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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1079 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VATSALABEN WD/O DADURAO LAXMANRAO MURUDKAR
Versus
YAKUBBHAI ADAMBHAI MANSURI

Appearance:
1. Civil Revision Application No. 1079 of 2000
MR NS SHEVADE for Petitioner No. 1-2
MR JT TRIVEDI for Respondent
MR BJ TRIVEDI for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/09/2001

C.A.V. JUDGEMENT

The petitioners herein, being aggrieved by the

order dated 21-9-2000 passed in Appeal From Order No.125 of 1999 by the learned Appellate Bench of the Small Causes Court, Ahmedabad, confirming the order dated 10-9-1999 passed below Ex.5 in H.R.P.Civil Suit No.576 of 1999 by the learned Single Judge of the Small Causes Court, Ahmedabad, in the matter of proceedings under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (`the Act' for short), has preferred this Civil Revision Application.

2. The facts in short are that premises bearing M.C.No.2041-6 situated at Punjalal-ni-Chawl, Rakhiad, Ahmedabad was hired by Laxmanrao Baburao Murudkar, the father-in-law of the plaintiff No.1 and grandfather of the plaintiff No.2, from Punjalal Shah in 1927 and he was residing there with his wife, six sons namely, Ganpatrao, Narayan, Dadurao, Govindrao, Shantaram and Kashirao and three daughters. Two of his sons died during the life time of deceased Laxmanrao and three daughters got married. Two of his other sons also got married and they were residing in the premises in question with Laxmanrao. As Laxmanrao died on 30-7-1965, his wife Chimabai was residing in the premises in question along with Ganpatrao, his wife Mahanandaben, son Ravindra, the plaintiff No.1, her husband Dadurao, daughter Rekha, Govindrao and Kashirao and receipts for the rent paid towards said premises were obtained in the name of Laxmanrao Baburao. After the marriage of Govindrao, due to shortage of space, premises situated at Tokarshah Pole were hired and he was residing there with his family. Kashiram was also residing in the premises in question with his family after his marriage. The premises in question were sold by its owner Kantilal in 1968 at the time when Chimabai, Ganpatrao, Dadurao, Govindrao and Kashirao were only residing there as tenants. According to plaintiffs, Govindrao was residing in the Government quarter allotted to him during the period 1985 to January, 1989 and thereafter, he was residing in the suit premises. The premises in question were again sold to one Mansuri and thereafter in 1979, said premises were purchased by the defendant. It was stated by the plaintiffs that attornment notice was issued to Govindrao Laxmanrao by the defendant thinking him as the only tenant and legal heir even though other legal heirs were residing in the suit premises. In fact, there was no agreement between Govindrao and the owner of the premises in question and hence, the act of previous owner would not be binding to the remaining heirs of deceased Laxmanrao. Thereafter, a suit being H.R.P.Civil Suit No.3525 of 1986 was filed by the defendant only against Govindrao Laxmanrao for rent and possession in which, a

decree of eviction was passed against Govindrao on 30-9-1996. Against which, an appeal being Civil Appeal No.147 of 1996 was preferred by said Govindrao before the Appellate Bench of the Small Causes Court at Ahmedabad. However, said appeal was dismissed against which, Civil Revision Application No.613 of 1999 was preferred before the High Court which was also disposed of. In all these proceedings, the plaintiffs were not joined as parties by the defendant and, therefore, decree of eviction passed against Govindrao would not be binding on them. It was stated that plaintiffs cannot be evicted on the basis of decree of eviction passed against Govindrao, who was one of the legal heirs of deceased Laxmanrao. According to plaintiffs, husband of plaintiff No.1, Dadurao, acquired the tenancy rights after the death of Laxmanrao, similarly plaintiffs acquired the tenancy rights after the death of Dadurao and, therefore also, decree of eviction passed against Govindrao is not binding on the plaintiffs. Hence, a suit being H.R.P.Civil Suit No.576 of 1999 was filed by the plaintiffs together with an application Ex.5 for interim injunction.

