustees cannot be considered.

42. In the present matter, though, it has come on record that plaintiff's son are doing business in different rented premises, but the fact is that, the plaintiff and his family members have come to India from Aden, and though they have their own property i.e. suit premises, they have to do business in some other premises on rent, and as the plaintiff did not have any premises, he was doing business in the rented premises for the livelihood of his family members and the same was an interim arrangement of the plaintiff, till he gets possession of his own premises for doing business. Moreover, it is also come on record that the business of Vimesh Provision Store, was also compelled to be closed by the plaintiff, in view of shortage of space and for the development of the business, the plaintiff and plaintiff's son had tried to get different properties on rent, and if all the factors by which the plaintiff's son have tried to shift from one property to the other property for doing

business are taken into consideration, the said factors clearly indicate that the plaintiffs were in dire need of premises to do their business.

43. In the present case, it has clearly come on record that the plaintiff's son have been doing business in different rented premises, and therefore, it cannot be said that it was only a desire of the plaintiff to do business in the suit premises.

44. Moreover, the factor of plaintiff being in need of the suit premises for his business has clearly been proved by the plaintiff before the Trial Court and the Appellate Court, and there are concurrent findings of the Court that the plaintiff is in bonafide and reasonable need of the suit premises.

45. The other factor which also will have to be taken into consideration is on the point of comparative hardship on the parties, the Appellate Court has taken into consideration, the oral evidence of the witnesses of the plaintiff whereby various rented accommodation have been offered to the defendants by the plaintiff and the said offers have been turned down by the defendant’s on one or the other excuse. In the present case, the plaintiff has tried to settle at various places for doing business, but unfortunately he has been unsuccessful, and therefore, as

the plaintiff is the best judge of his requirement, and when another accommodation is not reasonably suitable for the purpose of the plaintiff, then the eviction decree had to be passed. The plaintiff has proved that the alternative interim rented accommodation, was not sufficient and reasonable for the plaintiff to reside and do business. The evidence on record clearly state that the plaintiff's requirement is not malafide and is not merely a desire, but is a bona fide need of the plaintiff.

46. The alternative accommodation which has been suggested by the plaintiff, have not been stated by the defendants to be not sufficient and suitable for the business of Khadi Gram Udhyog Bandar. The plaintiff has suggested other suitable accommodation by oral evidence of witness produced vide Exhibits 239, 242, and 245. Therefore also, the witness examined at Exhibit 239, has deposed that he had other property situated in the city Jamnagar and was ready and willing to let out the first floor for making the construction as per the desire of the defendants and the Appellate Court has held that the properties that have been suggested to the defendant are in the city of Jamnagar, and were suitable for the defendants to do business.

47. Therefore, it has come on record that the plaintiff was in bonafide and reasonable need of the suit premises and that

comparative hardship would be caused to the plaintiff, if the decree of eviction is not passed in favour of the plaintiff. In the present case, the bonafide need of the plaintiff has clearly been established and even after weighing the evidence on record, the comparative hardship is at its highest in favor of the plaintiff.

48. Moreover, one more factor will also have to be taken into consideration while appreciating the comparative hardship, the defendants have not brought on record any material to indicate that at any time during the pendency of the litigation, the defendants had made an attempt to seek an alternative accommodation and had failed to find any alternative accommodation.

49. The said factor also will be one of the circumstances to be taken into consideration, while determining whether the plaintiff is in bonafide need of the suit from property. If the entire record is taken into consideration, there is nothing on record to show that the defendants who are in possession of the suit premises, since the year 1956, have made any attempt to seek any alternative accommodation. In the present case, though the tenancy of the defendant is from the year 1956, but availability of another premises as proved by the plaintiff, while producing while examining witness vide Exhibits 239,

242, and 245 clearly indicate that another premises was available to the defendants, where they can well shift their business and in the present case, the plaintiff has pleaded bonafide and reasonable requirement, and the same has been proved by the plaintiff.

