Reserved On : 28/01/2026
Pronounced On : 06/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 173 of 2004
With
CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2025
In R/CIVIL REVISION APPLICATION NO. 173 of 2004
With
R/CIVIL REVISION APPLICATION NO. 177 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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BHARAT PETROLEUM CORPORATION LTD.
Versus
NIRMA LTD. & ORS.

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Appearance:
MS MINOO A SHAH(774) for the Petitioner
MR KAMAL TRIVEDI, SR. ADVOCATE with MR KUNAN B NAIK(3210) for the Respondent No. 1
MR MEHUL VAKHARIYA, ADVOCATE for Respondent No.2
RULE SERVED BY DS for the Respondent Nos.3,4,5

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. These are the rent revisions one by the lessee and another by sub-lessee challenging eviction order.

2. The eviction order passed in HRP Suit NO.103 of 1985 confirmed by common order in Regular Civil Appeal Nos.42 and 2000 and 22 of 2000, is a subject matter of challenge in these CRAs. Thus, I propose to decide both the CRAs by this

common judgment.

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

3. The facts essential to decide the matters noted from the impugned judgment are as under:-

3.1 Mr. Pravinbhai Patel and his brothers in the capacity of landlord filed the aforestated HRP suit against defendant No.1 Bharat Petroleum Corporation Limited formerly known as Burmah Shell Oil Storage & Distribution Company of India Limited (in short "lessee") and defendant No.2 Mahendra Motors (in short "sub-lessee") along with three other sub sub lessee i.e. Honest Car Repairing Works, Rajesh Auto Centre and Prashant Tyre Services for eviction of land bearing Final Plot No.108/1 admeasuring 1000 sq yard being part of Town Planning Scheme No.3 situated at Ashram Road, Ahmedabad (in short "demised land"). The landlord claimed that they are the part of the HUF and they have leased the demised land to the lessee, a company incorporated in UK and carrying business inter alia at Bombay by entering and executing lease deed on 24.3.1972, which was registered as Sr No.3910 at the Sub Registrar Officer, Ahmedabad for the time period of 14 years commencing from 29.9.1970 and was to expire in midnight of 29.9.1984, at a monthly rent of Rs.1000/- exclusive of all taxes.

3.2 One of the conditions of the lease deed was that the lessor was at liberty to construct any structure upon the

demised land and had full and free liberty to use the demised land as a storage, depot or a service station for the purpose of selling or otherwise dealing in, or of receiving, storing, treating or handling for distribution of petroleum or any of its products and Kindered Motor Accessories or any other trade or business.

3.3 Under the terms and conditions of the lease deed, lessee had full and free liberty to erect, and maintain in the demised land all manner of equipments, plant, building, machinery, tanks, godowns, pumps, filing sheds and other structures, fixtures and appliances and facilities to use all parcels of the demised land for the purpose stated in the earlier part of the lease deed and further had full liberty to sublet, give or license to any third party the demised land without any further reference to the lessor.

3.4 The lessee is an undertaking of the Government of India and a successor in title to Burmah Shell Oil Storage & Distribution Company of India Limited. The Government of India on 24.1.1976 undertook the possession of original lessee by virtue of Burma Shell (Acquisition of Undertakings in India) Act ,1976. Thereafter, name of the company was changed to Bharat Refineries Ltd. w.e.f. 12.2.1976. Accordingly, name of the lessee was changed in a lease deed and Bharat Refineries Ltd. has been treated as lessee.

3.5 In a suit, it is claimed that the defendants have no right to interpret the terms and conditions of the lease deed permitting lessee or sub-lessee to do any business , which

might be outside the scope of storage, depot or a service station for the purpose of selling or otherwise dealing in, or of receiving, storing, treating or handling for distribution of petroleum or any of its products and Kindered Motor Accessories or any other trade or business. Thus, it is claimed by the plaintiffs that lessee has no whatsoever right to erect any other construction or to use the demised land other than for the purpose it was let or to induct any sub-lessee, but the lessee did not abide to the terms and conditions in continuous use of demised land for which it was let, further, did not abide abide the terms and conditions of the lease deed and erected the structure of permanent nature, it cannot be removed without changing edifice of the demised land and thirdly, the sub-lessee has further sublet the demised land without the permission of the landlord.