2.1 A reply was filed by the defendant at Ex.13 against the suit as well as application for interim injunction contending that the suit was not maintainable. It was contended that Govindrao Laxmanrao was representing all members of his family when the H.R.P. Civil Suit No.3525 of 1986 was contested before the Trial Court as well as the Appellate Court. It was further contended that the plaintiffs were knowing that in Civil Revision Application No.613 of 1999, which was preferred by Govindrao before the High Court, time was sought for to vacate the premises and with a view to delay the matter, these proceedings were initiated and hence, suit as well as application be dismissed.

2.2 Considering the rival submissions made on behalf of the parties and having regard to the facts and circumstances of the case, application Ex.5 was dismissed by the learned Judge of the Small Causes Court, Ahmedabad, vide order dated 10-9-1999. Thereafter, an Appeal From Order No.125 of 1999 was preferred by the plaintiffs before the learned Appellate Bench of the Small Causes Court at Ahmedabad. However, said Appeal From Order was dismissed with costs vide order dated 21-9-2000 against which, present Civil Revision Application has been preferred by the original plaintiffs.

3. Heard Mr.N.S.Shevade, learned counsel for the petitioners and M/s J.T.Trivedi and B.J.Trivedi, learned

counsel for the respondent.

4. Learned counsel for the petitioners, Mr.N.S.Shevade has argued the points which he has contended in his pleadings. He has contended that at the time of demise of Laxmanrao, his wife Chimabai, Dadurao, Govindrao and Kashirao were residing with their families in the premises as tenants and as Dadurao Laxmanrao, husband of plaintiff No.1 and father of the plaintiff No.2 has died, plaitniffs have become the lawful tenants of the premises in question and hence, they have got tenancy rights and inspite of above facts, the present respondent has filed H.R.P.Civil Suit No.3525 of 1986 against Govindrao Laxmanrao only, for rent and possession and hence, the decree, which was passed in the said suit in favour of present respondent and against Govindrao, is illegal and not binding on the present petitioners-original plaintiffs. The orders passed thereafter in appeal and revision are also not binding on them. He has further contended that there was no agreement between the owner of the premises in question and heirs of Laxmanrao for considering Govindrao Laxmanrao as the only tenant and there was no order to that effect either. Even then, the previous owner had accepted Govindrao as the only tenant in respect of the premises which is not legal and valid and such act of the owner is not binding to the remaining heirs of late Laxmanrao and they have got tenancy rights in the premises as they are lawful tenants in the premises in question.

4.1 To support his contention, learned counsel for the petitioners has relied upon the case of Sudhakar Kashiram alias Kashinath Bhavsar and Anr. V. Nagindas Atmaram, 13 G.L.R. 536 wherein the suit of the plaintiff was remanded back to the Trial Court with a direction to proceed further according to law after permitting the plaintiff to join Bai Saraswati as party to the suit. It was held in that case that the suit by the heirs is maintainable. Fact remains that the judgment rendered in above reported case is not a good law as held by the Division Bench of this Court, reported in 18 G.L.R. 305 more particularly para 5.

4.2 He has also relied upon the case of Nanumal Rijumal Vs. Lilaram Vensimal and Anr., 18 G.L.R. 858 which is also not a good law as held in Babubhai @ Jayantilal Kalyanbhai & Ors. V. Shah Bharatkumar Ratilal & Ors., 21 G.L.R. 103, more particularly para 29, wherein the Division Bench of this Court has framed the very issue as question No.1 which runs as under:

"Whether the decision of the Division Bench in Nanumal Rijumal v. Lilaram Vensimal and Anr. (1977) 18 G.L.R. 858 is a good law in view of the decision of the Supreme Court in Damadilal and Others v. Parashram & Ors. (1976) 4 SCC 855 and also in view of the decision in Dhanpal Chettier v. Yasodai Ammal, 1979 (2) All India Rent Control Journal 358 ?"

The above question has been answered by the Division Bench of this Court as under:

"The decision of the Division Bench in Nanumal's case is no longer a good law in view of the aforesaid two decisions of the Supreme Court."

