IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL REVISION APPLICATION NO. 422 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

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Approved for Reporting	Yes	No
		No

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TARUNKUMAR RAMNIKLAL TALATI
Versus
MAHESHKUMAR NANDLAL MEHTA & ORS.

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Appearance:
MR NV GANDHI(1693) for the Applicant(s) No. 1
MR KIRIT I PATEL(628) for the Opponent(s) No. 1,2,4
MS AMITA M SHAH(2290) for the Opponent(s) No. 1,2,4

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

Date : 01/09/2025
ORAL JUDGMENT

1. Rule. Learned advocate Mr. Kirit Patel waives service of notice of rule on behalf of the respondents. The present Revision Application has been filed under Section 29(2) of the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947, challenging the judgment and decree passed by 4th Additional District Judge, Mahuva, District – Bhavnagar in Regular Civil Appeal (Rent) No.3 of 2021, dated 03.05.2025, confirming the judgment and decree passed by the Additional Civil Judge, Mahuva, District – Bhavnagar in Regular Civil Suit No.257 of 2014, dated 28.01.2021.

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

3. The brief facts arising in the present Civil Revision Application are that the plaintiff filed suit for recovery of arrears of rent and for possession of the suit property.

4. It was the case of the plaintiff before the trial Court that the defendant is a tenant of one room of the suit property which has been purchased by the plaintiff.

5. It is the case of the plaintiff that defendant was a tenant in the property when the plaintiff purchased the suit property, on 27.06.2006 and the rent of the suit property was yearly rent of Rs.11,500/- excluding tax of Nagarpalika, electricity bill and as the defendant was in arrears of rent of Rs.89,125/- from 01.07.2006 to 31.03.2014 and that the defendant failed to pay tax of Nagarplika.

6. The plaintiff had filed suit for eviction as tenant was in arrears of rent for seven years, the plaintiff issued a notice to the defendant on 22.07.2014 which is poduced vide Exhibit-35 and the trial Court framed the issues vide Exhibit-12 as under:-

1. Whether the Plaintiff proves that out of the rooms in the disputed property, one room (godown) was rented to the Defendant for placing diamond polishing machines, on the condition of paying annual rent, municipal tax, and electricity bill amount?

2. Whether the Plaintiff proves that the Defendant has failed to pay the rent regularly and thereby he is a 'tenant in arrears'?

3. Whether the ground of the Plaintiff is true and reasonable?

4. Whether the plaintiff is entitled to the relief sought?

5. What order and decree?

6. The plaintiff examined himself vide Exhibit-21. The defendant examined himself vide Exhibit-48 and after considering the oral evidence, documentary evidence and giving findings on all the issues, the trial Court decreed the said suit and granted eviction of the defendant from the suit premises. Aggrieved by the said judgment and decree passed by the trial Court, the defendant filed Regular Civil Appeal (Rent) No.3 of 2021 and after reappreciating the evidence the first appellate Court dismissed the said appeal. Hence, the present Revision Application.

7. Learned advocate for the defendant has mainly argued that the trial Court and the appellate Court have not properly appreciated the facts of the present case. It has been aruged that the defendant has deposited the entire amount of rent before the trial Court, and therefore, the trial Court and the appellate Court could not have granted the decree of eviction on the ground that the defendant is tenant in arrears of rent. Moreover, it has also been argued that in view of the fact that the tenancy is not

month to month, the landlord cannot seek eviction under the provision of Secion-12(3)(a) of the Bombay Rent Act.

8. Moreover, the defendant has also argued that neither any description of the suit property has been mentioned in the plaint and in the prayer clause, the plaintiff has sought for possession of the upper portion of the suit premises and before the appellate Court, learned advocate for the plaintiff has argued that the ground floor portion was the property which was given on rent to the defendant.

9. Learned advocate for the defendant has also argued that in view of the fact that the tenant has deposited the entire amount before the trial Court, the trial Court could not have granted decree under the provision of Section-12(3)(b) of the Bombay Rent Act.

10. Learned advocate for the defendant has also aruged that from the judgment passed by the appellate Court, the appellate Court has taken into consideration that by way of notice, vide Exhibit-35, which was issued on 22.07.2014, the landlord has sought for arrears of rent to the tune of Rs.89,125/- and on 05.09.2017, the entire amount of Rs.89,125/- has been deposited by the tenant, therefore, the trial Court could not have granted eviction on the ground of defendant being tenant in arrears, and

therefore, in view of the said fact, it has been argued that present Revision Application is required to be allowed.

11. Per contra, learned advocate for the plaintiff has argued that there is no dispute of standard rent between the parties, that the notice produced vide Exhibit-35, specifically shows that an amount of Rs.89,125/- is due/payable by the defendant/tenant as rent. The fact also remains that though the defendant has taken a ground that he has paid the amount of tax but neither any set off has been sought by the defendant/tenant against the amount of rent due/payable by the tenant, and therefore, the trial Court has rightly held that the defendant is tenant in arrears.

12. With respect to the contention raised by the defendant that the description of the suit property in the relief claimed before the trial Court is with respect to the upper floor of the suit premises and in appeal the plaintiff has admitted that the ground floor portion was given on rent to the defendant. But, if the written statement and the oral evidence of the defendant is considered, the said defence has never been taken by the defendant tenant. Moreover, the judgment and decree passed by the trial Court and confirmed by the appellate Court also suggest that the plaintiff is entitled to the relief of eviction of the rented premises, and therefore, the said contention also cannot be

considered.