3.6 According to the terms and conditions of the lease deed, it expired in the midnight of 29.9.1984 and thereafter, the defendant No.1 – lessee and his sub-lessee have no right to occupy the demised land, but were liable to vacant the same after removing the structure set up on it. However, the lessee requested for renewal of the lease deed by letter dated 15.11.1983. The lessor did not accept the same and point out breach of terms and conditions and further stated that he has no interest in renewal of the lease and asked to handover the vacant and peaceful possession of the demised land and further by letter dated 13.2.1983 terminated the tenancy.

3.7 Expanding the case, the plaintiff pleaded that the

defendant No.2 – sub-lessee without any right unlawfully and unauthorizedly inducted the defendant No.3 Honest Car Repairing woks, defendant No.4 Rajesh Auto Centre and defendant No.5 Prashant Tyres Services and making profitory unit by parting with the possession of the part of the demised land.

3.8 In addition to the aforesaid grounds, the plaintiff claimed eviction of other ground of Rent Act viz personal and bona fide requirement; greater hardship and required the demised land for the purpose of making some construction. According to the plaintiffs, since by efflux of time, the lease is terminated and the status of the defendant No.1 became statutory tenant, he cannot act beyond statutory permission as he enjoyed limited right and liability under the provisions of the Rent Act.

3.9 Mainly upon above averments, the plaintiffs put his case for eviction.

3.10 The learned trial Court in suit proceedings, framed as many as 25 issues and held that the plaintiffs landlord succeeded in proving the grounds available u/s 13(1)(a), 13(1)(b), 13(1)(e) and section 15(d) of the Bombay Rent Act. The learned trial Court simultaneously held that the plaintiffs failed to prove the ground of eviction available u/s 13(1)(g) and 13(1)(i) of the Act.

3.11 The learned Court No.7, Small Causes Court, Ahmedabad, by judgment and decree 20.12.1999, partly

decreed the suit in favour of the plaintiffs and directed lessee and sub-lessee to handover the peaceful and vacant possession of the demised land to the plaintiffs and permitted the plaintiffs to withdraw rent if any deposited by the lessee or sub-lessee.

3.12 Two appeals were preferred against the judgment and decree passed by the learned trial Court. Regular Civil Appeal No.42 of 2000 was preferred by the BPCL – lessee and Regular Civil Appeal No.21 of 2000 was preferred by Mahendra Motors – sub-lessee before the Bench of the Small Causes Court, Ahmedabad under the provisions of the Rent Act.

3.13 Vide judgment and decree dated 23.3.2004, the appellate bench of learned Small Causes Court dismissed both the appeals by confirming the judgment and decree passed in the HRP suit.

3.14 Hence, present revision under the provisions of the Bombay Rent Act.

4. I have heard learned advocate Ms. Minoo Shah for the BPCL – lessee, learned advocate Mr. Mehul Vakhariya for Mahendra Motors – sub-lessee, who has adopted arguments of learned advocate Ms. Minoo Shah for the revisionists and learned senior counsel Mr. Kamal Trivedi assisted by learned advocate Mr. Kunal B. Naik for the landlord. For other respondents, none remained present.

4.1 Both the learned advocates have also placed on record written submissions.

5. Learned advocate Ms. Minoo Shah appearing for the revisionist – defendant No.1 would submit that clause 4(b) of the lease deed is for renewal and it is permitting the lessee to ask for the renewal of the lease deed. She would further submit that the lessee has asked for the renewal within the stipulated time period, but the lessor having remained adamant did not accept the request of the lessee to renew the list. She would further submit that since the lessee was ready and willing to renew the lease deed as per terms and conditions of the landlord, the status of the lessee would not transfer to the statutory tenant, but remains contractual tenant. She would further submit that the learned Courts below have committed serious error in rejecting clause 4(b) of the lease deed and thereby, concurrent findings of fact impugned in both the petitions suffer from the illegality.

5.1 Learned advocate Ms. Shah would further submit that since clause 2(g) of the lease deed permits the lessee to sublet the demised land even without reference to the lessor inducting Mahendra Motors on sub-lease or others as sub sub lease would not breach terms and conditions of the lease deed. She would further submit that this issue is also not properly comprehended by the learned Courts below and did not apply properly to the interest of the parties emerging from clause 2(g) of the lease deed and thus, serious error has been

committed by the learned Courts below.