4.3 He has also relied upon the case of Baldev Sahai Bangia V. R.C.Bhasin reported in AIR 1982 S.C. 1091. In the said reported case, the tenant was living in the tenanted house with his father, mother, two sisters and a brother. Subsequently, the tenant shifted to Canada to stay permanently there followed by his wife and children. While leaving for Canada, the tenant left his mother and brother in the house, who were regularly paying rent to the landlord. The landlord filed an application for ejectment of the tenant on the ground of requirement and non-residence of the tenant under Secs.14(1)(d) and (e). It was alleged by the landlord that with the exit of the tenant from the house, it became vacant and his mother and brother, who were left behind, could not be treated as members of the family. The Supreme Court has held in the said case that the tenant could not be evicted on such ground.

4.3.1 The aforesaid decision cited by the learned counsel for the petitioners is not applicable to the present case as the facts and circumstances of the present case and the case cited, are not identical.

4.4 He has relied upon an unreported judgment which was the case of Indrajit Ramanand Shukla V. Chunilal Babardas Shah and Another, 1983 G.L.H. (UJ) 15. That was a case where after the death of the father, two sons were residing in the suit premises and surely one of the sons is having a right to stay in the suit premises. It was held in that case that there cannot be any agreement between the heirs of the deceased tenant prejudicially

affecting the rights of the other brother.

4.5 Another unreported judgment relied upon by the learned counsel for the petitioners is of Darji Vadilal Babaram since deceased through his heirs and legal representatives Subhadraben Vadilal and others V. Mochi Vaghjibhai Rajaji, 1984 GLH (UJ) 54. Said judgement is based on the judgement of the Division Bench of this Court.

4.6 He has also relied upon 1991(2) G.L.R. 1277 which was the case of Bai Amina, D/o Sultanbhai Rehmanbhai & Ors. V. Doctor Abdulrehman Gulam Mohamad Mansuri & Ors. wherein this Court has held that on the death of original tenant, his son, daughter-in-law and their children having become statutory co-tenants, cannot be treated to be trespassers. Merely because there is divorce between the parties, the wife and children cannot be evicted as being trespassers or licensees.

4.7 He has also relied upon the case of Mohd. Azeem V. District Judge, Aligarh and others reported in AIR 1985, S.C.1118, wherein the Supreme Court has held that on the death of original tenant, one of his sons building a house in the same city and moving to it, the tenancy of other sons, widow and daughter of the deceased tenant does not terminate.

4.8 He has lastly relied upon another unreported judgment which was the case of Shivshanker Babulal Thakore and Others Vs. Thakker Ravikant Naryandas, 1989 (2) G.L.H. (U.J.) 29. In the said case, there was no agreement amongst the family members of the deceased about the tenancy rights. In the said case, the Court has held that such rights had not come to an end.

5. Mr.J.T.Trivedi, learned counsel for the respondent, has mainly argued that the present petitioners-original plaintiffs have not acquired any tenancy rights in the premises in question. He has also argued that on behalf of whole family of late Laxmanrao, Govindrao Laxmanrao has become the tenant and he was accepting the rent receipts as he has been accepted as the only tenant amongst the heirs of late Laxmanrao with the consent and knowledge of other heirs. He has contended that above question has been agitated in the previous suit which has been filed by the present respondent against Govindrao being H.R.P.Civil Suit No.3525 of 1986 wherein it was held by the Trial Court that the defendant of the said suit inter alia, Govindrao, has been accepted as the only tenant amongst