50. The finding of the Appellate Court that the plaintiff reasonably and bonafidely required the suit property for his own use and occupation is clearly one of fact and the said findings of fact recorded by the Appellate Court, cannot be said to be an error of law in arriving at them, the defendant is not in a position to disclose that the Appellate Court was in error of law in coming to the finding of fact that the plaintiff required the suit premises for his own bonafide requirement.

51. This Court can only interfere with the decision of the First Appellate Court under Section 29(3), if there is miscarriage of justice due to a mistake of law and while deciding the present revision applications, this Court cannot reassess the value of evidence and interfere with the finding of fact merely because a different conclusion of fact from what has been stated by the Appellate Court could have been arrived at in view of the fact that this Court cannot reappreciate the evidence and substantiate its own conclusion of fact in place of those reached by the First Appellate Court. The judgment

reported in ***Phiroze Bamanji Desai v. Chandrakant N. Patel and others*** reported in **(1974) 1 SCC 661,** will be of assistance in view of the fact that at paragraph 7, the Court held that the finding of the First Appellate Court that, the landlord reasonably and a bonafide required the premises for his own use and occupation was unquestionably a finding of fact and it was not competent to the High Court in the exercise of revisional power under Section 29(3) to interfere with this finding by reappreciating the evidence.

52. The Hon'ble Apex Court in the judgment in the case of ***Bhaichand Ratanshi v. Laxmishankar Tribhovan*** reported in ***(1981) 3 SCC 502,*** held that the revisional jurisdiction could only be exercised for a limited purpose, with a view to satisfy itself that the decision was according to law. Moreover, the defendants cannot dictate terms to the plaintiff and advise him what he should do and what he should not do and it is always the privilege of the plaintiff to choose the nature and place of business.

53. Moreover, as held in the case of **Shamshad Ahmad and others Vs. Tilak Raj Bajaj** reported in **(2008) 9 SCC 1**, wherein it has been held that even long user of the premises by the defendant, could not be a ground for depriving the plaintiff for doing business, if the requirement of the plaintiff is

bonafide and reasonable and that the finding as to bonafide requirement was a finding of fact and therefore, the same cannot be interfered in the revision of jurisdiction.

54. In the present case there are concurrent findings of the Trial Court and the First Appellate Court on the fact that the plaintiff has proved that the plaintiff has reasonably and bonafidely required the suit premises and therefore, the said concurrent findings are as per the evidence produced before the Trial Court and therefore, does not require any interference.

55. The fact that the Trial Court and the First Appellate Court have come to the conclusion that the plaintiff has proved that the plaintiff requires the suit premises for his bonafide and persoanal requirement is a finding of fact based on evidence on record and in view of the judgment of the Hon'ble Apex Court in the case of ***Julieta Antonieta Tarcato Vs. Suleiman Ismail*** reported in ***(2008) 1 SCC 173*****,** wherein the Court held that the finding of bonafide personal need, recorded by the Appellate Court, is a finding of fact, based on the evidence on record. Moreover, the landlord is the best judge of his requirement and the Court cannot direct the plaintiff to do business in a particular area. Moreover, the learned advocate for the defendant has tried to argue that subsequent events will

have to be taken into consideration while deciding the revision application. The fact remains that the suit that was filed for eviction was of the year 1971 and the Trial Court, partly allowed the said suit and the Appellate Court has allowed eviction of the defendant and the subsequent events can not be used to penalize the plaintiff, while litigation has dragged on for no fault of the plaintiff and the plaintiff cannot be penalized for the slowness of the legal system and the same cannot be the basis for denying the plaintiff, when the litigation at last reaches the final stage.

56. The judgment in the case of ***Gaya Prasad V/s. Pradeep Srivastava*** reported in ***(2001) 2 SCC 604*****,** will be applicable to the facts of the present case, wherein it has been held that developments in life of the plaintiff and his family held cannot be expected to come to a standstill during the pendency of eviction proceedings and the bonafides of the requirement of the plaintiff have to be tested in relation to the date on which the eviction was applied for.