5.2 Learned advocate Ms. Shah would further submit that findings of the learned Courts below that the lessee and sub-lessee have carried out construction without the permission of the landlord are in violation of the terms and conditions of the lease deed are also incorrect finding, as lease deed permits the lessee and sub-lessee to do any kind of the business. Meanwhile, the lessee and sub-lessee have carried out the construction to do their business. The taste of removability being a core to decide the application u/s 13(1)(a) and 13(1)(b) of the Rent Act has not been properly addressed in correct manner and thereby, the learned Courts below have committed serious error.

5.3 Lastly, learned advocate Ms. Minoo Shah would submit that pending the proceedings respondent – Nirma Limited has purchased the demised land. She would further submit that Transfer of Properties Act, on execution of the sale deed, recognized transfer of title and possession, but execution of sale deed if does not recognize transfer of the decree or assignment of the decree, the subsequent purchaser is not entitled to get the fruits of the decree. Learned advocate Ms. Shah, in the aforesaid circumstances, would submit that the respondent – Nirma Limited is not legally entitled to exercise right of landlord to recover the possession of the demised land.

5.4 Learned advocate Ms. Shah would further submit that

the learned Courts below have erred in interpreting terms and conditions of the lease deed as well as position of sub-lessee and sub sub-lessee, as also construction carried out, permitted by lease deed.

5.5 In the aforesaid premises, learned Ms. Minoo Shah requests to allow both the revisions.

6. Learned advocate Mr. Mehul Vakaria, appearing for the sub-lessee Mahendra Motors adopted the aforesaid arguments of learned advocate, Ms. Minoo Shah.

7. Learned Senior counsel Mr. Kamal Trivedi, assisted by learned advocate Mr Kunal Naik, in contrast to the aforesaid arguments, would submit that phrase "any other trade or business" incorporated in clause 1 of the lease deed has to be read applying golden rule of interpretation of the document. The lease deed and its clauses has to be read as a whole and not in isolation. He would further submit that the said phrase has to be interpreted by applying rule of *ejusdm generi*s or rule of *Noscitur a sociis*. Meaning thereby, the words or expressions in any definition are known by their associate expressions or words and they take their colour therefrom accordingly. He would further submit that the BPCL was leased the demised land for storage, depot or a service station for the purpose of selling or otherwise dealing in, or of receiving, storing, treating or handling for distribution of petroleum or any of its products and Kindered Motor Accessories or any other trade or business. Meaning thereby.

that the BPCL has been leased out the demised land for the specific purpose. He would further submit that phrase "any other trade or business" cannot be read in isolation to interpret on own sweat will and desire, to do any business.

7.1 Learned Senior counsel Mr. Trivedi further argued that phrase " Kindered Motor Accessories" used in clause 1 of the lease deed mean "akin" or "similar" i.e. accessories relatable to the main product viz. Petroleum for which the demised land was leased. It is thus, argued that defendant Nos.3 to 5 carrying out their business in name of Honest Car Repairing Works, Rajesh Auto Centre and Prashant Tyre Services respectively or the business carried out by the sub-lessee Mahendra Motors to do their respective business fall within the category, that is not permitted

7.2 Under the circumstances, carrying of the business other than the purpose for which the demised land was leased is amounting to subletting.

7.3 Learned Senior counsel Mr. Trivedi to support that the document has to be read wholly and the interpretation has to be made by applying rule of *ejusdm generi*s or by a rule of *Noscitur a sociis,* relied upon the judgment in case of **Nemai Chandra Kumar Vs. Mani Square Ltd, (2024) 17 SCC 743** (para 82 and 88) and in case of **Rakesh Bhanot Vs. Gurdas Agro Pvt. Ltd., (2025) 6 Scc 781** (para 17 & 23).

7.4 Learned Senior counsel Mr. Trivedi would further argue

that repairing of cars, motorcycle, electrical business and puncture work of deflated tyres cannot be said to be allied business of storage handling of petroleum products. Secondly, it was argued that the BPCL has not produced on record copy of the dealership agreement with Mahendra Motors and therefore, the learned Courts below, at no point of time, had knowledge that under what kind of terms and conditions, the BPCL has subleased the demised land to Mahendra Motors. It is further submitted that it is not the case where the lessee has exercised option and sublet the demised land to sub-lessee, but here it is a case where the sub-lessee exercised option and sub sub-leased the demised land to defendant Nos.3 to 5. the sub-lessee at no point of time has right to sublet the demised land further to sub sub-lessee and thus, it is in clear breach of section 13(1)(e) and 15A of the Rent Act.