the heirs of original tenant and when same question has come up before learned Appellate Bench of the Small Causes Court, it was held that the Trial Court has not committed any error in coming to the conclusion that the tenancy right has been transmitted to Govindrao only. He has contended that against that, Civil Revision Application has been preferred in the High Court by said Govindrao and same has been disposed of. Hence, according to him, above contention has been finally decided by the Court. He has drawn my attention towards the findings given in the previous suit as also oral evidence of Govindrao Laxmanrao and present petitioner-original plaintiff No.2, Jitendra, which have been recorded in the H.R.P.Civil Suit No.3525 of 1986 and it appears that paragraph Nos.9 and 19 of the said judgment and paragraph Nos.11 and 12 of the judgment rendered in Civil Appeal No.147 of 1996 were reproduced in Appeal From order No.125 of 1999 which has been filed before the learned Appellate Bench of the Small Causes Court at Ahmedabad.. He has further argued that it is a concurrent order rendered by the Courts below on facts and, therefore, this Court should not interfere with the same. He has further argued that prima-facie case has not been established by the present petitioners. According to him, since there is no balance of convenience in favour of present petitioners or no irreparable loss is caused to them which cannot be compensated in terms of money, no interim injunction can be granted. He has contended that the whole proceedings of the previous suit upto the High Court level were going on with the knowledge and information of the present petitioners and even present petitioner-original plaintiff No.2 has entered into witness box in that suit also. According to him, when the Court below has already decided the above referred point, the petitioners should not be encouraged in this second round of litigation which has been started after a period of 15 years.

5.1 To support his contention, learned counsel for the respondent has relied upon the case of Pranjivandas Khushaldas vs. Dhanuben Wd/o. Devchand and Ors., 2001(2) G.L.H. 223 wherein this Court has held in para 7 that it is incorrect to say that in every case, where there is a concurrent finding recorded by the two courts below, revisional jurisdiction is absolutely barred. If it is found that findings in the nature of concurrent findings have been illegally recorded or such findings are perverse, in that case, revisional interference is called for.

This Court has further held in para 8 as under:

"The requirement of Sec.13(i)(1) is that, the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant, after coming into operation of this Act, has built or acquired vacant possession of or has been allotted a suitable residence. It is under this ground that eviction of the tenants was sought by seeking amendment in the plaint. It may be mentioned that this ground was not there in the plaint initially. It is only when the landlord came to know that the tenant has constructed alternative accommodation that this plea was raised in the plaint. Shri M.B. Parikh for the revisionist has, however, contended that the tenants have not only built alternative accommodation suitable for their residence but have also shifted in that accommodation. However, there was no evidence that the tenants have shifted in that accommodation and that finding was recorded by the Trial Court, which was confirmed by the Appellate Court. Shifting to the alternative accommodation is not the requirement of Sec.13(i)(1) of the Act. There are three situations contemplated under this Section. One is that the tenant is rendered liable for eviction if he has built a suitable accommodation. The second is that the tenant acquire vacant possession of a suitable residence. The third is that he has been allotted a suitable residence. The requirement of possession is only in the second category when the tenant actually acquires vacant possession of a suitable residence. Acquisition of possession is not necessary when the tenant has built an accommodation for himself or for herself. Likewise, if an alternative accommodation has been allotted for the residence of the tenant then also, it is not the requirement of law that the tenant must have shifted to the alternative accommodation, so allotted to him or to her. In this case, the Trial Court has recorded categorical finding that it is an admitted fact that the defendant No.1(a) Dhanuben purchased the land in Wadi of Ichchha Doshi and had built a building, considering of three floors, namely ground floor, first floor and second floor. The plan of the building was also filed vide Ex.81 If a three storeyed building was constructed and nowhere it was alleged by the tenants that the

accommodation in this three storeyed building was not sufficient for accommodating the tenants after demise of the tenant-in-chief, it cannot be said that the claim of the landlord was liable to be rejected. The Trial Court, as well as, the Appellate Court have rejected the claim of the landlord mainly on two grounds. The first is that all the tenants have not built suitable accommodation for their residence. It may be mentioned that the tenant-in-chief was Devchandbhai and, Dhanuben is his widow. After the death of Devchandbhai, during the pendency of the suit, eight legal representatives inherited tenancy rights as has been found by the two courts below. It these persons become tenants in common or joint tenants, it is not the requirement of the law that all the tenants should have built accommodation for their residence. On the other hand, if any one of the tenants builds a suitable accommodation to accommodate all the tenants, that is sufficient for the landlord for getting a decree for eviction. Unnecessary time and energy has been wasted by the Appellate Court in examining as to who has constructed the house and what was the fund raised for the purpose and who contributed to the fund for completion of the house. Consequently, this ground is not sustainable that all the tenants in common or joint tenants should have built their own houses separately. There is no whisper from the tenants that the accommodation in three storeyed building is insufficient to accommodate the eight legal representatives of the deceased tenant. If that is so then , it can be said that the accommodation constructed by Dhanuben is sufficient for the residence of all the tenants in common or joint tenants."