13. Learned advocate for the plaintiff has also argued that there is no dispute of the rent of the suit property of Rs.11,500/-. Moreover, though, in the written statement and oral evidence of the defendant, the defendant has taken a contention that he has already paid the entire amount of rent, but the plaintiffs were not issuing receipts of said payment, no proof is producd to that effect. The issues were framed vide Exhibit-12 on 10.08.2016 and the defendant has deposited an amount of Rs.46,000/- on 08.07.2017 and has paid an amount of Rs.89,125/- on 05.09.2017, therefore, admittedly on the date the issues were framed, tenant has not deposited the entire amont of rent, and therefore, under the povision of Section-12(3)(b) of the Bombay Rent Act, an opportunity was given to the defendant that, on the first date of hearing, the defendant pays the rent due and the fact remains that on the date when the issues were framed on 10.08.2016, the defendant has not paid any amount of rent and the said amount of rent is deposited only after the framing of issues, and therefore, the trial Court has rightly granted the decree of eviction and the appellate Court after reappreciating the evidence has confirmed the judgment and decree passed by the trial Court. In view of the same, it has been argued that the present Revision Application is required to be rejected.

14. Having heard learned advocate for the parties and having considered the judgment and decree passed by the trial Court and confirmed by the appellate Court, the fact remains that the suit that has been filed by the plaintiff is for eviction of the defendant from the suit property on the ground that the defendant is tenant in arrears of rent. The fact also remains that it is an admitted position that, yearly rent of the suit property was of Rs.11,500/- excluding tax of Nagarpalika, electricity bill which are paid by the defendant tenant and as the defendant was tenant in arrears for the period from 01.07.2006 to 31.03.2014 and as the defendant failed to pay the same, the plaintiff issued notice dated 22.07.2014, which is produced vide Exhibit-35. The fact remains that as the rent was to be paid on yearly basis, the provision of Section-12(3)(b) of the Bombay Rent Act will have to be considered and if the povision of Section 12(3)(b) of the Bombay Rent Act are considered, there is nothing on record to show that at the time of filing of the suit, the defendant has already paid the entire amount of rent of Rs.89,125/- due and payable by the tenant to the landlord and the issues are framed vide Exhibit-12 on 10.08.2016 and written statement was filed on 23.07.2015. The plaintiff has proved that the defendant was in arrears prior to filing of the suit and under the provision of Section-12(3)(b) of the Bombay Rent Act, an opportunity is to be given to the tenant to prove against eviction and the

defendant has to comply with the conditions set out. Section-12(3)(b) of the Bombay Rent Act are meant to defeat the claim of landlord for eviction and in the present case, the defendant has not fulfilled those conditions and in view of the said fact, the defendant cannot get protection of Section-12(3)(b) of the Bombay Rent Act and the decree of eviction would have to be passed against the defendant. Moreover, the conditions laid down under Section-12(3)(b) of the Bombay Rent Act have to be strictly complied and it cannot be said that the defendant tenant can deposit the amount of rent at any point of time after the issues were framed. Section-12(3)(b) of the Bombay Rent Act reads as under:-

> *"**12(3)(b)** - In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due 75[and thereafter, -*
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> *(i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and*
>
> *(ii) pays costs of the suit as directed by the Court.]"*

15. Section-12(3)(b) of the Bombay Rent Act specifically states that if the case falls under Section-12(3)(b) of the Bombay Rent Act, the defendant tenant has to pay the rent on the first

date of hearing of the suit and in the present case, the tenant has not deposited the said amount before the first date of hearing i.e. 10.08.2016 when the issues were framed.

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

Bombay Rent Act, is entitled to set aside the impugned order as being not legal or proper.

17. The High Court can not interfere with the finding of facts recorded by the first Appellate Court. The consideration or examination of the evidence by the High Court in revisional jurisdiction under this Act is confined to find out that finding recorded by the courts below is according to Law and does not suffer from any error of Law and only if the finding of facts recorded by the courts below, is perverse or has been arrived at without consideration of the material evidence or that such finding is based on no evidence, or misreading of the evidence, or is grossly erroneous that, if allow to stand, it would result in gross miscarriage of justice and the same is open to correction as the same is not treated as findings according to Law and in the present case, the finding of facts recorded by the trial Court and the appellate Court is neither perverse nor arrived at without consideration of the material evidence. In the present case, in revisional jurisdiction, the High Court can not exercise its powers as an appellate power to reappreciate or reassess the evidence for coming to a different finding of facts. Revisional jurisdiction is not and can not be equated with the powers of reconsideration of all questions of fact as a court of first appeal.

18. The findings recorded by both the courts below are based on critical appreciation of the evidence led by the parties on record and does not suffer any error or material irregularities. The Court below has rightly come to the conclusion that the tenant is in arrears of rent, therefore, there was no error committed by the courts below which requires any correction at the hands of the High Court in exercise of revisional jurisdiction.

19. Under the revisional jurisdiction, the High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. In view of the aforesaid facts and proposition of law and in view of the concurrent findings of fact by both the Courts below, since no case is made out to call for any interference in the judgment and order passed by the appellate Court upholding the judgment and decree passed by the trial Court, the present Revision Application requires to be dismissed and it is dismissed accordingly. Rule is discharged. No order as to costs.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MANOJKUMAR RAI(HC01072), PRIVATE SECRETARY, at High Court of Gujarat on 01/09/2025 18:18:48