7.5 Reliance was placed upon the judgment in case of **Maheshbhai Nanjibhai Khuman Vs. Ahmedabad Luhana Mahajan Wadi Trust, 2025 AIJEL HC 252594** and in case of **Hindustan Petroleum Corporation Ltd. Vs. heirs of deceased Shishirkumari @ Floraben, (2025) AIJEL HC 2520**.

7.6 Insofar as issue of permanent construction is concerned, it was argued by learned Senior counsel Mr. Trivedi that the BPCL has not made any averment in written statement in regards to permanent construction. The defendant Nos.3 and 4, who have filed written statements, clearly admitted that

they have constructed shed on the demised land and therefore, there is clear attraction of section 13(1)((b).

7.7 Lastly, it is submitted by learned Senior counsel that in appeal proceedings filed by the lessee and sub-lessee, they themselves have filed an application to join Nirma Limtied as Nirma Limited is stepping into the shoes of the landlord on purchasing demised land along with right to execute the decree. It is submitted that copy of sale deed executed between erstwhile landlord and Nirma Limited placed on record indicates that the landlord has obtained decree from the Court in regards to demised land and they are selling the demised land to the Nirma Limited with the right to obtain fruit of the decree. Thus, now, no argument can be made that Nirma Limited has no right to continue the eviction proceedings. Even otherwise, Order 21 Rule 16 of the Code permit and recognize assignment of decree.

7.8 In support of above argument, learned Senior counsel Mr. Trivedi place reliance in case of **Jugalkishore Saraf Vs. Raw Cotton Co. Ltd., (1955) 1 SCC 248, Dhani Ram Gupta Vs, Lala Sriram, (1980) 2 SCC 162** and in case of **Vaishno Devi Construction Vs. Union of India, (2022) 2 SCC 290**.

7.9 Learned Senior counsel Mr. Trivedi summarizing the submissions, would further submit that revisional power of the High Court u/s 29(2) of the Rent Act is not equated with power of reconsideration available to the appellate Court in first

appeal. Power u/s 29(2) is though wider than the power available u/s 115 of the Code of Civil Procedure, 1908, the revisional Court u/s 29(2) cannot re-appreciate evidence and take a different view. In support of this submission, learned Senior counsel Mr. Trivedi has relied upon the judgment in case of **Helper Girdharbhai Vs. Saiyed Mohmad, (1987) 3 SCC 538** and in case of Patel **Valmik Himmatlal Vs. Patel Mohanlal Muljibhai, (1998) 7 Scc 383**.

7.10 Upon above submissions and arguments, learned Senior counsel Mr. Trivedi requests the Court to dismiss both the petitions.

8. I have heard learned advocates appearing for all the parties, perused the impugned judgment and decree passed by the learned Courts below as well as record and proceedings.

9. At the outset, let refer to the judgment in case of **Patel Valmik Himatlal vs. Patel Mohanlal Muljibhai (Dead) Through Lrs. - 1998 (7) SCC 383,** wherein, the Hon'ble Apex Court examined the ambit and scope of Section 29 of the Rent Act. Honble Supreme Court has observed 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 hut 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."

10. Keeping in mind the ambit and scope of revision u/s 29(2) of the Rent Act, if we perused the facts of the case, the plaintiffs landlord pleaded eviction of the lessee and sub-lessee on various grounds available u/s 13 and 15 of the Rent act. The learned Courts below did agree to the submission of the plaintiffs qua grounds available u/s 13(1)(a), 13(1)(b) and 15(2) of the Rent Act to believe that the lessee and sub-lessee have carried out construction without prior permission of the landlord on the demised land, also has sublet and thus, lessee and sub-lessee required eviction from the demised land. Other ground of personal bona fide requirement of demised land for the purpose of construction etc. were repeated.

11. Argument of learned advocate Ms. Minoo Shah that renewal clause being clause 4(b) in the lease deed granted option to the lessee to renew the lease which commenced from 29.9.1970 and expired in midnight of 29.9.1984. The lessee or the tenant within the time period had applied for renewal of the lease, say much prior to it expired i.e. on 15.11.1984. Therefore, she would submit that the view taken by the learned Courts below that the lease deed expired on midnight of 29.9.1984 is erroneous view. She would further submit that once the lessee and sub-lessee opted to renew the lease, it deemed to have been renewed in view of clause 4(b) of the lease deed. I am unimpressed with the such submission. Clause 4(b) reads as under:-