5.2 He has further relied upon the case of Ashok Chintaman Juker and Ors. Vs. Kishore Pandurang Mantri and Anr., 2001(4) SCALE 46 wherein it was held at head note as under:

"RENT CONTROL--BOMBAY RENT CONTROL ACT, 1947--SECTION 5(11)(C)--Tenant--One `C' was the tenant in the suit premises--After his death, rent receipts were issued in the name of his widow (respondent No.2)--At the time of C's death appellant, his son, was a minor--Suit for eviction filed against respondent No.2-Parties

settled the dispute and suit was disposed of in terms of the settlement--Landlord filed petition for execution of the decree--Appellant filed objections on the ground that he was entitled to occupy the premises as a tenant on the demise of `C'--Concurrent finding that the appellant was not residing in the suit premises since 1962-Whether the tenancy was joint so that a member of the family of the original tenant who claims to have been residing with the tenant at the time of his death can resist execution of a decree passed against a member of the tenant's family who undisputedly was accepted by the landlord as a tenant on the death of the original tenant-Dismissed the appeal".

It was held in paras 10 and 11 as under:

"10. In sub-section (11) of Sec.5 of the Act the expression `tenant' means any person by whom or on whose account rent is payable for any premises and include -(a) such sub-tenants and other persons as have derived title under a tenant before the coming into operation of this Act; (b) any person remaining, after the determination of the lease, in possession, with or without the asset of the landlord, of the premises leased to such person or his predecessor who has derived title before the coming into operation of this Act; (c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court. The language of the provision indicates that the definition of the term an inclusive one and wide in its amplitude. In the present case, we are concerned with clause (c) of sub-section (11) of Sec.5 which provides that "tenant" includes any member of the tenant's family residing with him at the time of his death as may be decided in default of agrement by the Court. There are two requisites which must be fulfilled before a person is entitled to be called "tenant" under sub-clause(c); first he must be a member of the tenant's family and secondly, he must have been residing with the tenant at the time of his death. Besides, fulfilling these conditions, he must have been agreed upon to be a tenant by the members of the tenant's family; in default of such agreement the decision of the Court shall be binding on such members. The further question that arises for

consideration is whether a member of the family of the original tenant who claims to have been residing with the tenant at the time of his death can resist execution of a decree passed against a member of the tenant's family who undisputedly was accepted by the landlord as a tenant on the death of the original tenant.

11. The question that arises for consideration in such cases is whether the tenancy is joint or separate. In the former case notice on any of the tenant is valid and a suit impleading one of them as a tenant is maintainable. A decree passed in such a suit is binding to all the tenants. Determination of the question depends on the facts and circumstances of the case. No inflexible rule or straight-jacket formula can be laid down for the purpose. Therefore, the case in hand is to be decided in the facts and circumstances thereof".

It was further held in para 16 as under:

"In the case on hand, as noted earlier, on the death of the original tenant Chintaman the rent bills in respect of the premises in question were issued in the name of his elder son Kesrinath and on his death the rent bills were issued in the name of his widow Smt. Kishori Kesrinath Juker. It is not the case of the appellant No.1 that there was any division of the premises in question or that rent was being paid to the landlord separately by him. Indeed the appellant No.1 took the plea that he was paying the rent through Smt.Kishori Kesrinath Juker. Thus, the tenancy being one, all the members of the family of the original tenant residing with him at the time of his death, succeeded to the tenancy together. In the circumstances the conclusion is inescapable that Smt.Kishori Kesrinath Juker who was impleaded as a tenant in the suit filed by the landlord represented all the tenants and the decree passed in the suit is binding on all the members of the family covered by the tenancy. In the circumstances, the decree passed in terms of the compromise entered between the landlord and Smt. Kishori Kesrinath Juker can neither be said to be invalid nor inexecutable against any person who claims to be a member of the family residing with the original tenant, and therefore, a "tenant" as defined in section 5(11)(c). The

position that follows is that the appellants have no right to resist on the ground that the decree is not binding to them...."