57. With respect to the comparative hardship, the fact that considering the evidence on record, when the plaintiff has already suggested alternative accommodation and alternative premises were available to the defendants and the same is also proved by oral evidence of the witnesses Exhibits 239, 242,

and 245 and the fact that the defendants have also not brought on record any material to indicate that any time during the pendency of long drawn litigation, the defendant made an attempt to seek an alternative accommodation and was unable to get it the findings of the Appellate Court in the Appeals are correct and does not require interference.

58. In the case of ***Mohd. Ayub and another v. Mukesh Chand*** reported in **(2012) 2 SCC 155,** wherein it has been held that the landlord's requirement need not be dire necessity, wherein it has been held that the landlord's requirement need not be dire necessity and at para no.17 it has been held as under:

> *"17.It is also important to note that there is nothing on record to show that during the pendency of this litigation the respondent made any genuine efforts to find out any alternative accommodation. We specifically asked learned counsel for the respondent to point out any evidence to establish that the respondent made any such genuine efforts. He was unable to answer this query satisfactorily."*

59. In view of the aforesaid facts, the judgment and decree passed in Regular Civil Appeal No.182 of 1981, whereby the plaintiff had challenged the refusal of the ground floor portion of the suit premises for bonafide requirement for doing

business and the Regular Civil Appeal No.199 of 1981, filed by the defendant, whereby the partial decree of eviction for the first floor portion of the suit premises was granted, have been decided as per the provisions of law.

60. With respect to the fact that the plaintiff has proved that the plaintiff requires suit property for his own *bona fide* requirement, the fact remains that the question of plaintiff's reasonable and *bona fide* requirement for premises for his own use and occupation is one of facts and in the revision application, the said facts cannot be re-appreciated. Moreover, the findings of the District Court in Regular Civil Appeal that the plaintiff reasonably and *bona-fidely* required suit premises for his own use and occupation is unquestionably a finding of facts and it is not competent to deal with said factual decision of the first appellate Court in exercise of revisional power under Section 29(3) to involve every findings by re-appreciating the evidence. Moreover, the scope of interference of this Court under Section 29 of the Gujarat Rent Act, are that the High Court cannot reassess the value of the findings and interfere with the findings of fact merely because it needs that the appreciation of evidence by the first appellate Court was wrong and that the appellate Court should have reached the different conclusion of fact from what it did. Under Revisional jurisdiction this Court cannot re-appreciate the evidence and

substitute its own conclusion of fact in couple of those reached by the appellate Court.

61. The revisional jurisdiction under Section 29 could only be exercised for a limited purpose with a view to satisfying a condition that the decision was according to law. In the present case, it cannot be said that the first appellate Court failed to apply its mind to the requirement of Section 13(1) (g) i.e. Bona fide requirement and of section 13(2) of the Rent Act as to comparative hardship and it cannot be said that the findings arrived at by the first appellate Court is manifestly perverse or erroneous.

62. 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 Appellate Court 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 Appellate Court is according to law and does not suffer from

any abuse of law. The findings recorded by the Appellate Court 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 this 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.

63. The findings recorded by the Appellate Court is based on critical appreciation of the evidence led by the parties on record and does not suffer any error or material irregularities. The Appellate Court has rightly come to the conclusion that the plaintiff requires the suit premises reasonably and bonafidely for occupation for himself and that greater hardship would be caused to the plaintiff if the decree of eviction is not granted and, therefore, there was no error committed by the Appellate Court which requires any correction at the hands of the High Court in exercise of revisional jurisdiction.

64. In view of the aforesaid facts and proposition of law and in view of the findings of fact by the Appellate Court, since no case is made out to call for any interference in the judgment and order passed by the Appellate Court, the present Revision

Applications are required to be dismissed and the same are dismissed accordingly. The tenant is hereby given two months time to vacate and handover peaceful possession of the suit premises to the plaintiff.

Sd/-
(SANJEEV J.THAKER,J)

URIL RANA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RANA URIL K(HC01406), PRIVATE SECRETARY, at High Court of Gujarat on 14/10/2025 17:27:49