> "*If the lessee shall be desirous of taking a renewal lease of the demised premises upon the expiration of the term hereby granted then, the lessor shall on receipt of a notice in writing to that effect, grant to the lessee a fresh lease of the demised premises for one further period not exceeding ten years each at the rent and upon the same terms and conditions in all respects as are reserved and contained herein. Provided however that should the lessee exercise the aforesaid option of renewal for a period lesser than full renewal period then in that case, the lessee shall be entitled to a further option equal to the balance of the renewal period and the lessee shall be entitled to continue to occupy and use the demised premises for such further period as it may desire notwithstanding whether a fresh lease has been executed and registered or not by the lessor.*"

12. The learned Courts below interpreted clause 4(b) of the lease deed and held that the lease deed provides for the renewal of fresh lease for further 10 years, contains words

"mutually agreed by both the parties". Thus, one sided renewal request of the lessee or sub-lessee would not per se deemed that the lease deed has been extended for further 10 years.

13. This Court in Hindustan Petroleum Corp Ltd. (supra) in identical fact situation, in para 8 held that if fresh renewal/lease deed is not executed as per section 107 of the Transfer of Property Act, it cannot be held that lease deed is renewed. In the present case, the fact remained undisputed that the landlord did not acceded to the request of the tenant to renew the lease for further period of 10 year or any other period. The unilateral request of the tenant has not been accepted. Thus, before expiry of the lease period by efflux of time the statues of the lessee became statutory tenant and he is to abide by the provisions of the Rent Act. Thus, first contention raised by learned advocate Ms. Minoo Shah is devoid of merits. The learned Courts below have comprehensively and thoroughly discussed this issue. I see no reason to take a different view than the view taken by the learned Courts below.

14. The aforesaid findings took this Court to the next submission that permanent construction has been carried out by sub sub-lessee on the demised land. It is the fact that in the written statement filed by the lessee i.e. BPCL, no contention put-forth to deny the allegation of illegal construction on the demised land. Defendant Nos.3 and 4 who have filed the written statement at Exh.50 in no uncertain

terms accepted that permanent construction has been carried out on the demised land in form of shed to protect defendant Nos.3 and 4 from inclement whether, especially during summer and monsoon. This is how the sub sub-lessee accepted the fact of permanent construction. The lessee, sub-lessee and sub sub-lessee failed to prove any documentary evidence on record to show that construction carried out by them has been carried out after obtaining permission from the local government. Be that as it may, what could be inferred that the sub-lessee was permitted to raise construction, but to the extent it relates to the purport and object of using the open land being leased out to the lessee i.e. to store the petroleum products or distribution thereof and not for any other purpose. Thus, mischief of section 13(1)(a) and (b) of the Rent Act attracted in the matter. It is finding of learned Courts below being compendious and in depth analysis and appreciation of the evidence. This Court under the revisional jurisdiction finds no reason to interfere with this encyclical findings specially being barred u/s 13(1)(e and 15(2) of the Rent Act attracted in the matter.

15. Clause 2(g) of the lease deed reads as under:-

> *""That the lessee shall have full liberty to sublet or license the said premises without restriction and without any further reference to the lessor and this clause shall at all times be deemed to be the written consent of the lessor for the purpose"*

16. Therefore, the lessee was permitted to sublet or license demised land without restriction or without any reference to the

lessor. However, plain reading of the clause indicates that lessee can sublet. The case on hand is such where the lessee sublet to Mahendra Motors, thereby Mahendra Motors became sub-lessee. Dealership agreement between the lessee and the sub-lessee claimed to be executed has not been produced on record. Thus, at no point of time, the landlord or the concerned Court below came to know about terms and conditions of the alleged dealership agreement or on which ground the lessee has sublet the demised land to the sub-lessee Mahendra Motors. Be that as it may, in the present case, undisputedly, Mahendra Motors has sublet to three other persons, namely, Honest Car Repairing Works, Rajesh Auto Centre and Prashant Tyre Services. In absence of any documentary evidence in line of clause 2(g), it can be sufficiently inferred that it is further subletting at the hand of sub-lessee Mahendra Motors for the purpose of making profit. It is proved on record that these three persons have been leased the demised land further as well as the construction made thereon at monthly consideration of Rs.65/-, Rs.600/- and Rs.200/-. Clause 2(g) permitted lessee to sublet demised land or part thereof not to the sub-lessee to part away with leased demised land. In other words, it was BPCL who was entitled to sublet the demised land or part thereof, which has been done by the lessee to the sub-lessee Mahendra Motors, however, that sub-lessee Mahendra Motors has no right to further lease the demised land. This is clear act in breach of section 13(1)(e) and 15(2) of the Rent Act.