5.3 Learned counsel for the respondent has also argued that law cannot be resorted to, and the procedural aspect of legal proceedigns cannot be permitted to perpetuate injustice and some special cost is required to be awarded to the respondent.

5.3.1 In this connection, he has relied upon the case of Rajappa Hanamantha Rajoji V. Mahadev Channabasappa and Others, AIR 2000 S.C. 2108. He has also relied upon T.Arivandandam V. T.V.Satyapal, AIR 1977 SC 2421 more particularly paras 6 and 7 which are as follows:

"6. The trial Court in this case will remind itself of Sec.35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motive and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. We regret the infliction of ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and guiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the cooperation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of exparte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy. Petition dismissed."

6. There cannot be any dispute regarding the principles laid down by this Court as well as the Apex Court in the aforesaid judgments relied upon by the learned counsel for the respective parties. Though the learned counsel for the petitioners has relied upon many judgments, when I am having the latest judgment i.e. 2001(4) SCALE 46, I am not discussing those judgments. Keeping in mind the above principles, I have gone through the record and proceedings together with the two concurrent orders passed by the Courts below upon injunction application Ex.5 filed by the present petitioners.

7. It is established from the record and proceedings and from the arguments advanced by the learned counsel for the respondent that the respondent had filed H.R.P.Civil Suit No.3526 of 1986 in the Small Causes Court at Ahmedabad against Govindrao Lakshmanrao Marudkar-original defendant, as heir and legal representative of the deceased tenant Lakshmanrao for possession of the suit premises on the ground of acquisition of alternative suitable accommodation as well as arrears of rent, wherein the Trial Court has held that the opponent No.1 was the person to whom the tenancy had been transmitted to the knowledge and consent of other family members and decreed the suit in favour of the landlord by a judgement dated 30-9-1996.

8. Feeling aggrieved by the said decree, the said Govindrao Lakshmanrao preferred an appeal being Civil Appeal No.147 of 1996 before the Appellate Bench of the Small Causes Court. However, said appeal was dismissed by the judgement and decree dated 16-2-1999, against which, Civil Revision Application No.613 of 1999 was preferred before this Court. After hearing the learned counsel for the respective parties, as this Court was not inclined to dismiss the said revision, the learned counsel appearing for said Govindrao sought permission to withdraw the Civil Revision Application with a request to grant him adequate time to vacate the premisses in question and, hence, this Court granted time upto 31-1-2000 to Govindrao on his filing usual undertaking latest by 12-5-1999 and decree of the Trial Court for possession was directed not be executed till 31-1-2000. Said Civil Revision Application was disposed of vide order dated 12-4-1999. Inspite of the commitment by way of filing undertaking having been made by Govindrao before this Court in said revision to hand over the vacant and peaceful possession of the suit premises on or before 31-1-2000, present petitioners have filed

H.R.P.Civil Suit No.576 of 1999 in the Small Causes Court at Ahmedabad for declaration that the decree passed in said suit is not binding on them and that their tenancy rights still subsist. Along with the said suit, the petitioners have also taken out injunction application Ex.5 for stay of the execution of eviction decree which was ultimately dismissed by the learned judge, Small Causes Court on 10-9-1999. Against which, an Appeal From Order No.125 of 1999 filed by the respondent No.2 was also rejected by the Appellate Bench of the Small Cause Court vide order dated 21-9-2000. It is against the aforesaid two concurrent orders of the Courts below, present Civil Revision Application has been preferred.

9. In the meantime, an application being Misc. Civil Application No.425 of 2001 has been filed by the present respondent-original landlord under the provisions of Contempt of Courts Act, 1979, wherein this Court has held that since the opponent No.1-Govindrao has committed contempt of court, application submitted by the applicant against opponent Nos.2 and 3 was dismissed. This court has made detailed discussion in para 9 of the said judgement.