17. In **Gajanan Dattatraya Vs. Sherbanu, AIR 1975 SC**

2156, the Hon'ble Apex Court held as under:-

> *"Once there is sub-letting the embargo placed on the right of the landlord to get possession is raised and it is not necessary that sub-letting should continue till the date of the suit. To accede to the contention of the appellant that the sub- letting must continue till the date of the suit, would mean that a tenant would not be within the mischief of unlawful sub-letting, if after the landlord gives notice...the sub-tenant vacates.*"

18. This Court in Maheshbhai Nanjibhai Khuman (supra), examined the issue of subletting in para 19 to 24, which reads as under:-

> *"19. In* ***Goppulal Vs. Thakurji, AIR 1969 SC 1291****, the Hon'ble Apex Court in regards to Rajasthan Rent Control Act, section 13(1)(e), held that sub-letting even if was prior to the Act coming into force to continue after the Act, continuation of subletting after the Act is justified to pass a decree for possession.*
>
> *20. In order to prove subletting, two ingredients are necessary. (1) exclusive possession and (2) valuable consideration. The sub-tenant must be in exclusive possession of the portion given on lease and the tenant must make profit thereof. Parting with the possession of the lease property is the predominant test. As far as consideration or profit made by the tenant is concerned, it is difficult to prove for the landlord that there was valuable consideration between the tenant and sub-tenant, as it is only within exclusive knowledge of the tenant and sub-tenant and since both are interested in suppressing that fact, it is difficult to find out that whether the tenant has made out any profit by handing over exclusive possession to the sub-tenant.*

*21. In **Bhagwati Spg and Wvg Works vs. Ahmedabad New Cotton Mills Co. Ltd., AIR 1980 Guj 20**, the Coordinate Bench of this Court believed that in such case, consideration must be inferred from the facts.*

*22. The word "unlawfully" used by law maker in section 13(1)(e) of the Act applies to all three i.e. subletting, assigned or transferred. [See: **Anand Nivas Pvt. Versus Anandji Kalyanjis Pedhi, 1965 AIR(SC) 414**] . Section 13(1)(e) of the Rent Act is much wider and it is not confined merely to the acts of unlawful sub-letting. Therefore, even if, ingredients of subletting i.e. possession and consideration are not proved, but if sub-tenant is found to be in possession and doing different business than the original tenant, it is sufficient to infer that there has been assignment or transfer of tenancy right by the tenant. [See: **Harshachandra Narsibhai Patel And Others Versus Ibrahim Haji Khubanbhai, 1985 (1) GLR 192**].*

23. The Coordinate Bench of this Court (G.T. Nanavati, J, as he then was) in case of Harshachandra (supra), has observed that once the tenant is out of possession and a transfer of premises is made to a relative or a known person, that would be covered by later part of clause (e). this Court has also observed that to give these words a restricted meaning and equate such a transfer within subletting is to make that part of the sub section redundant. Thus, in absence of proof of consideration, if there is a clear case of third party being in exclusive possession, it would be covered by word "transfer". The word "in any other manner" at the end of clause (e) go to emphasize that they include any type of transfer. To prove subletting, transfer or assignment, initial burden is on the landlord, but once the landlord had evidence that third party is in possession of rented premises, the burden shifts upon the tenant to satisfy the conscience of the Court about his possession as it is only known to the tenant. [See" section 106 of the Evidence Act]. Under the

aforesaid premises and legal provision, if we come to the facts of the case, it reveals that the defendant No.1 appeared before the court and state on oath that he has parted possession with the defendant No.2 and put defendant No.2 as Pagi in the rented premises. In these factual aspects, the case of the plaintiff was proved no sooner the defendant No.1 has given deposition on oath. The dependent No.2 tried to put case that she is a tenant of the rented premises, the plaintiff failed to establish so by leading evidence in this regard. However, the possession of the defendant No.2 is proved in the rented premises to be that of sub-tenant or the person in whose favour the interest of the tenant has been transferred or assigned without contractual permission or without the consent of the landlord. Pellucidly, privity of contract between landlord and the defendant No.2 does not exist. The plaintiff precisely came out with the case that the defendant No.2 is the sub-tenant and tenancy interest is assigned or transferred to the defendant No.2. It is proved on perusal of over-whelming evidence of on record.