10. It appears that both the Courts below have given reasoned orders and have dealt with each and every aspect of the matter in depth. Even they have taken into consideration the judgment rendered in previous H.R.P.Civil Suit No.3525 of 1986 filed by the present respondent against Govindrao Laxmanrao which has been confirmed by the learned Appellate Bench of the Small Causes Court in Civil Appeal No.147 of 1996 and which has become final between the parties by disposing of Civil Revision Application No.613 of 1999. Lower Appellate Court has reproduced in Appeal From Order No.125 of 1999 paragraphs Nos.9 and 19 of the judgment rendered in H.R.P.Civil Suit No.3525 of 1986 and paragraph Nos.11 and 12 of the judgment rendered in Civil Appeal No.147 of 1996. It is clear that the present petitioner No.2-original plaintiff No.2 was examined at Ex.79 in H.R.P.Civil Suit No.3525 of 1986 as a witness of Govindrao Laxmanrao wherein he has admitted that after the death of his grandfather-Laxmanrao, his uncle Govindrao was paying the rent and all the members of his family, who were residing in the suit premises, have consented for the issuance of rent receipt in the name of Govindrao and none objected to it. It was held in later part of para 12, which was reproduced from Civil Appeal No.147 of 1996, as under:

"Thus, the defendant and his family members have

inter se made an arrangement and have elected the defendant, the present appellant to be the tenant of the premises in question and thereby they have induced the previous landlord to accept the present appellant-defendant as the tenant of the premises...."

11. Keeping in mind the above aspects of the matter and also in view of the finding of fact of the lower Appellate Court that the family members interse made an arrangement and have elected Govindrao to be tenant of the premises in question and thereby they have made the landlord to accept Govindrao as the tenant of the premises, though the learned counsel for the petitioners has relied upon the judgments referred hereinabove by this Court at earlier stage and though law is clear on this point, petitioners will not get any benefit out of the judgments relied upon by the learned counsel for the petitioners on the point of Sec.5(11)(c) of the Act after the judgment of 21 G.L.R. 103, i.e. Babubhai's case, which has been based on two judgments of Apex Court. Para 27 of the said judgment is very clear about the legal position of Sec.5(11)(c) of the Act. Keeping in mind the judgment which is last in line delivered by the Apex Court and reproduced here of 2000(4) SCALE 46, though the present petitioners are admittedly staying in the premises in question along with Laxmanrao and thereafter with Dadurao and on the demise of Dadurao also, as I have discussed earlier, present petitioners have no prima-facie case. It is made clear that I am dealing with the interim injunction application wherein only prima-facie case is required to be kept in mind and hence, present petitioners will not get any benefit out of Sec.5(11)(c) of the Act as that point has been finally decided by this Court in revision and, therefore, petitioners cannot be permitted to have second round of litigation by way of present proceedings. Moreover, both the Courts below have come to the conclusion that the plaintiffs have no prima-facie case or balance of convenience or irreparable injury which cannot be compensated in terms of money.

12. In view of the aforesaid, I am in agreement with the view taken by the Trial Court and confirmed by the Lower Appellate Court after taking into consideration the arguments advanced by the learned counsel for the parties on facts and law. Hence, this Civil Revision Application is required to be rejected.

13. This Civil Revision Application is rejected. Rule is discharged. Ad-interim injunction granted

earlier stands vacated. Looking to the facts and circumstances of the case, Trial Court is directed to dispose of the suit on top priority basis preferably within a period of six months from today. It is made clear that the observations made by me in this order, being prima-facie ones, would not come in the way of the parties while deciding the suit or any other proceedings.

14. Learned counsel for the respondent has prayed for awarding compensatory costs relying upon two stated above. In view of the fact that this being an order in the interim injunction application, I do not think it fit and proper to award any compensatory cost to the respondent at this stage.

(R.P.DHOLAKIA,J.)
radhan/

Further Order

At this stage, Mr.N.S.Shevade, learned counsel for the petitioners, requests to stay the order for a period of eight weeks in order to approach the Apex Court. Looking to the facts and circumstances of the case, order is stayed for a period of eight weeks so as to approach the Apex Court.

(R.P.DHOLAKIA,J.)
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