24. As far as contention of learned advocate Mr. Gandhi that no relief is prayed by the plaintiff trust to ask for the possession from the defendant No.2 is concerned, let me say that relief of asking possession from the tenant is sufficient enough to pass a decree against any person who is holding interest on behalf of the tenant. sub-tenant is not even necessary party under the provisions of section 13(1)(e) of the Rent Act. In this regard, there are clear findings of this Court in case of Manjulaben (supra).”

19. The learned Courts below in the impugned judgment and decree exhaustively dealt with the issue raised in the revisions and this Court does not find any reason to interfere with such well reasoned order under revisional jurisdiction.

20. Lastly, it was also argued that lease deed provides to

conduct any other business and thus, carrying out business other than the business of storage of petroleum products is not a change of user. The important terms and conditions of the lease deed in this regards reads as under:-

> *"(1) and appurtenances thereto belonging Together with all rights, easements C or hitherto enjoyed therewith.*
>
> *(2) And together also, with full and free liberty to the lessee to use the demised premises as a Storage Depot of a Service Station for the purpose of selling or otherwise dealing in or of receiving storing, treating or handling for distribution petroleum or any of its pro- ducts and kindred motor accessories or any other trade or business."*

21. It is no more *res integra* that golden rule of interpretation is to read document on its entirety with the object stated therein say "any other trade or business". The phrase made in the aforesaid rule operate independently or is operating to any manner to the expression made in earlier part of the clause is the question to be address. The principle of *ejusdm generi*s or by a rule of *Noscitur a sociis* applies.

22. The Hon'ble Apex Court in Nemai Chandra Kumar (supra) and in case of Rakesh Bhanot (supra), referring to the aforestated principles, held that word or phrase should not read in isolation, but should be read in context of earlier expression. In the aforesaid premises, if we see the clause where phrase "any other trade or business" is employed, the other expressions are that the demised land is leased out as a

storage, depot or a service station for the purpose of selling or otherwise dealing in, or of receiving, storing, treating or handling for distribution of petroleum or any of its products and Kindered Motor Accessories or any other trade or business. Thus, interpretation implies that any other trade of business has to be read with loud object of lease i.e. storing of petroleum products. Alike the word "kindered" as per the dictionary gives meaning very similar or related means Kindered Motor Accessories, which is permitted to sell his motor accessories which akin to the storage of the petroleum products.

23. In view of above, there is clear breach of terms and conditions of the tenancy. The BPCL and Burmah Shell Oil Storage & Distribution Company of India Limited having abandoned the demised land permitted Mahendra Motors to sell different kind of motor accessories on the demised land and subsequently, Mahendra Motor permitted three other sub sub-lessee to carry out car repairing work or puncture work or related business, which cannot be treated as kindered motor accessories. The learned Courts below found clear breach of tenancy terms and conditions. I see no reason to interfere with such well reasoned findings.

24. Lastly, it was submitted by learned advocate Ms. Minoo Shah that Nirma Limited did not have any right to execute the decree. The contention was that selling or transfer of property does not include assignment of the decree. This is not a acceptable submission on the ground that in appeal filed

by the lessee and sub-lessee Mahendra Motors, an applications at Exhs.11 and 13 were moved to join Nirma Limited as party in the appeal proceedings on the ground that Nirma Limited became owner of the demised land and also purchased the decree. In the aforesaid circumstances, it would not lie correctly in the mouth of revisionists that Nirma Limited has not right to carry out proceedings or to execute the decree. Nonetheless, the sale deed executed between the erstwhile landlord and Nirma Limited clearly depicts condition and bestowed right upon Nirma Limited to execute the decree. Apt to note that Order 21 Rule 16 of the Code also recognizes assignment of decree. In view of above, the submission canvassed by learned advocate Ms. Shah failed to stand on its leg.

25. Resultantly, both the CRAs found meritless and accordingly, stand dismissed. Interim relief, if any, granted earlier stands vacated forthwith. Rule discharged.

26. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

27. Registry to maintain copy of this order in each matter.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

FURTHER ORDER

After pronouncement of the judgment, learned advocate Ms. Minoo A. Shah requests to continue the interim-relief for 04 weeks so as to enable her to approach the higher forum. The request is acceded to and the interim-relief is continued to operate for a further period of 04 weeks.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 06/02/2026 14:32:46